



Asia/Pacific Group
on Money Laundering

**ASIA/PACIFIC GROUP
ON MONEY LAUNDERING**

and

**OFFSHORE GROUP OF BANKING SUPERVISORS
(OGBS)**

**APG/OGBS MUTUAL EVALUATION REPORT
ON**

Macao, China

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

**As adopted 24 July 2007
by the APG Plenary**

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PREFACE - INFORMATION AND METHODOLOGY USED FOR THE EVALUATION OF MACAO, CHINA

- 1 The evaluation of the anti-money laundering (AML) and combating the financing of terrorism (CFT) regime of Macao, China 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 Macao, China, and information obtained by the Evaluation Team during its on-site visit to Macao, China from 4 through 15 December 2006, and subsequently. During the on-site visit the Evaluation Team met with officials and representatives of all relevant Macao, China government agencies and the private sector. A list of the bodies met is set out in Annex 2 to the mutual evaluation report.
- 2 The evaluation was conducted by a team of assessors composed of APG and Offshore Group of Banking Supervisors (OGBS) experts in criminal law, law enforcement and financial regulatory issues. The Evaluation Team consisted of:
 - Legal Expert – Mrs Manuela Marta, Portugal;
 - Financial/Regulatory Experts – Mr Gerald Kloski, United States and Mr Richard Walker, Jersey (representing the OGBS);
 - Law Enforcement Expert – Mr Norazlan Mohd Razali, Malaysia; and
 - APG Secretariat– Mr Ian Knight and Mr Arun Kendall.
- 3 Due to unforeseen circumstance, Mr Kloski was unable to continue with preparation of the mutual evaluation report beyond the on-site visit.
- 4 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 the financing of terrorism (FT) through financial institutions and Designated Non-Financial Businesses and Professions (DNFBP), as well as examining the capacity, the implementation and the effectiveness of all these systems.
- 5 This report provides a summary of the AML/CFT measures in place in Macao, China as at the date of the on-site visit or immediately thereafter. It describes and analyses those measures, sets out Macao, China'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).

EXECUTIVE SUMMARY

1 Background information

1. This report provides a summary of the anti-money laundering (AML) and combating the financing of terrorism (CFT) measures in place in Macao, China at the date of the on-site visit or immediately thereafter (December 2006). It describes and analyses those measures, and provides recommendations on how certain aspects of the system could be strengthened. It also sets out Macao, China's levels of compliance with the FATF 40+9 Recommendations (see the attached table on the Ratings of Compliance with the FATF Recommendations).

2. Macao, China is demonstrating a strong commitment towards implementing laws and institutional bodies to enhance its compliance with the international AML/CFT standards). This is critical given the significance of the casino sector in Macao, China.

3. There is no direct evidence of terrorist financing (FT) being undertaken either in or through Macao, China. However, with particular reference to the gaming sector, the risk of money laundering (ML) is substantial.

4. Macao, China was assessed previously in April 2001 jointly by the APG and the Offshore Group of Banking Supervisors (OGBS). The recommendations from the 2001 assessment covered need for enhanced awareness training and guidelines, legal modifications for provisions dealing with suspect transaction reports, confiscation and cash movements, regulatory and enforcement issues pertaining to casinos particularly, and suggested resource and capacity enhancements particularly to the Monetary Authority of Macao (AMCM) and establishment of a financial intelligence unit (FIU). Macao, China reported progress in all areas, with many recent developments being encapsulated in changes to laws in 2006.

5. Designated non-financial business and professions (DNFBPs) operating in Macao, China include casinos, trust and company service providers, realty services, traders in goods of high unit value, notaries and registrars, commercial offshore service institutions, lawyers, accountants and tax consultants. Generally, this sector has been brought within the AML/CFT framework.

6. The main laws and administrative regulations in force to combat ML and FT include the Criminal Code, Decree Law No. 5/91M, No. 6/97/M, Laws No. 4/2002, 2/2006 and 3/2006 and Administrative Regulation No. 7/2006.

2 Legal System and Related Institutional Measures

7. ML was first criminalised in 1997. A new legislative framework devoted to AML/CFT has been in place since 4 April 2006 satisfying the physical and material elements of the offence as required by international conventions. The offences of terrorism and related elements have been in force since 1985. It contains cross reference to the ML regime – thus obliging entities with a duty to prevent ML with similar obligations to prevent FT.

8. Macao, China ratified the Vienna Convention in March 1999 and has also ratified the Palermo Convention by way of publication in the Macao, China Official Gazette of September 2004. Macao, China has also ratified the International Convention for the Suppression of the Financing of Terrorism by way of publication in its Official Gazette on 28 June 2006.

9. Proceeds of crime provisions exist in the Criminal Code. In criminal proceedings in Macao, China all property derived from criminal activity or acquired with its proceeds can be forfeited, except if it belongs to bona fide third parties. In relation to seizure, a provisional measure for temporary deprivation can apply to all kinds of property and to all serious crimes, including ML and FT and related predicate offences.

10. The provisions for confiscation, freezing and forfeiture of the proceeds of crime are broad in application, but are constrained by the fact that it remains for the prosecution to prove beyond a reasonable doubt that the property to be forfeited is from an unlawful activity. The one exception is the unjustified wealth offence – which applies mainly to public civil servants.

11. There was no comprehensive statistical data provided on seized and forfeited assets. Further, there are no provisional measures to prevent assets being dealt with while formal processes are undertaken, unless under exceptional circumstances where the seized assets may lose their value as evidence. Nor is there any possibility of providing mutual legal assistance to foreign requests on freezing orders.

12. Macao, China has not made any provision for freezing terrorist related funds or assets. However, it is noted that the general framework of seizure and forfeiture of funds and assets under the Criminal Code and Criminal Procedure Code would accommodate the seizing and confiscation of terrorist funds.

13. The Financial Intelligence Office (GIF in Portuguese) was formally established on 8 August 2006. It is an independent government entity directly under the purview of the Secretary for Economy and Finance. It is a special project entity with a term of three years and can be extended by order of the Chief Executive. The GIF started operations on 12 November 2006 and at the time of the on-site visit, had six officers seconded to it. It is critical that the ongoing operation of GIF is supported by the Macanese authorities. Prior to the establishment of the GIF, the Judiciary Police was responsible for the function.

14. The Judiciary Police (PJ) is the main police body of Macao, China and the only law enforcement agency responsible and authorised to investigate ML/FT offences in Macao, China. Of its 329 investigators, 10 are dedicated to ML investigations. The PJ has core investigative powers of search, seizure, arrest and some information obtaining powers. From the statistics there are very few investigations relating to ML, and none to FT. Of these limited numbers, there are only seven prosecutions recorded since 2002. The detail and outcomes of those prosecutions are unknown – with the exception of one matter in 2005 that apparently resulted in the seizure of HKD 34 million.

15. Cross border currency movement appears to be a significant issue for Macao, China. The Macao Customs Service (SA) is responsible for monitoring the passage of goods over the border. While the facility at the main border with the PRC is impressive, there did not appear to be any process applied to monitoring the trafficking of goods

other than random searches. In addition, controls at the sea port were not evident. SA indicated an interest in a more prominent role in preventing and combating ML/FT offences. Presently SA does not have the authority to investigate ML or FT.

16. The Commission Against Corruption (CAC) was established in September 1990 and its powers and functions have been subject to several amendments. After the establishment of Macao, China as a Special Administrative Region of the PRC, a new legal framework was approved (Law 10/2000). The powers and competences were reinforced by conferring to the CAC independent powers of criminal investigation.

3 Preventive Measures - Financial Institutions

17. With the coming into force of Administrative Regulation No. 7/2006 and the introduction of revised Guidelines in November 2006, the AMCM has clearly sought to comply with the FATF standards.

18. The Regulation and the Guidelines can be improved, for example by expanding the reasons to exercise customer due diligence (CDD), creating the requirement to verify the identity of persons on whose behalf the customer is acting, a requirement to understand the ownership and control structure of legal arrangements, etc.

19. Macao, China has a good framework to comply with the FATF's standards for introduced business. Only basic enhancements are recommended in this report. Similarly, financial institution secrecy laws do not inhibit implementation of FATF Recommendations thanks to the legal provisions and regulations that are in place.

20. The relevant regulation and guidelines provide a sound basis for institutions' record keeping requirements and procedures for wire transfers.

21. The Insurance Guidelines do not cover obligations for complex, unusual, large transactions, or unusual patterns of transactions. The Guidelines for Financial Institutions cover unusual/suspicious transactions which include complex and large transactions. The Guidelines do not refer to setting forth examination findings in writing and maintaining these findings. In addition, there is no requirement for institutions to give special attention to relationships and transactions with jurisdictions insufficiently apply the FATF Recommendations. Although the Guidelines for Financial Institutions require institutions to detect unusual activity, there is no explicit requirement in any of the Guidelines to examine the background and purpose of transactions with no economic or visible lawful purpose

22. Macao, China has clear legal provisions related to the protection of the disclosure of information imposed by legal, regulatory and administrative provisions, when suspicious reporting is performed in good faith. The law clearly prohibits and punishes the disclosure of the fact that a suspicious transaction report (STR) or related information has been reported to GIF or other authority.

23. There are some positive approaches to compliance in the Guidelines, especially the Guideline for Financial Institutions. Where the FATF obligations are not satisfied, this is to do with the detail of the obligations not being included in the Guidelines. Regarding the application of Macanese AML/CFT standards to overseas branches and subsidiaries, the AMCM exercises this application through its consolidated supervision.

24. The Evaluation Team saw no evidence of shell banks.

25. The supervisory and oversight system of the AMCM is very good, although the Insurance Supervision Department's program of AML/CFT on-site inspections to the insurance sector has yet to commence.

4 Preventive Measures – Designated Non-Financial Businesses & Professions

26. The DNFBP sector can be discussed in two groups, gaming or casino operations, and the other DNFBPs.

27. While the legal framework has begun to be addressed with respect to the application of AML/CFT provisions in the casino sector, large gaps remain in terms of those provisions meeting the FATF standards. In addition, and as a matter of course, authorities, including the Gaming Inspection and Coordination Bureau (DICJ) and PJ should conduct a comprehensive assessment of the risks to illicit finance, including ML and FT in the casino sector, in keeping with the international standards and in an effort to gain a better appreciation of the vulnerabilities inherent in the sector.

28. Macao, China has made significant efforts to bring DNFBP within the AML/CFT framework and is to be commended for undertaking such a major exercise. Nevertheless, it is not clear why the Instructions, Guidelines and Preventive Measures have been drafted, with no written explanations of a risk-based approach provided.

29. The legal framework for the reporting of suspicious transactions remains fragmented, incomplete, and potentially contradictory for DNFBPs more generally and casinos/gaming concessionaries more specifically.

30. Macao, China has considerably strengthened its AML/CFT framework by the appointment of supervisory authorities for all the DNFBPs and by the issue of guidelines in the form of Instructions, Guidelines and Preventive Measures to DNFBP. The Macao Trade and Investment Promotion Institute are particularly well prepared for its AML/CFT supervisor role.

31. In respect of the oversight and regulatory responsibilities delegated to the DICJ, the implementation of recently issued guidelines and instructions cannot be assessed at this time. In addition, no comprehensive risk assessment seems to have been undertaken within the casino sector specifically to assess the risk of ML or FT – thereby informing regulation and ongoing monitoring.

32. Macao, China has undertaken the commendable approach of extending its AML framework beyond the entities specified by the FATF to other areas of potential risk and of reviewing its approach to cash transactions and the persons carrying out these transactions.

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

33. Macao, China has made significant efforts to reduce ML and FT risks by establishing a public company registration system; establishing supervisors and

guidelines for company service providers, notaries, lawyers and offshore entities; and introducing revised guidelines for banks which cover beneficial ownership of legal persons.

34. Macao, China has a foundation for ensuring the beneficial ownership, albeit not necessarily the control, of legal arrangements is known to the main local service providers - banks. Although there are no trust service providers, there is a framework for trust service provider regulation in place. In practice, the relative size of the banking sector and the scope of the Guideline for Financial Institutions mean that the beneficial ownership of most foreign trusts using Macao, China's services in Macao, China will be known and the authorities can obtain access to this information.

35. In respect of the NPO sector, the Evaluation Team was advised that in June 2006 Macao, China commenced a preliminary study to assess the NPO sector and its weak points. A working group was established. No authority has the clear oversight role for AML/CFT risks are mitigated by virtue of the existing registration framework for NPOs formed as associations and foundations. This will facilitate enquiries by the competent authorities in Macao, China.

6 National and International Co-operation

36. Coordination mechanisms in respect of the financial sector and DNFBPs are in place through the Working Group on Anti-Money Laundering – although it is not clear how operational cooperation is achieved.

37. The provision for providing assistance from GIF to Macao, China law enforcement, especially regarding information and technical support, is embedded in the Executive Ruling No. 227/2006. In a similar manner, the Law of the Judiciary Police No. 5/2006 provides power for PJ to request as well as make it compulsory for other law enforcement bodies, public agencies, public entities, private entities and natural persons to cooperate and provide assistance to PJ.

38. The Vienna and Palermo Conventions are applicable in Macao, China – albeit they are not fully implemented. The UN Suppression of Financing of Terrorism Convention applies in Macao, China although no freezing mechanism is in place. The UN Security Council Resolutions are enforced in Macao, China.

39. There was no comprehensive statistical data on mutual legal assistance (MLA) concerning ML and FT – so an assessment of the MLA system was not possible. Given that Macao, China has only recently concluded MLA agreements, the implementation factor is similarly not possible to assess. Concerns are also held regarding the efficiency of the system because the general procedures appear very involved at the administrative level.

40. In respect of extradition, such agreements are strictly within the sphere of competence of the PRC. However, the surrender of fugitive offenders regime is a similar law. Money laundering is an offence which would fit the criteria for surrender of fugitive offenders.

41. In respect of other forms of international cooperation, the AMCM does exchange information with neighbouring jurisdictions and authorities performing

equivalent functions. However, the AMCM and other supervisory authorities should consider establishing further bilateral instruments with jurisdictions where Macao, China has a need for cooperation – because such cooperation is still quite restricted.

7 Other Issues

Table 1: Ratings of Compliance with FATF Recommendations

Table 2: Recommended Action Plan to improve the AML/CFT system

Table 3: Authorities' Response to the Evaluation

MUTUAL EVALUATION REPORT

1. GENERAL

1.1. GENERAL INFORMATION ON MACAO, CHINA

a. Overview

1. The Macao Special Administrative Region of the People's Republic of China (PRC), hereinafter referred to as "Macao, China", lies on the South-eastern coast of the PRC, at the estuary of the Pearl River Delta. It consists of the Peninsula of Macao and the Islands of Taipa and Coloane, covering a total surface area of 28.2 square kilometres. As of June 2006, the estimated population of Macao, China was 503,000. The population density is 17,837 inhabitants per square kilometre. The official languages are Chinese and Portuguese. English is also widely used.

2. For 2005, the nominal GDP and per-capita GDP of Macao, China were MOP 92.6 billion (USD 12 billion) and MOP194,458 (USD 25,211) respectively. Inflation rate for 2005 was 4.4%. The GDP for the first half of 2006 was estimated at MOP 52.0 billion (USD 6.7 billion), with an inflation rate of 5.1% as at July 2006. As at the end of July 2006, the total labour force was estimated at 278,000, with an unemployment rate of 3.9%.

3. In the first half of 2006, gross gaming receipts went up 12.9% to MOP25.5 billion (USD 3.3 billion) in nominal terms when compared with the same period of the previous year; and investment grew rapidly on the back of several large-scale construction projects in progress. On a quarter-to-quarter basis, total visitor spending (excluding gaming expenses) rose 15.7% upon increases in the number of arrivals and per-capita spending of visitors. Exports of goods rose further from January to July 2006, with a real growth of 33.8% over the same period of 2005. Estimated from all relevant data, GDP growth in the first half of 2006 over the first half of 2005 was 17.7% in real terms.

4. During the period of January to July 2006, the value of total exports increased 33.8% year-on-year to MOP12.34 billion (USD1.6 billion). In addition, both the values of domestic exports and re-exports increased 45.5% and 9.5% respectively. Moreover, the value of imports amounted to MOP20.54 billion (USD 2.7 billion), up 25.7% over the same period of 2005. In the first seven months of 2006, Macao, China's trade balance registered a deficit of MOP8.20 billion (USD 1.1 billion). During this period, exports/imports ratio increased from 56.4% in the corresponding period of 2005 to 60.1%.

5. During the period of January – July 2006, Macao, China's total value of imports grew 25.7% year-on-year, mainly due to the increase in the value of imports by broad economic categories, namely fuels & lubricants (42.6%), consumer goods (29.2%), raw materials & semi-manufactures (23.0%) and capital goods (15.2%).

6. Meanwhile, Macao, China's main suppliers of imported goods are still concentrated in the Asian region. Imports from PRC and Hong Kong, China together constituted 55.7% of the total value of imports. Compared with January to July of 2005,

the value of imports from PRC and Hong Kong, China rose 38.4% and 30.0% respectively.

7. As regards invisible trade (exports of services) during the first half of 2006, exports of gaming services rose 10.0%; total visitor spending increased 15.7% as a result of rises of 15.9% and 10.0% recorded respectively in the number of visitor arrivals and per-capita spending of visitors (excluding gaming expenses); exports of other services also posted a double-digit growth. Based on integrated data of the exports of services, total exports of invisible trade recorded an increase of 12.1%. Moreover, imports of services grew 14.9% in the second quarter of 2006.

8. Future economic policies are intended to focus on balanced and sustainable development of Macao, China's economy. As Macao, China continues with the development of prominent sectors of industry, Macao, China intends to promote the related service industries so as to foster appropriate diversification of the local economy as well as its overall balanced development. At the same time, Macao, China shall actively participate in regional economic cooperation and collaboration, working towards the integration of neighbouring economies to build a regional commercial and trading services platform. It will especially focus on economic and trading exchange and cooperation between mainland China and Portuguese-speaking jurisdictions, on the trade services platform for the western part of Guangdong Province and on the services platform for mutual communication and cooperation among worldwide Chinese business entrepreneurs.

9. Since its official implementation on 1 January 2004, the Mainland and Macao Closer Economic Partnership Arrangement (CEPA) has been constantly improved and extended. Now, imports from Macao, China entering the PRC enjoy zero tariffs (except those explicitly prohibited by the national government) as long as the Rules of Origin agreed by both sides are met. At the same time, 26 service industries in the PRC are already open to Macao, China enterprises. Through CEPA the trade in both goods and services is gradually being liberalised, and investment is being encouraged and made easier.

b. Legal framework and hierarchy of laws

10. Macao, China was established on 20 December 1999 as a Special Administrative Region in accordance with the provisions of Articles 31 and 62 (13) of the Constitution of the PRC by decision adopted by the first session of the eighth National People's Congress of the People's Republic of China (NPC) on 31 March 1993. At the same time and in the same session, complying with the above-mentioned Article 31 of the Constitution, the NPC also adopted Macao, China Basic Law. According to the NPC decisions the Basic Law was put into effect on the date of the establishment of Macao, China.

11. The Basic Law has constitutional value and therefore overrides all the other laws. Its main focus is to set forth the general principles and the explicit rules regarding Macao, China (the relationship between the Central People's Government and Macao, China, the fundamental rights and duties of Macao, China residents and political structure and the institutional framework of the Region) In consistence with this aim, it stipulates a scale of norms necessary for determining not only the autonomy enjoyed by Macao, China, but also the extent of that autonomy.

12. Macao, China is entitled to decide and pursue its own economic and free trade policies safeguarding the free movement of capital, goods, intangible assets and convertible currency. It also formulates its own monetary and financial policies, issuing and managing its own currency and maintaining the free flow of capital. Macao, China remains a separate customs territory and a free port, determining its own taxation policy.

13. The Basic Law determines when and how Macao, China can negotiate and conclude certain international agreements on its own, or participate in certain international organisations. It allows the establishment of Macao, China official and semi-official economic and trade missions in foreign jurisdictions and sets up a special procedure for consultation with Macao, China's government regarding the application of international agreements to which the PRC is or will become a party. It authorises Macao, China to issue, in accordance with the law, passports and other travel documents.

14. The Basic Law enshrines several principles, policies and provisions under the principle of "One country, Two systems". According to this principle, the socialist system and policies of the PRC will not be practised in Macao, China, whereby its existing social and economic systems and way of life will remain unchanged for 50 years.

15. Another significant principle enshrined in the Basic Law is that Macao, China shall exercise a high degree of autonomy except in defence and foreign affairs and enjoy executive, legislative and independent judicial power, including that of final adjudication.

16. It also guarantees that "Macao shall be ruled by its own people" by stipulating that the executive authorities and legislature of Macao, China shall be composed of Macao, China permanent residents and that the rights and freedoms of the local residents and of other persons in Macao, China shall be safeguarded in accordance with law.

17. Local laws and other normative acts previously in force shall be maintained, except for any that contravenes the Basic Law, or subject to any amendment by the legislature or other relevant Macao, China organs in accordance with legal procedures.

18. Basic Law is the fundamental of the legal framework of Macao, China, which is followed by Laws, Administrative Regulations, Resolutions of the Legislative Assembly, Executive Orders, Executive Rulings (Despacho) from the Chief Executive and Rulings from Major Officials of the Macao, China Government. Each Government Department is also authorized to issue Notices and Circulars that have legal enforceability. The Laws must be passed by the Legislative Assembly and announced by the Chief Executive before being effective, whilst Administrative Regulations could be issued by the Chief Executive after consultation with the Executive Council. Executive Orders and Executive Rulings are issued by the Chief Executive by the power vested in him under Article 50 of the Basic Law. Article 64 of the Basic Law empowers major officials to issue Rulings.

c. Government structure

19. The Chief Executive is simultaneously the highest-ranking officer of Macao, China and the head of the government of Macao, China. He is assisted by the Executive Council in policy-making.

20. The government is the executive body of Macao, China. The government must abide by the law and is accountable to the Legislative Assembly of the Region. Macao, China government comprises general secretariats, directorates of services, departments and divisions. The principal posts of government are the Secretaries, the Commissioner against Corruption, the Commissioner of Audit and the heads of the Police Services and the Customs Services.

21. There are five Secretaries: the Secretary for Administration and Justice, the Secretary for Economy and Finance, the Secretary for Security, the Secretary for Social Affairs and Culture and the Secretary for Transport and Public Works.

22. The Legislative Assembly of the Macao SAR is the legislature body of the Region (Articles 67 to 81 of the Basic Law).

23. Macao, China enjoys a high degree of autonomy except for defence and foreign affairs, which are the responsibilities of the PRC Government. Notwithstanding Macao, China's non-sovereign status, the Basic Law stipulates that the PRC Government can authorise Macao, China to conduct external affairs. Furthermore, Macao, China can exercise, on its own, considerable powers in certain appropriate fields, including the economy, trade, financial and monetary affairs, shipping, communications, tourism, culture, science and technology, and sports.

d. Court and legal system

24. The Basic Law vests Macao, China with independent judicial power, including final adjudication. It also establishes the independence of the courts, their submission only to the law and their jurisdiction over all cases in the Region (Articles 19, 82 to 89 of the Basic Law). Macao, China courts are responsible for protecting legal rights and interests, preventing any breaches of legality and resolving conflicts between public and private interests.

25. The following courts are established in Macao, China: the Primary Court (with general jurisdiction at first instance, including the Criminal Instruction Tribunal), the Administrative Court (with jurisdiction at first instance in administrative disputes), the Court of Second Instance and the Court of Final Appeal.

26. In Macao, China the Procurator-General, the Assistant-Procurators-General and the Deputies of the Procurator exercise the procuratorial functions. These functions, as vested by law, are carried out independently and free from any interference (Article 90 (1) of the Basic Law).

27. In the Macao, China legal system there is no doctrine of binding precedent. The court decisions are compulsory for all public and private entities and override the decisions of any other authorities. Laws of procedure regulate the terms under which court decisions affecting any authority are implemented, and specify the sanctions that should be applied in the event of non-compliance.

28. It should be noted that it is a fundamental principle of Macao, China's legal system that a court cannot abstain from reaching a decision by invoking a default or obscurity of the law, or alleging an unresolvable doubt about the facts in question (Article 7 of the Civil Code).

e. *Application of international treaties*

29. The application to Macao, China of international treaties to which the PRC is a party is decided by the PRC Government upon seeking the views of the Macao, China government and according to the circumstances and the latter's needs (Article 138 (1) of the Basic Law). Previous treaties in force in Macao, China to which the PRC is not a party may continue to apply in Macao, China (Article 138 (2) of the Basic Law).

30. In fact, one of the fundamental pillars of Macao, China's legal system, which is based on the continental Roman-Germanic family of law, is precisely that international and domestic laws are part of the same general legal order operating simultaneously in regard to the same subject matter.

31. Another cornerstone of Macao, China's legal system is the principle of publication of laws. Pursuant to this, Articles 3 (6) and 5 (1) of Law 3/1999, of 20 December, established that international agreements applicable in Macao, China shall be published in the Official Gazette.

32. Once international treaties duly ratified or approved by the PRC, or in the case of the above mentioned appropriate fields by the Chief Executive, are published in the Official Gazette, they immediately and automatically become part of Macao, China's legal order.

33. There is no need to incorporate international law into domestic law for its effective application. Nevertheless, reservations and declarations made at the time of the assumption of the international obligation or the wording of an international instrument may imply that one or more of its clauses can not be self-executing. In those cases, though the international provisions still entirely and directly effective, they must be implemented by means of domestic legislation.

34. In the event of a conflict between international and domestic law, international agreements applicable to Macao, China take precedence over domestic ordinary law (Article 1 (3) of the Civil Code).

f. *Transparency, good governance, ethics and measures against corruption*

35. The Macao, China government promotes transparency and good governance by establishing independent supervision functions mainly through the establishments of the Commission against Corruption (CAC) and the Commission of Audit. They are nominated by the Chief Executive for appointment by the Central People's Government (Articles 50 (6) and 59 of the Basic Law) and are accountable to the Chief Executive.

36. The CAC also acts as the Macao, China 'Ombudsman' and is entitled to carry out preventive actions and investigations against any crimes of corruption and fraud committed by civil servants to enhance honesty and incorruptibility of public administration.

37. The Commission of Audit is responsible for monitoring the operation and management of public accounts and conducting audit work in different sectors.

38. It should be mentioned that the protection of the defendant's basic rights is always guaranteed within Macao, China legal system, in particular, the principle of the presumption of innocence, the right to an equitable and fair procedure and the principle of contradictory. These principles are applicable to both criminal and administrative proceedings.

39. In accordance with article 145 of the Administrative Procedure Code, approved by Decree-law n° 57/99/M, from 11 October 1999, a person can appeal within the relevant administrative bodies (gracious appeal) against any administrative decision or sanctions against him. Should the result of the gracious administrative procedure still go against the individual's interests, a legal proceeding for judicial review can be initiated through the Administrative Court, for a final judicial review as stipulated under the proceedings regulated in the Litigious Administrative Procedure Code, approved by Decree-Law No 110/99/M, from 13 December 1999.

40. Civil servants of the Macao, China Government are obliged to comply with the guidelines of professional ethics and conduct of public administrative personnel, which covers treatments related to the exercise of public functions, conflicts of interests, accepting gifts/discounts/passages, duties of secrecy and uses of public resources. Holders of public positions and staff of the public administration are also required to declare independently their personal incomes and assets.

41. According to Article 279 of the General Clauses of the Employees of Public Administration, the following are stipulated to be the basic qualities of civil servants:

- Impartiality towards the public, which means refusal to receive unlawful interests and perform fairly even under pressure;
- Enthusiasm, which includes the accomplishment of duties in a professional manner, understandings of the laws and regulations and continual improvements of their skills;
- Obedience to lawful orders from superiors;
- Integrity, which refers to the pursue of public interests by duly performing the duties assigned by the superiors and according to the job purpose;
- Confidentiality, which means the protection of secrecy of the information obtained during the course of duties;
- Courtesy towards the users of public services, superiors, colleagues and subordinates;
- Diligence, which refers to the normal and continuous performance of duties during working hours;
- Punctuality;
- Obligation of not to take up jobs that contradict with the present duties;
- Obligation of the heads of departments and management to deal with subordinates fairly and according to the job requirements.

1.2. GENERAL SITUATION OF MONEY LAUNDERING AND FINANCING OF TERRORISM

42. Drug crime, organized crime, kidnap, bribery and illegal gambling are considered to be the major sources of illegal proceeds. Statistics on the number of

criminal investigations for the past five years along with ML investigations and prosecutions is given as follows:

	2002	2003	2004	2005	The first half of 2006
Criminal Investigations					
Drug crime	155	197	193	173	99
Organized crime	14	24	21	19	9
Kidnap	6	6	3	3	0
Bribery	1	4	6	2	1
Illegal gambling	47	113	79	68	43
Money Laundering Investigations and Prosecutions					
File Opened	26	2	10	9	12
Prosecutions	3	1	0	2	1

43. Even though PJ had indicated the ML/FT crimes are relatively small in Macao, China, nevertheless the existence of casinos, close proximity border with PRC and its open economy do pose a threat to ML/FT activities.

44. There have been some cases where money was brought to Macao, China underground alternative remittance systems (ARS) and there have been cases where ARS were used by gambling tourists in the casinos. Macao, China authorities also suggest that the money brought into Macao, China by means of these systems may be used for “consumption and investment”.

45. No terrorist financing or suspicious FT cases have been identified in the last four years.

1.3. OVERVIEW OF THE FINANCIAL SECTOR AND DNFBP

a. The Financial Sector

46. The financial sector is one of the key industries in Macao, China. Its development is in line with the strong economic growth in a sound and prudent manner. The Monetary Authority of Macao (AMCM) is the sole regulatory and supervisory authority, exercising the functions of a quasi-central bank with the power to regulate and supervise all financial institutions in Macao, China, including banks, financial intermediaries, moneychangers, cash remittance houses, insurance companies, insurance intermediaries, and other financial institutions. The following chart sets out the types of financial institutions that carry out the financial activities listed in the Glossary of the FATF 40 Recommendations.

Type of financial activity (referring to the Glossary of the 40 Recommendations)	Type of financial institutions that perform this activity in Macao, China
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Acceptance of deposits and other repayable funds from the public	<ul style="list-style-type: none"> ▪ Banks ▪ Postal savings banks ▪ Other credit institutions
Lending (including consumer credit; mortgage credit; factoring, with or without recourse; and finance of commercial transactions (including forfeiting))	<ul style="list-style-type: none"> ▪ Banks ▪ Postal savings banks ▪ Finance companies
Financial leasing (other than financial leasing arrangements in relation to consumer products)	<ul style="list-style-type: none"> ▪ Banks ▪ Finance companies
Transfer of money or value (including financial activity in both the formal or informal sector (e.g. alternative remittance), but not including any natural or legal person that provides financial institutions solely with message or other support systems for transmitting funds)	<ul style="list-style-type: none"> ▪ Banks ▪ Cash remittance houses
Issuing and managing means of payment (e.g. credit and debit cards, cheques, traveller's cheques, money orders and bankers' drafts, electronic money)	<ul style="list-style-type: none"> ▪ Banks ▪ Other credit institutions
Financial guarantees and commitments	<ul style="list-style-type: none"> • Banks
Trading in: <ul style="list-style-type: none"> (a) money market instruments (cheques, bills, CDs, derivatives, etc.); (b) foreign exchange; (c) exchange, interest rate and index instruments; (d) transferable securities; (e) commodity futures trading 	<ul style="list-style-type: none"> ▪ Banks ▪ Financial intermediaries (trading securities on spot basis on behalf of customers only, margin/leverage trading not allowed)
Participation in securities issues and the provision of financial services related to such issues	<ul style="list-style-type: none"> ▪ Banks
Individual and collective portfolio management (covers management of collective investment schemes such as unit trusts, mutual funds, pension funds)	<ul style="list-style-type: none"> ▪ Banks ▪ Insurance companies
Safekeeping and administration of cash or liquid securities on behalf of other persons	<ul style="list-style-type: none"> ▪ Banks ▪ Financial intermediaries ▪ Insurance companies
Otherwise investing, administering or managing funds or money on behalf of other persons	<ul style="list-style-type: none"> ▪ Banks ▪ Insurance companies
Underwriting and placement of life insurance and other investment related insurance undertakings and insurance intermediaries (agents and brokers))	<ul style="list-style-type: none"> ▪ Insurance companies
Money and currency changing	<ul style="list-style-type: none"> ▪ Banks ▪ Moneychangers

Banks

47. According to the Financial System Act (FSA) approved by Decree-Law No. 32/93/M, banks are authorized institutions and are allowed to carry out the following activities: accepting deposits and other repayable funds from the public; lending, making guarantees and other commitments, financial leasing and factoring; money transmission services; issuing and administering means of payment such as credit cards, travellers' cheques and letters of credit; trading for own account or for account of customers in

money, financial and foreign exchange market instruments, financial futures and options, and transactions involving foreign exchange or interest rates and transferable securities; participating in issues and placements of securities and provision of other services related to such issues; operating in inter-bank market; portfolio safekeeping, administration and management; management of other assets; financial consultancy; investment in holdings in company capital; credit reference services; safe custody services; and sale of insurance contracts.

48. As of September 2006, there are 23 banks licensed to conduct universal business in Macao, China and another three banks with offshore licences, making a total of 26 banks. Of the 23 non-offshore banks, 10 are locally incorporated, while 13 are branches of overseas banks. Source of funds of the banks came from the PRC; Hong Kong, China; Portugal; the United States; the United Kingdom; France; Singapore; Chinese Taipei and Macao, China. The three offshore banks are all subsidiaries or branches of overseas banks. In addition, there is one postal savings bank in Macao, China which operates very limited banking services (mainly remittance service, deposits-taking and loans service). As at the end of July 2006, total assets amounted to MOP243 billion (USD30.4 billion) and total deposits reached MOP210 billion (USD26.2 billion).

Financial Intermediaries

49. Purchasing or selling on behalf of third parties securities and other instruments in the money, financial or foreign exchange markets are authorized operations which can only be provided by banks or financial intermediaries. Under the FSA, financial intermediaries are authorized institutions and they can only accept customers' order on spot (cash) basis. Margin trading or leverage trading is not allowed for the time being.

50. As at the end of September 2006, there are two financial intermediaries authorized to carry out business in Macao, China. Both are branches of securities companies licensed in Hong Kong, China.

Moneychangers and Cash Remittance Houses

51. Moneychangers and cash remittance houses are authorized institutions in Macao, China.

52. Moneychangers are primarily regulated through Decree-Law No. 38/97/M, under which the business scope of moneychangers are restricted to purchases and sales of notes, coins and travellers' cheques. As at the end of September 2006, there are 11 authorized moneychangers and 10 of them are operating in Macao, China (the remaining one is still preparing for operation). Sources of funds of the moneychangers mainly come from local and Hong Kong, China investors. There are also authorized exchange counters in the casinos of three existing gaming concessionaires.

53. Decree-Law No. 15/97/M sets out the regulatory framework for cash remittance companies, which are allowed to promote the express delivery of cash, in the territory of Macao, China or aboard, by the order of third parties, and execute the necessary foreign exchange operations related to their businesses via local banks. As at the end of September 2006, there are two authorized cash remittance companies in Macao, China.

Insurance Companies

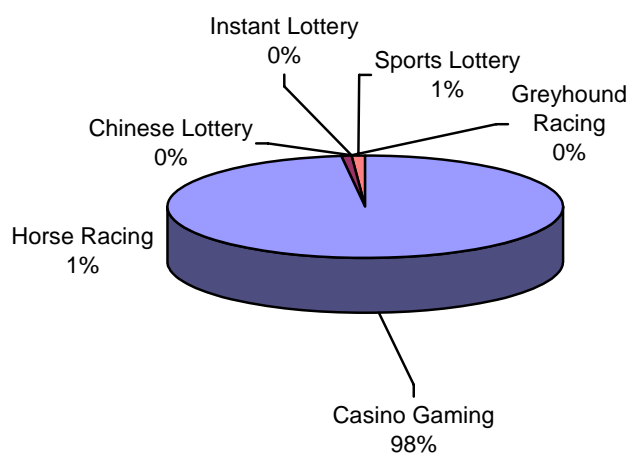
54. There were 24 Insurance companies operating in Macao, China at the end of September 2006, of which 13 were pure non-life companies, while the remaining 11 were licensed to conduct both life insurance business and the management of private pension funds. Among the non-life insurers, there were two insurers still in the run-off stage. In 2005, the premium portfolio of the principal commercial activity of the insurance companies totalled MOP2,215.4 million (USD277 million equivalent), being 74% life insurance business and 26% general insurance. For the first six months of 2006, the premium portfolio of the principal commercial activity of the insurance companies has recorded 8.6% year-on-year increase amounted to MOP1,101.6 million (approximately USD137.7 million equivalent), being 65.5% life insurance business and 34.5% general insurance. Total number of licences issued to registered insurance intermediaries reached 3,256 as at end of August 2006.

b. Designated Non-Financial Businesses and Professions (DNFBPs)

Gaming Activities

55. In 2005, all gaming activities generated a total of almost MOP\$45.8 billion in gross revenue, an increase of 8% over 2004, still mainly attributed to casino gaming. In 2005, casino sector made up 97.6% of the total gross gaming revenue. The balance came from horse racing (1.4%) and sport lotteries (0.8%).

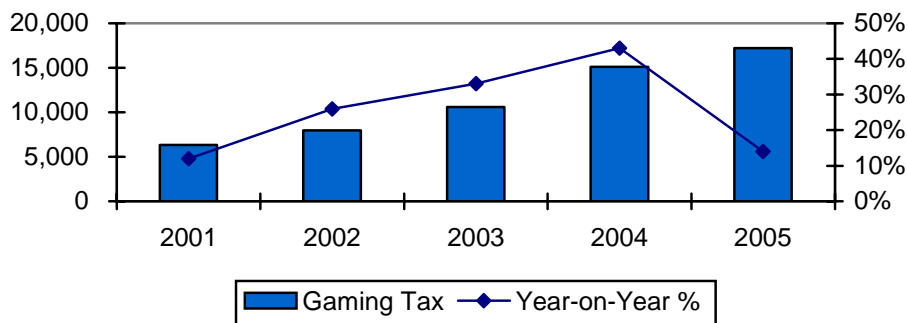
Chart 1: Breakdown of Total Gross Gaming Revenue by Different Gaming Activities in 2005



56. In the first half of 2006, the total gross revenue from all gaming activities was MOP25.5 billion, representing an increase of 13% over the same period last year. Casino sector continues to take up 98.1% of the gross revenue, followed by horse-racing (0.93%) and sports lottery (0.8%). In August 2006, the total year-to-date gross revenue from gaming activities has further grown to MOP34.1 billion.

57. In 2005, gaming tax revenue was MOP\$17.2 billion, up 14% over 2004. Apart from Greyhound Racing, Instant Lottery and Football Betting, all gaming activities registered a positive growth in gaming tax revenue when compared to 2004.

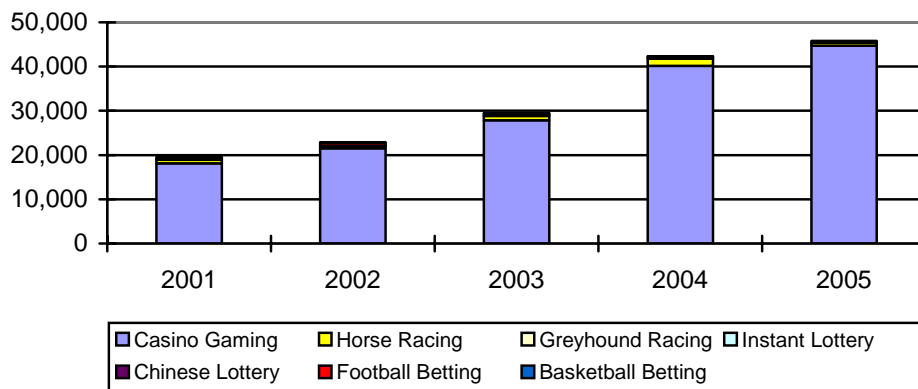
Chart 2: Gaming Tax from 2001-2005 (in million patacas)



58. As noted from Chart 2, gaming tax revenue has been steadily increasing since 2001, a growth rate of 43% being recorded in 2004, and then slowing to 14% in 2005.

59. Casino gaming accounts for a substantial share of Macao, China's gaming sector. Growth of the gaming industry became more obvious after the entry of the new gaming competitors in 2003. Casino gaming plays a leading role among all gaming activities, with casino revenue to total gaming revenue ratio set in the range of 93% ~ 98% from 2001 to the first half of 2006. Horse racing and football betting are also on the track of continuous growth.

Chart 3: Total Gross Gaming Revenue from 2001-2005 (in million patacas)



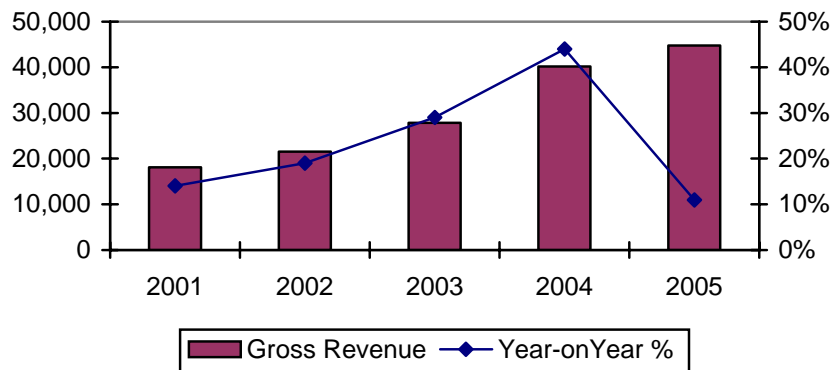
three gaming concessionaries - SJM, Venetian and Galaxy generated a total MOP\$44.72 billion in gross revenue, an increase of 11% over the same period of 2004, hitting a new record. Up to August 2006, their year-to-date total gross revenue reached MOP\$34.1 billion.

61. Chart 4 below shows that gross revenue demonstrated an upward trend with explosive growth in past five years, by an average annual rate of growth of 23%. Based

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on current performance and several new casinos entering the market in 2006, it is anticipated that revenue would approach MOP\$50 billion in 2006.

Chart 4: Casino Gross Revenue from 2001-2005 (in million patacas)



Real estate agents, dealers in precious metals and precious stones

62. Real estate agents act as middlemen for property rental and trading. Dealers in precious metals and precious stones mainly provide retail service of these items for ornamental purpose. The statistics on the number of real estate agents and precious stones and metal dealers are not available.

Lawyers, notaries, other independent legal professionals and accountants

63. The Macao Lawyers Association states in its website that there are 123 registered lawyers in practice and 78 lawyers in training. The Macao, China legal profession is dominated by expatriates, although localization is making progress with more bilingual entrants into the profession in recent years.

64. According to government records, as at the end of 2006 there were 148 registered accountants, 119 registered auditors and 10 registered auditing firms in Macao, China. The Finance Services Bureau (DSF) only has – through the Committee for the Registry of Auditors and Accountants (CRAC) - legal powers to assess the professional qualification, accept the registrations of and to recommend disciplinary actions against accountants and auditors. The DSF is also legally provided with generic supervision powers – which result from, at a first basic level, DSF's organic law.

65. There are 51 notaries in Macao, China, 47 of which are in private practice. There are four registrar officers. Both are supervised by the Legal Affairs Bureau (DSAJ) and their scope is to give full faith and credit to non-judicial documents (notaries-public) and to register all eligible transactions (registrar offices).

Trust and company service providers

66. There is no trust law under the present legal system. Company service providers provide services such as the incorporation of companies and company secretarial services. These providers, who can be lawyers or accountants, come under the supervision of Economic Services Department (DSE).

Offshore institutions

67. As at end of June 2006, 5.6% of total non-financial offshore institutions were designated non-financial businesses and professions (DNFBP). The distribution is:

- Dealers in minerals and metal (precious metals) – 1.25% (trading in iron and copper)
- Dealers in Jewellery (precious stones) – 2.33% (designing and trading in jewellery)
- Business consultancy (company services providers) – 2.02% (mainly company secretarial services providers)

68. The rest of the offshore institutions fall outside the scope of the DNFBPs.

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

69. The types of legal persons that exist in Macao, China include commercial companies, civil societies, associations and foundations. Legal arrangements are also possible, according to the Commercial Code.

70. **Commercial companies:** There are four basic types of commercial companies in Macao, China; general partnerships, limited partnerships, private companies and public companies (Article 174 of the Commercial Code). All the prospective companies must apply to register with the Commercial Registrar. The company must submit, among others, the company name, the type of company, the incorporation statutes, the registered and principal business office, administrator and secretary, share structure and member's share. Companies are owned by one or more shareholders (which may be legal or natural persons).

71. **Civil societies:** The civil societies are legal persons formed by members who contribute assets and services for the common exercise of a certain economic activity in order to share the profits resulting from that activity or to maintain savings. The civil societies are in everything similar to the commercial companies. The only difference is their objective. When a civil society's objective is the exercise of a commercial business, it is considered a commercial company; but when its objective is not a commercial business, it is considered a civil society. So, civil societies have a residual definition.

72. **Associations:** The associations are non-profit making organizations of individuals wherein the personal element predominates. The constitution act and statutes shall specify the assets or services brought by the associates to the social patrimony, the denomination, purpose and statutory seat of the association, the form of its operation, as well as its duration, when the association is to exist for a certain period of time (rules related to the constitution, operation, members, statutes and extinction causes are set forth in the Articles 155 to 172 of the Civil Code). The constitution act of the association, its statutes and modifications shall be made through a public document and must be published in the Official Gazette and must be sent to the Procuratorate. The management body of the association must register the identification of the heads of the social bodies within 90 days after the mentioned publication.

73. **Foundations:** The foundations are organizations that mainly consist of funds established for charitable, benevolent or social purposes as determined by the

founder(s). Foundations may be created by public document, unless other formalities are required, or by will of the founder(s), which have attached, on stable terms, their patrimony. The incorporate act must indicate the aim of the foundation and specify the assets destination or purpose. The statutes may include, inter alia, the statutory seat of the foundation, structure and operation rules. The recognition by a public authority of the incorporate act and the assets whereto attached is mandatory for its validity. The constitution act must be published in the Official Gazette in order to be opposed against third parties.

74. **Legal arrangements:** It is possible to have legal arrangements between companies to co-operate in the exercise of an enterprise. Those legal arrangements are foreseen in the Commercial Code: economic interest groupings (Article 489 of the Commercial Code) – two or more commercial entrepreneurs can, without prejudice to their legal personalities, create among themselves an economic interest grouping, in order to facilitate or develop their economic activity and to improve or increase the results of such activity; consortium contracts (Article 528 of the Commercial Code) – two or more individuals or collective persons, who exercise an economic activity, bind among themselves to undertake a certain activity or to make a certain contribution, in an organized manner, with the purpose of achieving any of the objects mentioned in the following article; association in participation contracts (Article 551 of the Commercial Code) – a person is associated to a commercial enterprise exercised by another person, the former participating in the profits, or in the profits and losses, resulting from such exercise to the latter.

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

a. AML/CFT Strategies and Priorities

75. The efforts of Macao, China in the fight against ML and FT can be traced back to the 1990s. In 1991, the Decree-Law on drug control was promulgated to allow the Government to confiscate assets derived from drug trafficking. The confiscation of assets was further expanded to other criminal activities by the Criminal Code in 1995. The law on Organized Crimes promulgated in 1997 goes further to deal with crimes related to conversion, transfer or dissimulation of illicit assets or proceeds arising from criminal activities. The Decree Law No. 24/98/M* in 1998 stipulates that reporting is mandatory when suspicious transactions are spotted, and this law formed the basis of the reporting of suspicious transactions by financial institutions to the Judiciary Police with advice to the AMCM. In 2002, another Law was passed to implement measures under international conventions signed and ratified by the Central Government of PRC and applicable to Macao, China. It enables the anti-terrorist measures under Resolution No. 1373 of the UN Security Council to be applicable to Macao, China.

76. With the passing of the AML/CFT legislation, Law No. 2/2006, Law No. 3/2006 and Administrative Regulation No. 7/2006, the Macao, China government has placed high priority on implementation of the measures under the legislation. All the regulatory entities concerned including the AMCM, the Gaming Inspection and Coordination Bureau, the Finance Services Bureau, the Economic Services, etc, will take full efforts to revise or draft AML/CFT guidelines with incorporation of the CDD and internal control measures required under the new legislation.

77. In summary, the main laws and administrative regulations in force to combat ML and FT include:

- The Criminal Code
- Decree Law 5/91/M (Criminalization of illicit traffic in narcotic drugs and psychotropic substances)
- Law 6/97/M, Law against Organized Crime
- Law 4/2002 (Compliance with certain acts of International Law)
- Law 2/2006 (Prevention and Repression of Crime of Money Laundering)
- Law 3/2006 (Prevention and Repression of Crimes of Terrorism)
- Administrative Regulation No. 7/2006 (Preventive Measures against Money Laundering and Financing of Terrorism)

78. The new laws on the Prevention and Repression of Money Laundering, Law No. 2/2006, of 3 April, on Prevention and Repression of Terrorism, Law No. 3/2006, of 10 April, and Administrative Regulation No. 7/2006, of 15 May, on preventive measures for crimes related to ML and FT set up a comprehensive and integrated legal framework in combating ML and terrorism.

79. The major features of the AML law includes: the redefinition of the crime of ML with the extension of its scope of application to all forms of serious crimes; the incrimination of tipping off; the criminal liability of legal persons; extension of the scope to other non-financial sector entities, such as real estate agents, lawyers, accountants, auditors, offshore companies, pawn shops and any other merchants handling goods of a high unit value.

80. These entities will abide by a set of duties such as CDD record keeping and reporting of suspicious transactions, monitoring of such transactions and setting up penalties.

81. This new special criminal law replaced and superseded the existing legislation on ML, namely Decree-Law 24/98/M, and the provisions on ML enshrined in Law 6/97/M, against organized crime. Parts of the new law are applicable, *mutatis mutandis*, in regard to FT.

82. Decree Law No. 24/98/M was applicable to the crime of ML transitionally up until Administrative Regulation No. 7/2006 came into force on 15 November 2006.

83. Under this diploma, which implements the measures laid down in the laws, the entities and persons subject to the duties stipulated in the law are supervised by different authorities according to their type and nature. Those authorities are listed and it is within their competence to systematize the procedures for compliance with the referred duties by means of issuing of guidelines. They also have to inform the Procurator whenever they suspect the existence of ML and FT. With the operation of Office of Financial Intelligence (GIF) having started in November 2006, STRs are now forwarded by reporting entities to GIF before being passed to the Procurator.

84. Law No. 2/2006 defines the offence of ML as to convert or transfer “advantages, or to assist or facilitate any of those operations, for the purpose of disguising its illicit origin or of avoiding the main perpetrator or participant in the preceding crimes from

being prosecuted or submitted to a criminal sanction” and the concealment or disguise of the true nature, source, location, disposition, movement, or ownership of the advantages, the notion of advantages being defined for the purpose of the law as “the assets derived from the commission, through any form of participation, of a typified act punishable with a penalty of imprisonment of a maximum term above 3 years, as well as any assets obtained therefrom” (Article 3(1), (2) and (3)).

85. The new law extended the scope of application of the ML offence to all forms of serious crimes, terrorism being a predicate offence.

86. Law No. 3/2006 is the new counter terrorism law. Being a special criminal law, it prevails over ordinary criminal law, which, nevertheless, is still, when not expressly repealed, applicable in a subsidiary manner.

87. the core elements of Law 3/2006 are the redefinition of the criminal offences of terrorist organizations and of individual acts of terrorism provided for in Articles 289 and 290 of the Macao Criminal Code, which were entirely repealed and superseded by Articles 4 and 6 of the new law, and the definition of three new particular types of connected activities, namely, those of other terrorist organizations, FT and incitement to terrorism as autonomous criminal offences, provided for and punished in Articles 5, 7 and 8 of the new law, respectively.

88. The most relevant features of this new law are the explicit inclusion of the transnational element in the specific motivation of the legal type of the offence of other terrorist organizations and implicitly in regard to individual acts of terrorism by means of expressly establishing a possibility of correlation between the specific motivation of both criminal conducts, the reassertion of extra-territorial jurisdiction rules (Article 3) and the introduction of legal persons’ liability in regard to all the mentioned criminal offences (Article 10).

89. Although the definition of the offence of terrorist organization was maintained as “any association of two or more persons acting in concert to impede, alter or subvert, by means of violence, the operation of the political, economical or social system of Macao, China, to compel a public authority to do or to refrain from doing any act or to tolerate it, or to intimidate certain persons, group of persons or the population in general”, and still operates by reference to the commission of other typified offences expressly listed in the same provision, it is important to stress that the list of those offences was enlarged and their definition improved.

90. The offence of FT is defined as to render available or collect “funds with the purpose of financing, totally or partially, the commission of terrorism”, without distinction of the offence terrorism nature. Some preventive measures to counter the FT were also set up, by means of establishing in Article 11 an operative reference to some of the provisions of the other above quoted new special criminal law on money laundering.

91. Unless otherwise provided by international applicable conventions, extra-territorial jurisdiction can be exercised in regard to criminal offences committed against other jurisdictions and international public organizations whenever the agent is found in Macao, China and is not possible to surrender him to another territory or country/jurisdiction.

92. With the adoption of the above-mentioned new Laws No. 2/2006 and 3/2006 and Administrative Regulation No. 7/2006, Macao, China has reinforced and updated the tools to fight effectively the crime of ML and of FT, in line with the mandatory requirements of applicable international treaties and instruments, as well as with commonly worldwide accepted international standards and practices, in particular, the FATF revised 40 Recommendations + 9 Special Recommendations.

93. The Financial Intelligence Office (GIF is the Portuguese acronym) was set up under Executive Ruling no. 227/2006 in August 2006. GIF began its operation in November 2007 with the function of collecting, analysing and disseminating information on suspicious transactions. A stated priority for Macao, China is to put in place adequate resources to support the GIF.

94. The Judiciary Police (PJ) has been recently restructured to strengthen the law enforcement power with specialization of function areas for investigation of different types of serious crimes including gaming related crimes and FT ML/TF crimes.

95. Regarding the future plan on AML/CFT, the GIF, with support from the AMCM, has taken up the coordination role for all the regulatory authorities and self-regulatory bodies with AML/CFT functions. In addition to the main function of collecting, analysing and disseminating information on suspicious transactions, the GIF will also provide technical assistance to other government agencies in different areas including revision of guidelines, implementation of supervision measures, training and public awareness programs, etc. Both the GIF and the AMCM will continue close contacts with international organizations like the APG, IMF to keep track with international trend and development on AML/CFT and proposals will be made to the Government for any new policies in response to changing international requirements.

96. The Government Anti-money Laundering Working Group continues to work as a communication link for all the government agencies concerned with AML/CFT.

b. The institutional framework for combating ML and FT

97. Administrative Regulation 7/2006 was published on 15 May 2006. It establishes the list of the supervising authorities that will have the mission to check if the AML/CFT preventive obligations are being fulfilled. It defines each of the preventive obligations mentioned above and defines administrative penalties for failure to fulfil the preventive obligations.

Ministries

98. The Secretary for Administration and Justice has a major role in the coordination of the legislative initiatives to improve the effectiveness of the Macao, China's AML/CFT program. The Legal Affairs Bureau (DSAJ) and the International Law Office (GADI) are accountable to the Secretary for Administration and Justice.

Criminal Justice and Operational Agencies

99. The Public Prosecutions Office of Macao, China, as a judicial institution vested with independent prosecutorial powers, has as its duties in the field of combat and prevention of crimes including ML, to conduct criminal investigation, institute criminal prosecution and to promote criminal trial procedures as well as the prevention of crimes.

100. In order to avoid the overlapping of competences between the different law enforcement agencies, in the security area, and taking into consideration legal and administrative and political advantages, the competence for the fight against ML and FT has been attributed to the Unitary Police Services (UPS) as the command and operational director and the Judiciary Police (PJ) as the investigatory agency.

101. Law 5/2006 on Organization of Judiciary Police empowers the Judiciary Police with a special function to investigate ML and related crimes. This is to cope with investigation work under Law No. 2/2006 on Prevention and Repression of Money Laundering and the AML/CFT measures of Administrative Regulation No. 7/2006. The PJ has specifically set up the Money Laundering Related Crime Division to focus on the investigation of such crimes.

102. Macao Customs Service (SA) plays an assistant role in combating ML/TF. Based on Law No. 5/2006 (Competency and Authority of Judiciary police), if SA discovers or suspects ML/TF activities in the checkpoints, it will transfer the case to the PJ.

Financial sector bodies

103. Under Law No. 2/2006 and Law No. 3/2006 as well as the supplementary Administrative Regulation, financial institutions under the supervision of the Monetary Authority of Macao (AMCM) are subject to the legal requirements to carry out CDD measures for AML/CFT purpose and to report suspicious transactions when detected. Article 7 of Law No. 2/2006 and Article 3 to 5 of Administrative Regulation no. 7/2006 state the duties of financial institutions under supervision of AMCM including the identification of customers and contract parties, identification of nature, purpose, source of fund and amount of transactions performed, refusing transactions without adequate information for CDD, record keeping and reporting of suspicious transactions.

DNFBP and other matters

104. The DICJ is the regulatory agency that has the competence to apply administrative penalties to the gambling concessionaires when they do not comply with the AML/CFT obligations according to Articles 9 and 10 of Administrative Regulation No. 7/2006.

105. Administrative Regulations No. 7/2006, point 6 of Article 2, Economic Services Department (DSE) regulates DNFBPs such as real estate agents, dealers in precious metals, dealers in precious stones, dealers in luxury transport vehicles and company services providers. DSE has already issued a series of guidelines to these entities for their detection and reporting of ML activities.

106. Article 2 of the abovementioned Administrative Regulation also authorizes the Macao Trade and Investment Promotion Institute (IPIM) to supervise and monitor the compliance of offshore non-financial entities in AML/CFT measures. By the same article, solicitors are obliged to comply with the requirements issued by the Independent Commission for the Exercise of the Disciplinary Power.

107. The Macao Lawyers Association is the chief supervisory body of the lawyers in Macao, which supervises the lawyers with the 'General Clauses of Lawyers' approved by Decree Law 31/91/M.

108. Under Chief Executive Order No. 2/2005, Auditors and accountants are under the supervision of the self-regulating body of the Committee for the Registry of Auditors and Accountants (CRAC) which directly reports to the Director of Finance Services Bureau (DSF). By this order, CRAC is authorized to propose sanctions or revocation on auditors and accountants for any infringements. Article 44 of the Statute of Auditors (approved by Decree No. 71/99/M) and Article 25 of the Statute of Accountants (approved by Decree No. 72/99/M) stipulates that accountants have to comply with the guidelines issued by CRAC.

109. The notaries-public and registrars are under the scope of the preventive obligations and are under the supervision of the Legal Affairs Bureau (DSAJ). The Legal Affairs Bureau has the power to enact instructions in order to better define the preventive obligations and to establish procedures for the fulfilment of those obligations in order to achieve its effectiveness. A draft guideline has been issued to notaries-public and registrars regarding their roles in the fight against ML and FT, particularly concerning their functions in buying and selling of real property, formation of legal persons and buying and selling of companies

c. Approach concerning risk

110. Macao, China takes a comprehensive approach to AML/CFT preventive measures. Macao, China does not seek to exclude coverage of any sectors of financial institutions or DNFBPs from AML/CFT measures on the basis of risk.

111. In the short term, taking into account the risks associated with different business sectors, priority will be placed in the Gaming and financial sector with allocation of more resources to cope with the fast growing economy.

d. Progress since the last APG/OGBS mutual evaluation in 2001

112. The Workgroup on Anti-Money Laundering, which is now coordinated by GIF, has been keeping a proactive role in consolidating the efforts of relevant government agencies against ML and FT. Apart from updating AML/CFT policy initiatives, such as new papers and interpretative notes issued by the FATF and other international organizations, the Workgroup is currently coordinating implementation of the measures laid down in the AML/CFT laws and regulations promulgated recently in Macao, China. One of the implementation aspects coordinated by the Workgroup is to assist members to draft or revise AML/CFT guidelines to be issued to the financial and non-financial sectors. Currently, the guidelines for non-financial sectors have been drafted by most of the government agencies like DICJ, IPIM, DSF, DSAJ and DSE. In the meantime, AMCM has also revised its guidelines issued to the financial sector in 2002. The self-regulatory organizations for legal professions have also drafted guidelines.

113. In April 2006, Law 2/2006 on prevention and repression of the crime of ML and Law 3/2006 on prevention and repression of the crimes of terrorism were enacted. Following the promulgation of these two laws, Macao, China also enacted in May 2006 Administrative Regulation no. 7/2006 on preventive measures for the crimes of ML and FT. This Regulation is actually meant to implement the measures laid down in the laws. The law on mutual legal assistance in criminal matters, Law no. 6/2006 entered into force on November 1, 2006.

114. The Executive Ruling no. 227/2006 issued in August 2006 has laid down the legal basis for the establishment of the GIF, which started operation on 12 November 2006. With the establishment of GIF, collection and analysis of suspicious transaction data will be consolidated under one special unit, which could streamline and unify the present STR reporting process.

115. Apart from sanctions on the ML/FT crimes, it is also required that wider range of entities in financial and non-financial sectors, including financial institutions, gaming operators, company services providers, offshore companies, accountants, auditors, tax consultants, lawyers, solicitors, notaries, registrars, real estate agents, traders of precious metals and stones, pawn shops etc. should take proper customer due diligence (CDD) measures when conducting transactions above an appropriate threshold, and to report any suspicious transactions within 2 working days to the GIF. If CDD measures could not be properly taken, the laws require the aforesaid entities to refrain from carrying out the respective transactions. In addition, the reporting entities are now clearly protected by the laws from any consequent responsibilities when reporting suspicious transactions in good faith, and tipping-off is explicitly prohibited.

116. The AMCM continued to develop the existing AML/CFT monitoring and reporting system in the financial sector. After revision of the existing AML/CFT guidelines to cope with the recent changes to international and local criteria, the AMCM has already completed the consultation of the revised guidelines with the financial sector. On the other hand, AMCM continued to issue circulars to all banks and other authorized institutions for updating, from time to time, lists of terrorists subject to sanctions under the UN Security Council Resolutions published in Macao, China Official Gazette. Apart from these lists, banks and other authorized institutions maintain a database of suspicious terrorists and terrorist organizations based on the UN website or on lists provided by other foreign governments, so as to effectively identify individuals or organizations which may be related to FT as well as ML.

117. To ensure due implementation of the existing AML/CFT guidelines, the Banking Supervision Department carries out ongoing onsite examinations and offsite surveillance on all authorized institutions. After each examination, findings and recommendations are advised to the examined institution for rectification and the institution is required to report to the AMCM the progress in adopting those recommendations.

118. As a result, banking institutions have started to take a more active position in allocating reasonable resources to improve their internal monitoring systems. For example, some major banks in Macao, China have restructured their internal control systems by establishing AML/CFT control measures such as a risk-based customer acceptance policy, STR reporting procedures and development of software applications to detect unusual transactions.

119. For the gaming sector, DICJ (Gaming Inspection and Co-ordination Bureau) has completed guidelines to govern the gaming concessionaries in respect of the preventive measures for AML/CFT. It draws a picture of obligations for concessionaries to establish necessary internal procedures. Under the guidelines, concessionaries are required to identify the customers and register the details of large value transactions for all games or exchanges of chips with an amount over a threshold of MOP500,000 (approximately USD 62,500).

120. Supervisors have been appointed for a wide range of DNFBP – these supervisors have issued guidelines.

121. Regarding international cooperation, as above mentioned, Law no. 6/2006 set forth the legal framework for cooperation in criminal matters

122. The PJ will continue to undertake investigation of ML and FT cases even after the establishment of the GIF in November 2006. In light of the increasing trend of financial crimes, the PJ is currently undergoing a reorganization process to have different specialized sections for the investigation of commercial, ML/FT and gaming crimes. This reorganization is, as part of a full restructuring of the PJ to enhance its functions and power. The PJ continues to keep close connection with other law enforcement and investigation agencies to fight against cross-border crimes. Macao, China Branch of Interpol provides a key channel of information exchange between Macao, China and other jurisdictions. In addition to Interpol, direct communication and information exchange channels have also been built up between the PJ and the police agencies in Hong Kong, China and the PRC.

2. LEGAL SYSTEM AND RELATED INSTITUTIONAL MEASURES

Laws and Regulations

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

Recommendation 1

2.1.1 DESCRIPTION AND ANALYSIS

123. The application of international law in Macao, China's legal system requires a previous ratification and approval by the PRC after seeking the views of the Macao, China, or in some specific fields, where Macao, China is authorized to conclude international agreements on its own, by the Chief Executive. After publication at the Official Gazette, according to the principle of publication of laws (Articles 3 (6) and 5 (1) of Law 3/1999, of 20 December), those treaties become immediately and automatically part of Macao, China's legal order. The international law prevails above domestic law, in the event of conflict (Article 1(3) of the Civil Code).

124. Both the 1988 UN Convention against Illicit Traffic in Narcotic Drugs Substances (Vienna Convention) and the 2000 UN Convention against Transnational Organised Crime (Palermo Convention) are applicable in Macao, China. The Vienna Convention was published in the Macao, China Official Gazette 13, I Series, of the 29 March 1999, without reservations and Palermo Convention was published in Official Gazette 36, II Series, of 8 September 2004, with the reservation made by the PRC on paragraph 2 of Article 35 (recognition of International Court of Justice as settler of disputes between States).

125. Money laundering has been an autonomous offence in Macao, China since 1997. Article 10 of Law N° 6/97, from 30 July 1997, defined ML offence very similarly to the Vienna Convention 1988, in relation to organised crime, this fact was referred to in the report of the last joint APG/OGBS mutual evaluation, in 2001. Following this legal provision, the Decree-Law N° 24/98/M, of 1 June 1998, established the financial and non-financial entities and their duties to communicate/report suspicious transactions to Judiciary Police (PJ) and the sanctions applicable to non-compliance.

126. Following the scope of the above mentioned Conventions, a new legislative framework devoted to AML has been in place since 4 April 2006, through Law 2/2006, which updated and established several provisions to prevent and suppress the laundering of benefits of illicit origin.

127. Law 2/2006 was drafted in accordance with the material and subjective elements of both Conventions, and ML offence satisfies the physical and material elements of the offence as required by both Conventions. Both paragraphs 2 and 3 of Article 3 of Law 2/2006 correspond to Article 6(1)a)i) and ii) of the Palermo Convention and Article 3(1)b) and c) of the Vienna Convention. The ML offence is punished with a minimum penalty of two to eight years of imprisonment (Article 3 of Law N° 2/2006), and in several circumstances lead to the aggravation of its penalties from three to 12 years (Article 4 of the same Law).

128. Concerning the predicate offence of ML, although Article 2(b) of the Palermo Convention defines serious crimes as those punishable with imprisonment of a maximum term above four years, Macao, China adopted the threshold approach and decreased the maximum term limit to three years, regardless of the minimum limit, and in such a way included more offences as predicate offences. All the offences punishable with a penalty of imprisonment of a maximum term above three years are considered serious offences under the criminal law. The adoption of that criterion is stated in paragraph 1 of Article 3 of Law 2/2006, where the predicate offences for ML are defined as those that are “punishable with a penalty of imprisonment of a maximum term above 3 years”.

129. As far as the list of the designated categories of offences is concerned, the following crimes are included as predicate offences:

- Participation in an organized criminal group and racketeering is punished with a minimum penalty of three to 10 years of imprisonment (Article 288 of the Criminal Code) and participation in a secret society is punished with a penalty of five to 12 years of imprisonment (Article 2 of the Law against the organized crime, Law 6/97/M);
- Terrorism is punished with a penalty of three to 12 years of imprisonment (Article 6 of the Law for the prevention and suppression of the crimes of terrorism, Law 3/2006) and FT is punished with a penalty of one to eight years of imprisonment (Article 7 of the same Law);
- Trafficking in human beings is punished with a minimum penalty of two to eight years of imprisonment (Article 7 of the Law against the organized crime, Law 6/97/M) and migrant smuggling is punished with a minimum penalty of two to eight years of imprisonment (Article 14 of Law 6/2004);
- Sexual exploitation, including sexual exploitation of children is punished with a minimum penalty of one to five years of imprisonment (Articles 163, 164 and 170 of the Criminal Code);
- Illicit trafficking in narcotic drugs and psychotropic substances is punished with a minimum penalty of eight to 12 years of imprisonment and fine (Article 8 of the Decree-Law 5/91/M);
- Illicit arms trafficking is punished with a minimum penalty of two to eight years of imprisonment (Article 262 of the Criminal Code);
- Illicit trafficking in stolen and other good is punished with a minimum penalty of imprisonment with a maximum term of five years (Article 227 of the Criminal Code);
- Corruption (“Passive corruption” – act of being corrupted) is punished with a penalty of one to eight years of imprisonment (Articles 337 and 338 of the Criminal Code); however, the “Active corruption” (act to corrupt someone) is punished with the maximum imprisonment of three years, therefore below the threshold of a crime to be considered as predicate offence of ML (Article 339 of the Criminal Code);
- Fraud is punished with a maximum penalty of five or 10 years of imprisonment, depending of the special circumstances of the criminal conduct (Article 211 of the Criminal Code) – if the patrimonial loss resulting from the fraud is not of a

high value, it will not be considered a predicate offence since it does not fit in the threshold;

- Counterfeiting currency is punished with a penalty of two to 12 years of imprisonment (Article 252 of the Criminal Code);
- Counterfeiting and piracy of products is punished with a penalty of one to four years of imprisonment (Article 211 of the Decree-Law 43/99/M);
- Environmental crime is punished with a penalty of one to eight years of imprisonment (Articles 268 and 269 of the Criminal Code);
- Murder is punished with a minimum penalty of 10 to 20 years of imprisonment (Articles 128 and 129 of the Criminal Code) and grievous bodily injury is punished with a minimum penalty of two to 10 years of imprisonment (Articles 138, 139 and 140 of the Criminal Code);
- Kidnapping is punished with a minimum penalty of three to 10 years of imprisonment (Article 154 of the Criminal Code), illegal restraint is punished with a minimum penalty of one to five years of imprisonment (Article 152 of the Criminal Code) and hostage-taking is punished with a minimum penalty of three to 12 years of imprisonment (Article 155 of the Criminal Code);
- Robbery is punished with a minimum penalty of one to eight years of imprisonment (Article 204 of the Criminal Code) and aggravated theft is punished with a minimum penalty imprisonment with a maximum term of five years (Article 198 of the Criminal Code);
- Extortion is punished with a minimum penalty of two to eight years of imprisonment (Article 215 of the Criminal Code);
- Forgery, fraud of documents with a special value and fraud by a public worker are punished with a penalty of one to five years of imprisonment (Articles 245 and 246 of the Criminal Code); and
- Piracy is punished with a penalty of five to 15 years of imprisonment (Article 275 of the Criminal Code).

130. Macao, China has no stock exchange market and, insider trading and market manipulation are not criminalised.

131. Paragraph 4 of Article 3 of Law 2/2006 also provides for punishment of ML even if the predicate offence from which the proceeds of crime derive has been committed outside Macao, China, provided that it is also punishable by the law of the country or region with jurisdiction over such act.

132. Law 2/2006 uses the concept “advantages” to refer to the proceeds of crime. Paragraph 1 of Article 3 of that Law establishes that “advantages shall be regarded as any assets derived from the commission, through any form of participation, of a typified act punishable with a penalty of imprisonment of a maximum term above 3 years, as well as any assets obtained therefrom.” According to that provision, there are no limits imposed for the nature of the property or for its value that directly or indirectly (“as well as any assets obtained therefrom”) represents the proceeds of crime. According to paragraph 4 of the same Article, the offence of ML also extends to “advantages” derived

from predicate offences committed outside Macao, provided those offences are also punishable by the law of the State or Region with jurisdiction over such act.

133. The defendant can be convicted of ML without any correspondent conviction of a predicate offence. The prosecution must only prove beyond a reasonable doubt that the proceeds are the proceeds of crime (“punishable with a penalty of imprisonment of a maximum term above 3 years”).

134. The offence of ML applies to those who commit the predicate offence (self-laundering) and also to those who did not commit, or participate in the commission of, the predicate offence. According to paragraph 2 and 3 of the Article 3 of the Law 2/2006, the ML offence applies to whoever has the purpose of disguising the illicit origin of the advantages (persons who committed the predicate offence and other persons) or assisting the main perpetrator or participant of the preceding crimes from being prosecuted or submitted to a criminal sanction (persons who did not commit the predicate offence) and to whoever conceals or disguises the true nature, source, location, disposition, movement or ownership of the advantages (persons who committed the predicate offence and other persons).

135. The General Part of the Criminal Code, applicable by the double remission of the Article 2 of the Law 2/2006 and of the Article 8 of the Criminal Code, establishes the appropriate ancillary offences to all the criminal offences in Macao, China, including the offence of ML.

136. An attempt to commit a ML offence or other crime, which is punishable with a penalty of imprisonment of a maximum term above three years, is always punishable as ruled in Articles 21 and 22 of the Criminal Code. The penalty is the same applicable to the main perpetrator, but with a special mitigation in the terms of Article 67 of the Criminal Code.

137. Those who aid and abet the commission of a ML crime or other crime, which is punishable with a penalty of imprisonment of a maximum term above three years, are punishable as main perpetrators of the crime, according to Article 25 of the Criminal Code. That Article establishes that, those who commit the offence, directly or by an intermediary, those who commit the offence with others and those who instigate others to commit the offence are punishable as main perpetrators of the ML offence.

138. The ML offence only applies when the perpetrator knows, or should have known, that he is committing that offence and when he has the intention to commit it (Article 13 of the Criminal Code, applicable by the double cross references of Article 2 of Law 2/2006 and of Article 8 of the Criminal Code).

139. ML is therefore considered a wilful offence in Macao, China law, in accordance with the general principle of the Criminal Code. There are different forms of “wilfulness”: direct, necessary or eventual, as provided for in Article 14 of the Criminal Code. According to Article 13 of the same Code, only typical facts committed with wilfulness or with negligence in cases specially provided for in the criminal law, are punishable.

140. Under Article 14 of the Criminal Code, a person acts with wilfulness when, conceiving a fact that corresponds to an offence, he/she acts with the intention of committing it (direct wilfulness); shall also be deemed to have acted with *dolus* the

person who mentally anticipated that, as a necessary consequence of his/her conduct, an act will occur that amounts to a legally typified criminal behaviour (necessary wilfulness); where an act occurs that amounts to a legally typified criminal behaviour and that act was mentally anticipated as a possible consequence of the conduct, if the perpetrator acted tolerating the occurrence of such an act, dolus shall be deemed to characterise the conduct (eventual wilfulness).

141. Therefore wilfulness cannot exist without the willing element as well as the intellectual element. An offence of ML under the form of negligence is not provided for but almost the same subjective elements of negligence can be found in the eventual wilfulness.

142. According to Article 26 of the Criminal Code, those who facilitate the commission of the ML offence, or give moral help to its commission, are punished as accomplices. The penalty is the same applicable to the main perpetrator, but with a special mitigation in the terms of the Article 67 of the Criminal Code.

143. Conspiracy to commit an offence, including a ML offence, is an autonomous offence punishable by Article 288 of the Criminal Code and the penalty for the commission of the offence of conspiracy to commit ML is three to 10 years of imprisonment.

144. According to the provisions of paragraph 4 of Article 3 of Law 2/2006, the proceeds of the predicate crimes, which took place in another jurisdiction, if converted, transferred, or, if someone conceals or dissimulates its nature, origin, whereabouts, layout, movement or entitlement in Macao, China, is considered a ML offence. This provision provides the punishment for the ML offence, when the predicate offence has been committed outside Macao, China, provided it is also punishable by the law of the State or Region with jurisdiction over such act.

Recommendation 2

145. The ML offence applies to natural persons that engage in ML activities, as ruled by Article 3 of the Law 2/2006, and also applies to legal persons, which became criminally liable, according to Article 5 of same Law. Moreover, if the natural persons engaging in ML activities are members of criminal organizations or secret societies, they will have their punishment aggravated.

146. The law does not impose any limit concerning the demonstration of the intentional element of the ML offence. In fact, according to Article 112 (1) of the Criminal Procedure Code, all evidence that is not forbidden by law, is allowed. The evidence forbidden by law is generally listed in Article 113 of the Criminal Procedure Code.

147. Article 114 of the Criminal Procedure Code establishes that the judge is free in the evaluation of any evidence, according to the rules of experience and his free conviction. So, to demonstrate the fault element of intention, inferences can be drawn from objective factual circumstances.

Legal Persons

148. The criminal liability of legal persons (even if irregularly formed) is established in Article 5 of Law 2/2006. Associations without legal personality are also liable for the

criminal offence of ML, when it is committed on their behalf and in their collective interest by their organs or representatives or by a person under their authority, when the commission of the criminal offence has been rendered possible by virtue of an intentional breach of the duties of supervision or control that they are entrusted with.

149. To demonstrate intention or knowledge the fault element must be imputed to an organ or representative of the legal person, which expressly, tacitly or impliedly authorized or allowed the commission of the offence. This can be done by proving that the legal person's organs or representatives intentionally, knowingly or recklessly carried out the relevant conduct, or expressly, tacitly or impliedly authorized or allowed the commission of the offence; proving that a corporate culture existed to encourage, tolerate or lead to non-compliance with the relevant provision; or proving that the body corporate failed to create and maintain a corporate culture that required compliance with the relevant provision.

150. The legal persons liable for the ML offence are punishable with fine or judicial dissolution. There are also several accessory penalties established in the paragraph 8 of the Article 5 of the Law 2/2006 which can be imposed to the legal persons.

151. The responsibility of the legal persons, even if irregularly formed, and the associations without legal personality, does not exclude, however, the individual responsibility of the respective perpetrators, according to paragraph 2 of the Article 5 of the Law 2/2006.

152. Prosecution of legal persons does not bar or otherwise affect parallel proceedings, whether civil or administrative. However, if the legal person is found guilty of a criminal offence and, simultaneously, of an administrative offence, the principal punishment for the administrative offence must be precluded, but any other accessory penalties of the administrative offence won't be precluded. According to Article 8 of the Decree-Law 52/99/M, when the same fact constitutes simultaneously a criminal offence and an administrative offence, the perpetrator is punished by the criminal offence and with the accessory penalties of the administrative offence. The mentioned provision is a development of the *ne bis in idem* principle (no legal action can be instituted twice for the same cause of action) which is a fundamental principle of Macao, China criminal law.

153. Following the criminal provisions of Law 2/2006 and improving the directives of Decree-Law N° 24/98/M of 1 June 1998, a new Administrative Regulation N° 7/2006 was published on 15 May 2006 and came into force in 12 November 2006.

154. This Administrative Regulation established the list of the supervising authorities, which are demanded to issue and check the preventive obligations related to the ML and the FT crimes are being fulfilled. Also several obligations were established for the supervised entities to fulfil, such as: client and transaction identification, denial to perform transactions if the identification obligations are not fulfilled, preservation of documents related to the identification obligations, report of suspicious transactions and prohibition of tipping-off. The same Regulation identifies the entities compelled to those preventive obligations, such as, the financial institutions, the gaming industry, the real estate agencies, the merchants of high-value goods, lawyers, notaries, registrars and several company service providers. And it finishes by defining the administrative penalties that the entities with preventive obligations can incur, if they do not fulfil those obligations.

155. The supervising authorities were given the power to enact instructions in order to better define each of the preventive obligations in each sector of activity and the relevant procedures. Those regulations were prepared and all of them came into force on 12 November 2006.

156. Law 2/2006 introduced the legal basis for the establishment of a financial intelligence unit (GIF) with the special duty to centralize, analyse and disseminate the suspicious transactions reports. The specific functions of GIF were established under Executive Ruling N° 227/2006, on 29 July 2006. Before the role was undertaken by the PJ.

157. When the ML offence is committed by a natural person the penalty can range from two to eight years of imprisonment, as ruled in Article 3 (2) of Law 2/2006. However, according to Article 4 of the same Law, the punishment is aggravated to three to 12 years of imprisonment: if the ML offence is committed by a criminal association or a secret society, or by someone who is a member of or supports such association or society (the perpetrators will also be punished by the autonomous crimes of criminal association or secret society); if the predicate offence is terrorism, narcotics traffic, international traffic of persons or of prohibited weapons or explosive substances; or if the perpetrator commits the ML offence in a habitual manner. In any of these cases, the applicable penalty may not exceed the maximum limit of the penalty provided for the predicate offence, according to paragraph 6 of Law 2/2006 and the cross reference to that paragraph in Article 4.

158. If those offences are committed by a legal person, even if irregularly incorporated, or by an association without legal personality, the punishment shall be fine or judicial dissolution, according to Article 5 (3) of Law 2/2006. The fine can range from MOP 10,000.00 to MOP 20,000,000.00. The judicial dissolution can be compulsory, when the legal person is established with the intention of, exclusively or predominantly, through the legal person, committing the ML offence or, when the repeated commission of criminal offences reveals that the legal person is being used, exclusively or predominantly, for that purpose.

159. Legal persons can also incur in several accessory penalties which may be applied cumulatively, as stipulated in paragraphs 8 and 9 of Article 5 of Law 2/2006, such as the prohibition of the exercise of certain activities for a period of one to 10 years; deprivation of the right to subsidies or subventions granted by Government departments or public entities; closing of the establishment for a period of one month to one year; definite closing of the establishment, judicial injunction; and publicity of the sentence.

160. In addition to the criminal liability for the commission of the ML offence, there were also established new administrative infractions for those entities who fail to comply with the fulfilment of the preventive obligations related to the ML offence, even if they act negligently (Article 9 of Administrative Regulation No. 7/2006). Paragraph 1 of the same Article rules that non-compliance with the preventive duties constitutes an administrative offence, punishable with a fine of MOP 10,000.00 to MOP 500,000.00, or MOP 100,000.00 to MOP 5,000,000.00, depending on whether the offender is a natural or a legal person.

161. However, when the economic benefit obtained by the offender from the commission of the infraction exceeds half of the maximum limit established in paragraph

1, such limit shall be raised to the double of such benefit, as stated in paragraph 3 of the Article 9. According to Article 10 of Administrative Regulation No. 7/2006, despite the application of the penalty and the payment of the respective fine, this does not release the offender, whenever that is still possible, from compliance with the duty.

162. In summary, the ML provision was designed as an autonomous and independent offence. All the offences punishable with a penalty of imprisonment of a maximum term above three years are considered serious crimes and therefore predicate offences of the ML crime, including the crime of FT. The punishment for ML shall take place even if the predicate offence from which the proceeds of crime derive from has been committed outside Macao, SAR, provided that it is also punishable by the law of the State or Region with jurisdiction over such act.

Recommendation 32 (ML investigation/prosecution data)

Table 1: Suspicious transactions processed by Judiciary Police

Year	Suspicious Transactions rec'd	Persons involved	Persons arrested
2002	68	72	0
2003	107	168	0
2004	109	142	0
2005	194	253	13
2006 (Jan to June)	317	342	0

Table 2 Cases under prosecution

Year	Cases under prosecution	Seizure of Assets related to crimes	Type of crimes
2002	3	0	0
2003	1	0	0
2004	0	0	0
2005	2	HKD34,000,000	- Fraud - Kidnapping
2006 (Jan to June)	1	0	0

163. According to the above data, Judiciary Police and Public Prosecutions Office maintain records and statistics of STRs and number of cases prosecuted. Beginning from 12 November 2006, statistics on STRs will be maintained by the GIF.

164. The above statistical data, concerning the Public Prosecutions Office only applies to the previous ML legislation (Law 6/97/M), as no other case is or was under investigation concerning the new ML legislation. The Team was informed that a case was opened during the on-site visit, which had as perpetrator a political person, presently in jail. That case was under investigation for corruption and money-laundering crimes, although still under the previous legislation as the facts occurred before the new ML legislation came into force.

165. Due to the increasing number of reports submitted to Macao, China authorities, it could be expected that a higher number of cases might have been prosecuted. According to Macao, China authorities the lack of prosecutions was due to most STRs being identified and registered as criminal cases (inquiries), and determined not to involve ML offences. However, this still does not explain the low prosecution numbers. In addition, no statistical data was available concerning predicate offences of ML cases investigated; ML cases prosecuted; nor sentences applied. No automatic records/statistics are maintained. The ME Team was advised that several ML cases were opened having relevant predicate offences in foreign jurisdictions, but no specific data was provided.

166. The ME Team was not afforded the opportunity to meet with a Judicial Magistrate; therefore no further information could be collected concerning convictions. However, according to the Public Prosecutions Office all the cases taken to Court were sentenced (no absolution registered).

2.1.2 RECOMMENDATIONS AND COMMENTS

167. Macao, China has a ML offence and legal regime that largely fulfils the physical and material elements of the offence as referred to in the UN Conventions and generally fulfils the requirements of Recommendations 1 and 2.

168. The punishment threshold (maximum three years imprisonment) of the “Active corruption” crime (act to corrupt someone), is below the threshold of a crime to be considered as predicate offence of ML (Article 339 of the Criminal Code). Macao, China should consider raising the penalty to more than three years so that it may be included has a predicate offence for ML.

169. A predicate offence for ML does not extend to Macao, China jurisdiction, if committed outside Macao, China and it is not an offence in the foreign country. Macao, China may consider broadening the territorial and legal scope of ML’s predicate offences to all conduct that would constitute a predicate offence, regardless of its status in the foreign jurisdiction.

170. Under previous ML legislation, the number of convictions is relatively low, considering the STRs recorded and criminal cases opened. No case is registered under new ML legislation. Therefore the effectiveness of the ML legal system applicable under the new legislation is cannot be assessed at this time.

171. No comprehensive statistics on ML predicate offences, ML prosecutions or archiving, sentences or penalties were available. Macao, China should consider keeping more comprehensive statistics in relation to ML cases, so that effectiveness of the current legislation may be analysed and, if necessary, reviewed.

2.1.3 COMPLIANCE WITH RECOMMENDATIONS 1 & 2

	Rating	Summary of factors underlying rating
R.1	LC	<ul style="list-style-type: none"> • “Active Corruption” crime is not a ML predicate offence. • Predicate offences for ML do not extend to those offences committed outside Macao, China where the conduct is not an

		<p>offence in the foreign country.</p> <ul style="list-style-type: none"> • Low number of convictions, considering STRs recorded and no comprehensive statistics existent under previous applicable ML legislation, provides same doubts on the effectiveness of previous regime. • No cases opened, no comprehensive statistical system in place under the new ML criminalisation regime, therefore it is impossible to assess the effectiveness of the current legislation and other regulations.
R.2	LC	<ul style="list-style-type: none"> • Given the new ML law has not yet applied in investigations, prosecutions or sentences, it is too early to assess the effectiveness of the ML system concerning liability of both natural and legal persons.
R.32	PC	<ul style="list-style-type: none"> • No comprehensive statistical data on ML cases, therefore impossible to clearly measure effectiveness and efficiency of the previous and existing ML system.

2.2 CRIMINALISATION OF TERRORIST FINANCING (SR.II)

2.2.1 DESCRIPTION AND ANALYSIS

Special Recommendation II

172. The offences of terrorism, implicit FT and terrorist organization have been in force since 1985 (ref: Articles 289 and 290 of Macao, China new Criminal Code). However, a new legislative framework devoted especially to the “Prevention and Repression of Terrorist crimes” was adopted and has been in place since 11 April 2006 (Law 3/2006), which revoked the Criminal Code articles. This law defines and criminalises the offences of a Terrorist Organization (Article 4), Other Terrorist Organizations (Article 5), Terrorism (Article 6), Terrorism Financing (Article 7) and Terrorism Incitement (Article 8). FT is a predicate offence of ML, and is punishable with one to 8 years imprisonment (Law 3/2006, Article 7). Following the same steps as the ML criminalisation, the criminal liability of legal persons was also established (Article 10 of the same Law).

173. FT is criminalised in Article 7 of Law 3/2006, “whoever renders available or collects funds with the purpose of financing, totally or partially, the commission of terrorism shall be punished with the FT offence with a penalty of one to 8 years of imprisonment, if a heavier sentence is not applicable by virtue of previous provisions”. The FT criminalisation is consistent with Article 2 of the UN 1999 International Convention for the Suppression of the Financing of Terrorism. This UN Convention was signed by the PRC, ratified in 19 April 2006, and published in Macao, China Official Gazette No. 26/2006, II Series, of the 28 June 2006, bringing it into force.

174. The broad wording of the FT offence ensures that this provision is intended to punish whoever has the purpose of financing terrorism acts, terrorist organizations and other terrorist associations, as defined in Law 3/2006. The law does not take in account the modus operandi of the offender, meaning that any means of providing or collecting

the funds, directly or not, is punishable if there is the knowledge that they will be used to finance fully or in part terrorism, terrorist acts or terrorist organisations.

175. FT is a wilful offence that applies when the perpetrator (any person) knows, or should have known, that the funds are to be used in FT and when he has the intention to commit it – as stipulated in Article 13 and 14 of the Criminal Code, applicable by the double remission of Article 2 of Law 3/2006 and Article 8 of the Criminal Code.

176. There are different forms of “wilfulness”, in accordance with the general principle of the Criminal Code: direct, necessary or eventual, as provided for in Article 14 of the Criminal Code. According to the Article 13 of the same Code, only typical facts committed with wilfulness or with negligence in cases specially provided for in the criminal law, are punishable.

177. Under Article 14 of the Criminal Code, a person acts with wilfulness when, conceiving a fact that corresponds to an offence, he/she acts with the intention of committing it (direct wilfulness). A person shall also be deemed to have acted with *dolus* if they mentally anticipated that, as a necessary consequence of his/her conduct, an act will occur that amounts to a legally typified criminal behaviour (necessary wilfulness). Where an act occurs that amounts to a legally typified criminal behaviour and that act was mentally anticipated as a possible consequence of the conduct, if the perpetrator acted tolerating the occurrence of such an act, *dolus* shall be deemed to characterise the conduct (eventual wilfulness).

178. According to Article 26 of the Criminal Code, those who facilitate the commission of the FT offence or Terrorism or Terrorist acts, or give moral help to its commission, are punished as accomplices. The penalty is the same applicable to the main perpetrator, but with a special mitigation in the terms of Article 67 of the Criminal Code.

179. Conspiracy to commit an offence, including the terrorism financing, is an autonomous offence punishable by Article 288 of the Criminal Code and the penalty for the commission of the offence of conspiracy to commit ML is three to 10 years of imprisonment.

180. There are no legal limitations regarding funds for the FT. Both legal and illicit origins of the funds, as well as the way they have been gathered or provided, are considered in the FT provision. Paragraph 3 of Article 1 of the Civil Code stipulates that the “international conventions applicable in Macao, China prevail over the ordinary laws”. Given that there limits to the extent of the funds are not stipulated, the rules to be applied are the ones of the Terrorist Financing Convention.

181. The FT offence does not have any kind of requirement concerning the effective use of the funds to carry out or attempt a terrorist act or concerning any kind of link to a specific terrorist act. The only requirement is that the funds must be provided or collected with the purpose of financing the commission of terrorism offences (terrorist organisations, terrorist acts and those, who participate in terrorist organisations or acts). Whether the funds were in fact used or not, it is not relevant for the purpose of prosecute and punish the offenders.

182. The acts concerning terrorist organisations, acts or FT committed internationally are covered by Macao, China Law 3/2006, Articles 3 to 7.

183. An attempt to commit FT offence is always punishable as ruled in the Articles 21 and 22 of the Criminal Code. According to Article 22 of the Criminal Code, an attempt to commit an offence is always punishable if the offence is punishable with a penalty of imprisonment of a maximum term above three years. The penalty is the same applicable to the main perpetrator, but with a special mitigation in the terms of Article 67 of the Criminal Code. Since the FT is punishable with a penalty of one to eight years of imprisonment, an attempt to commit the offence will always be punishable.

184. Preparatory acts are also punishable according to the provisions clearly expressed in Law 3/2006, Article 4 (5), concerning terrorism and terrorist organisations.

185. Those who aid and abet the commission of the FT offence are punishable as main perpetrators of the offence, according to Article 25 of the Criminal Code. That Article establishes that those who commit the offence, directly or by an intermediary, those who commit the offence with others and those who instigate others to commit the offence are punishable as main perpetrators of the FT offence.

186. The FT offence is applicable to acts committed in Macao, China but also to acts committed outside Macao, China (Article 3 of Law 3/2006) against Macao, China, against the PRC, provided that the perpetrator is a resident of Macao, China and is found in Macao, China, or against a foreign State or an international public organization, provided that the perpetrator is found in Macao, China and may not be surrendered to another Territory or State.

187. The law does not impose any limit in the demonstration of the intentional element of the FT offence. In fact, as ruled by the paragraph 1 of Article 112 of the Criminal Procedure Code, all the evidence that is not prohibited by law, are allowed. The evidence prohibited by law is listed in the Article 113 of the Criminal Procedure Code.

188. Article 114 of the Criminal Procedure Code establishes that the judge is free in the appreciation of the evidence, according to the rules of experience and his free conviction. So, to demonstrate the fault element of intention, inferences can be drawn from objective factual circumstances.

189. As ruled by Article 10 of Law 3/2006, "legal persons, even if irregularly formed, and the associations without legal personality are liable for the criminal offence of FT, terrorism, terrorist organisations, terrorism incitement, when it is committed on their behalf and in the their collective interest by their organs or representatives or by a person under their authority, when the commission of the criminal offence has been rendered possible by virtue of an intentional breach of the duties of supervision or control that they are entrusted with".

190. To prove intention or knowledge the fault element must be attributed to an organ or representative of the legal person that expressly, tacitly or impliedly authorized or permitted the commission of the offence. This can be done by proving that the legal person's organs or representatives intentionally, knowingly or recklessly carried out the relevant conduct, or expressly, tacitly or impliedly authorized or permitted the commission of the offence; proving that a corporate culture existed to encourage,

tolerate or lead to non-compliance with the relevant provision; or proving that the body corporate failed to create and maintain a corporate culture that required compliance with the relevant provision.

191. The legal persons liable for the FT offence are punishable by either fine or judicial dissolution. There are also several accessory penalties established in paragraph 8 of Article 10 of Law 3/2006 which can be imposed on legal persons, such as temporary disqualification from the practice of an activity; exclusion from entitlement to public benefits or grants; temporary or definitive closing of premises; judicial injunction and publicity of the sentence. The responsibility of the legal persons, even if irregularly formed, and the mere de facto associations, does not exclude the individual responsibility of the respective perpetrators, according to paragraph 2 of Article 10 of Law 3 /2006.

192. Prosecution of legal persons does not bar or otherwise affect parallel proceedings, whether civil or administrative. However, if the legal person is found guilty of a criminal offence and, simultaneously, of an administrative offence, the principal punishment for the administrative offence must be precluded, but any accessory penalties of the administrative offence will not be precluded. According to Article 8 of the Decree-Law 52/99/M, when the same fact constitutes simultaneously a criminal offence and an administrative offence, the perpetrator is punished by the criminal offence and with the accessory penalties of the administrative offence. The mentioned provision is a development of the ne bis in idem principle (no legal action can be instituted twice for the same cause of action) which is a fundamental principle of Macao, China's criminal law.

193. When the FT offence is committed by a natural person, the punishment can range from one to eight years of imprisonment, as ruled in Article 7 of Law 3/2006, if a heavier sentence is not applicable by virtue of previous provisions.

194. If that offence is committed by a legal person, even if irregularly incorporated, or by an association without legal personality, the punishment shall be either a fine or judicial dissolution (Article 10 (3) of Law 3/2006). The fine can range from MOP 10,000.00 to MOP 20,000,000.00. According to paragraph 7, the judicial dissolution can be compulsory, when the legal person was set up with the intention of, exclusively or predominantly, through the legal person, committing the FT offence or when the repeated commission of offences demonstrates that the legal person is being used, exclusively or predominantly, for that purpose.

195. Legal persons can also incur in several accessory penalties which may be applied cumulatively, as stipulated in paragraphs 8 and 9 of Article 10 of Law 3/2006, such as the prohibition of the exercise of certain activities for a period of one to 10 years; deprivation of the right to subsidies or subventions granted by Government departments or public entities; closing of the establishment for a period of one month to one year; definite closing of the establishment, judicial injunction; and publicity of the sentence.

196. In summary, the FT crime was designed as an autonomous and independent offence. All the offences punishable with a penalty of imprisonment of a maximum term above three years are considered serious crimes and therefore predicate offences of the ML crime, so including the crime of FT. The punishment for FT shall take place even if the offence has been committed outside Macao, China, provided that it is also punishable by the law of the State or Region with jurisdiction over such act.

Recommendation 32 (FT investigation/prosecution data)

197. At the time of the onsite visit there was no statistical data concerning investigations or prosecutions of FT as no cases had been commenced.

198. In accordance with Administrative Regulation 9/2006, Article 8, in 2006 the Judiciary Police established the Organized Crime Division. This Division is empowered to investigate organized crimes and terrorist crimes, under Law 5/2006 on Organization of Judiciary Police, Article 7, paragraph 1 (7) and (12) respectively. The intention is for the Money Laundering Division, the Criminal Intelligence Division and the Interpol Macao Office to cooperate and share information.

2.2.2 RECOMMENDATIONS AND COMMENTS

199. Law 3/2006, from 10 April 2006, provides satisfactory criminalisation of the offences of terrorist organisations, terrorism and FT in line with UN Convention on FT. However, due to the recent approval of the Law and implementation of preventive mechanisms, no statistical data on STRs concerning FT were collected and provided. Therefore, effectiveness of current legislation and regulations on FT implementation cannot be determined.

2.2.3 COMPLIANCE WITH SPECIAL RECOMMENDATION II

	Rating	Summary of factors underlying rating
SR.II	LC	<ul style="list-style-type: none">It is too early to assess effectiveness on implementation of FT offence provisions, due to very recent adoption of such provisions.
R.32	PC	<ul style="list-style-type: none">No comprehensive statistical data on FT cases, therefore impossible to clearly measure effectiveness and efficiency of the previous and existing FT system.

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

2.3.1 DESCRIPTION AND ANALYSIS

Recommendation 3

200. In criminal proceedings in Macao, China, all property derived from criminal activity or acquired with its proceeds may be forfeited, except if it belongs to bona fide third parties. In relation to seizure, a provisional measure for temporary seizure can apply to all kinds of property and to all serious crimes, including ML and FT crimes and related predicate offences.

201. The seizure of criminal proceeds is provided for in Articles 163 to 171 of the Criminal Procedure Code, while the forfeiture of criminal proceeds is provided for in Article 101 to 104 of the Criminal Code.

202. There are special provisions relating to:

- The forfeiture of objects or products of narcotics crimes in the Article 22 of Decree-Law 5/91/M.

- The seizure of assets and rights of secret societies (organized criminality), according to the Articles 31 and 32 of Law 6/97/M.

203. According to Article 163 of the Criminal Procedure Code, property that must be seized is broadly defined as any object which was used or was meant to be used to commit an offence, or which constituted the proceeds, profit, price or reward of it or which was left by the perpetrator in the locality of the offence, or any other property which can be used as evidence.

204. According to Article 101, paragraph 1 and Article 103, paragraphs 1, 2, 3 and 4 of the Criminal Code, the proceeds from instrumentalities used in and the instrumentalities intended for use in the commission of ML, FT and predicate offences, property of correspondent value must be seized and forfeited or paid.

205. Paragraph 3 of Article 103 of the Criminal Code establishes that the forfeiture also includes the property or rights obtained by any transaction or exchange with the property that resulted from the offence. Paragraph 4 of the same provision rules that if the property cannot be forfeited in specie, the forfeiture is made by payment of the equivalent value. Both situations apply regardless of whether the property is held or owned by a defendant or a third party, except by bona fide third parties, according to the Article 102 of the Criminal Code.

206. The general provisions on criminal proceedings provide the possibility of seizure under two different circumstances: immediately by law enforcement officers in the presence of the commission of a crime (if urgent, or if the delay may harm the gathering of evidence) (Article 163, 4 Criminal Procedure Code); or with authorisation and order issue by a public prosecutor or a judge depending the case (Article 163, 3 same Code). Independently of the cases, seizure has to be validated by the judiciary authority.

207. Article 166 of the Criminal Procedure Code foresees that the seizure of any kind of funds or other financial assets deposited in banks or credit institutions must be conducted by a judiciary authority. Seizure is legally possible whenever there are reasons to believe that the funds or assets are related to the commission of a crime or are important to its investigation or to produce material evidence. It can take place even if the funds or assets are not property of the perpetrator or are not deposited in his/her name. Yet, it requires a judicial order.

208. After seizure of an object, property, etc., when the asset due to its size cannot be attached to the proceedings, in order to avoid its dealing, transfer or disposition, the assets are entrusted to a court official linked with the proceeding or to a custodian (Article 163 (2) of Criminal Procedure Code).

209. In addition, the Monetary Authority of Macao (AMCM), within its central bank supervision powers, may proceed with the seizure of any documents or assets that constitute the object of an offence or which may be necessary for the related proceedings. (Article 8 of Decree-Law N° 32/93/M – Financial System Act). Within a criminal case, a judicial order is needed to seize documents or assets, according the Criminal Procedure Code.

210. Under the Macao, China criminal legal framework there are no references to the freezing mechanism and its regulation, such as the freezing of a bank account

transaction, preventing or authorising the execution of a transfer, any credit or debit execution order, etc. The freezing mechanism should be capable of quick execution. To prevent any transfer, dealing or disposal of assets in banks, the order has to be issued by a judge, within the seizure legal provisions already referred to above. Given that there is no freezing mechanism in place; Macao, China cannot provide mutual legal assistance on ML, under existing legislation.

211. The law does not demand any prior notice, concerning the application of the seizure and forfeiture measures. The Criminal Procedure Code only provides for the active legitimacy of the judiciary authority with competence to seize property.

212. Paragraphs 2 and 3 of Article 8 of Law 2/2006, concerning the competence of the financial intelligence Office (GIF), provide a wide range of powers to allow the GIF to identify and trace property, including information requests to any public or private entities.

213. Moreover, according to paragraph 1, number 6, of Article 7 of Law 2/2006 and Article 8 of Administrative Regulation No. 7/2006, all the assistance, especially the disclosure of information and the delivery of documents, shall be provided to, as and when requested by the competent authorities for the prevention and suppression of the crimes of ML.

214. In addition, the Criminal Procedure Code also grants law enforcement authorities a wide range of powers to allow the identification and tracing of property, including examination orders (Articles 156, 157 and 158), search (Articles 159 to 162) and seizure (Articles 163 to 171), among others.

215. Pursuant to Law 5/2006, the Judiciary Police has exclusive competency to investigate ML and FT offences, as well as all serious crimes (predicate offences of ML crime). All other entities, public or private, must provide information requested in relation to ML and FT cases to the PJ on request.

216. Bona fide third parties have their rights protected under the Macao, China Criminal Code, in accordance with Palermo Convention, concerning forfeiture. According to paragraph 1 of Article 102 of the Criminal Code, the forfeiture does not take place if the property was not owned when the offence was committed by any of the offence perpetrators or beneficiaries, or if the property is not owned by them when the forfeiture is declared. However, paragraph 2 of the same provision states that even if the property is owned by third parties, the forfeiture is declared when the owners of the property have concurred, censurably, for its use or production, or if they got advantages from the offence, or if the property was acquired after the commission of the offence, if the third parties knew their origin. According to paragraph 3 of the same Article, if the property consists of inscriptions, representations or registrations made in paper, in another medium or form in audiovisual means, belonging to bona fide third parties, the forfeiture does not take place. Instead, the property is given back to the owner after deletion of the inscriptions, representations or registrations. If that deletion is not possible the court orders the destruction of the property and the owner will have the right to compensation.

217. In addition, according to the Articles 273 and 274 of the Civil Code, all the acts, agreements and contracts made against a legal imperative provision are considered null (void). With this civil consequence it is possible to prevent or avoid the actions,

agreements or contracts that a criminal perpetrator makes in order to prejudice the authorities' ability to seize and forfeit property. The Public Prosecutions Office has civil legitimacy to proceed against the perpetrator.

218. It is an offence to promote or form a group, organization or association, the object or activity of which is meant to commit offences, punishable with a penalty from three to 10 years (Article 288 of the Criminal Code). Moreover, Law 3/2006 creates a special offence regarding the promotion or formation of terrorist groups, organisations or associations. All the objects that were used or were meant to be used by those organisations, or produced by such organisation for the commission of an illicit act or that constitute the proceeds of that illicit act, must be forfeited (Paragraph 1 of Article 101 of the Criminal Code. Article 103 of the Criminal Code establishes that the things, rights or assets that were directly obtained from the commission of the offence must also be forfeited. If the ML or the FT offences are committed by legal persons, even if irregularly formed, or by associations without legal personality (Article 10 of Law 3/2006 and Article 5 of Law 2/2006), they will be criminally liable and their property can be forfeited in the same terms that would be forfeited the property of natural persons.

219. According to the paragraph 2 of Article 101 of the Criminal Code, the forfeiture of assets takes place even if no one can be punished for the offence, on the basis that there is not enough evidence.

220. The prosecution must prove beyond a reasonable doubt that the property to be seized or forfeited is from an unlawful activity. Therefore, the defendant does not have to demonstrate the lawful origin of the property; although he can do that and might have interest in doing that if the property is really from a lawful origin.

221. There is, however, one exception to this rule in Law 11/2003 concerning the unjustified wealth offence. In Article 28, certain persons are obliged to present an income declaration (mainly Public Civil Servants), and who have been shown to own property or have received income with value above the income declared must satisfactorily demonstrate the lawful origin of the property, otherwise they will be punished with imprisonment of a maximum term of three years and a fine. In addition, the income or property that can not be demonstrated as having come from a lawful origin can be seized and forfeited.

Recommendation 32 (confiscation/freezing data)

222. No comprehensive statistical was provided on seized and forfeited assets.

2.3.2 RECOMMENDATIONS AND COMMENTS

223. Macao, China legislation allows the seizure and forfeiture of proceeds of crime. However, no provisional measure on freezing exists which would prevent assets being dealt with, transferred or disposed of within a short period of time, such as bank account transfers. Macao, China should consider adopting freezing as a provisional measure to combat ML.

224. The procedure for freezing should, among other things:

- clearly identify the legal authority for the issuing of a freezing and unfreezing order or other instrument;

- stipulate legal framework for freezing proceeds, funds and assets;
- consider effective, ex parte, asset freezing mechanism for listed entities;
- include mutual legal assistance on foreign freezing requests;
- specify freezing and unfreezing procedure; and
- protect the rights of bona fide third parties.

225. Given that there was no statistical data available, and that the new ML legislation just recently became in force and consequently there are no cases commenced under that law, the effectiveness of the legal system to seize and to forfeit the proceeds of ML offence cannot be assessed at this time.

2.3.3 COMPLIANCE WITH RECOMMENDATIONS

	Rating	Summary of factors underlying rating
R.3	PC	<ul style="list-style-type: none"> • No freezing provisions, mechanisms and procedures in place as provisional measure of ML regime. • No possibility of providing MLA to foreign requests on freezing orders issued by or demanded by foreign authorities on ML. • No statistics under the new ML criminalisation regime, therefore it is impossible to assess the effectiveness of the existing legislation on provisional measures.
R.32	PC	<ul style="list-style-type: none"> • No comprehensive statistical data on seized and forfeited ML/FT cases, therefore impossible to clearly measure effectiveness and efficiency of the previous and existing ML/FT systems.

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

2.4.1 DESCRIPTION AND ANALYSIS

Special Recommendation III

226. Special Recommendation III requires two different elements: the first one concerns the implementation of measures to freeze (restrain the transfer, conversion, disposition and movement, of goods or assets but the property remain on the person or institution that held the interest) of terrorist related funds or assets according to relevant United Nations Security Council Resolutions (UNSCR); the second element concerns the adoption and implementation of measure to seize and confiscate terrorist funds, (take control and permanently deprive the owner from his/hers assets or funds) through any judicial order or mechanism. Macao, China has not made provisions for nor implemented the first obligation. The general framework of seizure and forfeiture of funds and assets, under Criminal Code and Criminal Procedure Code applies for the second obligation.

227. UNSCRs 1267 (1999) and 1373 (2001) and its successor resolutions have been published in the Official Gazette. UNSCR 1267 was published in OG 29, II Series, of 19 July 2000 and UNSCR 1373 was published in OG 43, II Series, of 24 October 2001.

These Resolutions became part of the Macao, China legal system and prevail over ordinary law.

228. According to the above UNSCRs, jurisdictions are obliged to freeze terrorist funds or assets, on the first Resolution of Al-Qaeda and Taliban individual funds or assets belonging to those organisations, and on the second Resolution to any terrorist funds or assets, who commit or attempt to commit terrorist acts.

229. The obligation to freeze funds or assets on UNSCR is non self-executing, therefore requires domestic provisions so that such obligation may be applicable. In order to comply with certain acts of international law, which were not self-executing, UNSCR included, Law 4/2002, of 15 April 2002 was approved. This law contains provisions of a substantive criminal law nature, establishing as serious criminal offences, punishable with severe penalties, the violation of sanctions imposed by the UNSCR. However, as referred previously, and despite this law, Macao, China did not establish a legal provision for a freezing mechanism nor standards and procedures to be adopted and executed.

230. Some relevant elements are established in Law 4/2002, such as:

- Article 5 which enables the Chief Executive of Macao, China to adopt appropriate administrative measures to give effect to those sanctions and requires the competent authorities of Macao, China to supervise the implementation of such measures, providing that standards and procedures were in place to execute such orders;
- Article 8 which determines the issuing of guidelines by supervising authorities to financial and non-financial entities to detect listed individuals assets and possible terrorist acts. Within this framework the AMCM and other supervising entities have issued guidelines and notices to financial and non-financial institutions in order to increase their awareness of the existing sanctions and of possible terrorist acts; and
- Article 22 of the same Law determines that it is a criminal offence the provision or collection of prohibited funds (which includes the funds for terrorism) to any State, Territory, natural or legal person, private or public, which are object of an international sanctioning rule.

231. The UNSCR list of terrorist entities, besides publication in Macao, China Official Gazette, have been disseminated among the supervising authorities, such as the AMCM, law enforcement agencies and other entities (either public or private). AMCM issued Circular 007/B/2005, to banks, financial institutions, money changers, cash remittance companies and finance companies referring to UNSCR terrorist list, and demanded that supervised entities should identify possible terrorist funds and persons, develop a database and execute CDD measures. More recently AMCM issued guidelines on ML and FT prevention, following Administrative Regulation No. 7/2006.

232. Law 4/2002 also imposes a duty on the AMCM, as the banking supervising authority, to instruct and monitor the provision or collection of prohibited funds (which includes the FT) (Article 8 (2)).

233. Given that there is no freezing mechanism procedure, the current legislation of Macao, China does not have any special regulation on the communication of actions taken under the freezing mechanisms or unfreezing mechanisms.

234. According to Article 36 of the Basic Law of Macao, China, everyone has the right to have access to the law, to the courts, to legal advice in protecting their lawful rights and interests and to judicial remedies. Justice cannot be denied on any grounds, in particular, lack of financial resources. Furthermore, the Macao, China legal aid system covers the non-payment of judicial costs as well as legal counselling.

235. According to Article 163 of the Criminal Procedure Code, property that must be seized is broadly defined as any object which was used or was to be used to commit an offence, or which was the offence's product, profit, price or reward or which was left by the perpetrator in the local of the offence or any other which can be used as evidence.

236. Article 31 of Law 6/97/M, related to seizure, is applicable whenever the investigation of ML is being carried out within the framework of organised crime, secret societies or organisations.

237. Under paragraph 1 of Article 101 of the Criminal Code, the objects which were used or were to be used to commit an offence, or produced by the offence, are subject to forfeiture when, by its nature or by the case's circumstances are dangerous for the security of persons, their moral or the public order, or when they might be used for the commission of new offences.

238. Under paragraph 2 of the Article 103 of the Criminal Code, the things, rights or advantages which were directly obtained with the offence must be forfeited. If the forfeiture of rewards, things, rights or advantages is not possible, there should be the payment of the equivalent value (paragraph 4 of Article 103).

239. Paragraph 3 of Article 103 of the Criminal Code establishes that the forfeiture also comprehends the property obtained by any transaction or change with the property that resulted from the FT offence. Paragraph 4 of the same provision rules that if the property cannot be seized and forfeited in specie, the forfeiture is made by payment of the equivalent value. Both situations apply regardless of whether the property is held or owned by a defendant or a third party.

240. Article 102 of the Criminal Code has some exceptions to these provisions, in order to protect bona fide third parties.

241. According to paragraph 3 of Article 163 of the Criminal Code, the normal procedure for seizing of property is with authorization, order or validation by the judiciary authority. However, as ruled by paragraph 4 of the same provision, the criminal police bodies can also seize property when the seizure is urgent or when the normal procedure can cause harm to the evidence itself.

242. The law does not demand any prior notice. The Criminal Procedure Code only rules about the active legitimacy of the judiciary authority with competence to seize property.

243. The FIU (GIF) has a wide range of powers to identify and trace property, including information requests to any public or private entities. Moreover, according to Article 8 of the Administrative Regulation No. 7/2006, all the assistance, especially the disclosure of information and the delivery of documents, shall be provided to, as and when requested by, the competent authorities for the prevention and suppression of the crimes of FT.

244. In addition, the Criminal Procedure Code also entitles the law enforcement authorities with a wide range of powers to allow the identification and tracing of property, including examination orders (Articles 156, 157 and 158), search (Articles 159 to 162) and seizure (Articles 163 to 171), among others.

245. In order to avoid actions that might put at risk the ability of the authorities to recover property subject to forfeiture, there is the possibility of seizing property by the criminal police bodies without even needing the authorization or order from the judiciary authorities (a court or the prosecution office), as ruled by paragraph 4 of Article 163 of the Criminal Procedure Code. In fact, that provision states that the criminal police bodies can seize property in cases of urgency or when the delay of the normal procedure can be dangerous for acquiring the evidence.

246. Moreover, paragraph 2 of Article 163 of the Criminal Procedure Code rules that the seized property is, when possible, attached to the criminal proceeding. When that is not possible, in order to prevent its alienation or transfer to another person, the seized property is subject to guard by the justice officer working with the proceeding or by a depositary.

247. According to Articles 273 and 274 of the Civil Code, all the acts, agreements and contracts made against a legal imperative provision are considered null (void). With this civil outcome it is possible to prevent or avoid the actions, agreements or contracts that a criminal perpetrator makes in order to prejudice the authorities' ability to seize and forfeit property. The Prosecution Office has civil legitimacy to proceed against the perpetrator.

248. Law 4/2002 established a criminal regime for the violation of the provisions resulting from the applicable international acts. For that purpose, Article 3 states the principle of unity, whereby the provisions of the applicable international Acts and the provisions of Law 4/2002 are considered one and the same law.

249. According to Article 22 of Law 4/2002, whoever intentionally invests, sends or makes available to any State, Territory, person or entity, public or private, object of an international sanction provision, any prohibited funds is punished with imprisonment with a minimum term of one year and a maximum term of five years and a fine. Negligence is also punishable according to paragraph 2 of the same provision. The criminal liability of the legal persons is also established in Articles 17 and 18.

250. Moreover, Administrative Regulation No. 7/2006 also establishes several measures to prevent and suppress the FT offence, (Article 7 of Law 3/2006). Several private and public entities have duties imposed on them to achieve that purpose, namely the identification of clients, the identification of their transactions, record-keeping, refuse to perform operations whenever the client does not provides information to fulfil the identification duties and the obligation to report transactions suspected of FT. Several

agencies were given supervising authority in order to monitor the compliance with those preventive measures. Besides the issuance of guidelines, the supervising authorities must also perform inspection actions and institute administrative proceedings for administrative sanctions when there is failure to comply with the preventive measures. Most of these Guidelines issued by the supervising authorities have only recently been put in place, so it is not possible to test their effectiveness at this time.

Recommendation 32 (FT freezing data)

251. No statistical data was provided.

2.4.2 RECOMMENDATIONS AND COMMENTS

252. Both UNSCR 1267 and 1373, concerning self-executing acts, are part and in force within Macao, China the legal system. Both UNSCRs require provisional measure on freezing, seizing and forfeiture of funds and assets of listed terrorists or of terrorist acts and organisations, to be fully implemented.

253. Macao, China's legislation allows the seizure and forfeiture of funds and assets derived from the proceeds of, or used in, or intended or allocated for the use in, the FT, terrorist acts or terrorist organisations. However, no provisional measure on freezing or unfreezing is in place. Macao, China should consider adopting freezing provisions and procedures as a provisional and effective measure to fight against FT.

254. The procedure for freezing should, among other elements:

- clearly identify the legal authority for the issuing of a freezing and unfreezing order or other instrument;
- stipulate legal frame for freezing proceeds, funds and assets;
- consider effective, *ex parte*, asset freezing mechanism for listed entities;
- include mutual legal assistance on foreign freezing requests;
- specify freezing and unfreezing procedure; and
- protect the rights of *bona fide* third parties.

2.4.3 COMPLIANCE WITH SPECIAL RECOMMENDATION III

	Rating	Summary of factors underlying rating
SR.III	PC	<ul style="list-style-type: none"> • Macao, China does not have freezing and unfreezing measures and procedures both under general or special laws to implement fully UNSCRs 1267 and 1373 in relation to FT funds or assets.

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

2.5.1 DESCRIPTION AND ANALYSIS

Recommendation 26

Establishment of Financial Intelligence Unit (FIU)

255. The legal power to establish the Macao, China FIU (GIF in Portuguese) is contained in Article No. 8; paragraph No. 2 of Law No. 2/2006. The Financial Intelligence Office (GIF) was formally established on 8 August 2006 by Executive Ruling No. 227/2006 from the Chief Executive with responsibilities to collect and analyse suspicious transactions reports (STRs) from reporting institutions defined under Law No. 2/2006 and report it to the Public Prosecutions Office.

256. The GIF is an independent government unit directly under the purview of the Secretary for Economy and Finance. It is a special project entity with a term of three years and can be extended by order of the Chief Executive. It will have its own fund for its operation and the budget will come under the Office of the Secretary for Economy and Finance.

257. The GIF is an entirely a new entity and started operating on 12 November 2006. It was temporarily housed at the Macao Institute of Financial Services at the time of the on-site meeting but moved to new premises in January 2007. At that time, the GIF had six officers comprised of a Director, seconded from the AMCM; two examiners, also seconded from AMCM (one from Banking Supervision and one from the Insurance Supervision); one senior inspector, seconded from the PJ; and two IT supporting staff, seconded from other government agencies. Besides, the AMCM and the Office of the Secretary for Economy and Finance provided legal counsel support to the GIF. It is critical that the ongoing operation of an FIU is supported by the authorities.

258. The Director of the GIF was nominated through Executive Ruling No. 227/2006 from the Chief Executive. She was previously head of the Banking Supervision Department in the AMCM and has been the coordinator of the government AML working group since 2002. The senior inspector was previously the head of the PJ Commercial Investigation Department and was an officer-in-charge of receiving STRs. He has also been with the AML working group since 2002.

259. All GIF officers are required to keep information confidentially in accordance with Law No. 2/2006 and Executive Ruling No. 227/2006. In addition, employees of public entities are also subject to secrecy requirements under paragraphs 2(e) and 7 of Article 279 of 'General Clauses for Workers of Macao Public Administration', approved by Decree Law No. 87/89/M.

260. Prior to the establishment of the current GIF, the PJ was the competent authority under the Decree Law No. 24/98/M to receive STR, but only limited to the conversion, transfer or concealment of illegal assets or proceeds of organised crime under Law No. 6/97/M. PJ continued to receive the STRs up until 12 November 2006 when the GIF began its operations. The Decree Law No. 24/98/M was subsequently repealed by virtue of Article 9 and subject to Article 10, of Law No. 2/2006.

261. The Evaluation Team was informed that the rationale of establishing a new FIU, and not continuing it under PJ, was because the numbers of reporting institutions were increased under the new AML/CFT laws, Law No. 2/2006 and No. 3/2006. As all financial institutions and most of the supervisory authorities with AML/CFT functions come under the purview of Secretary for Economy and Finance, it was decided that the new FIU should be placed under the same Secretary, to facilitate communications between GIF, AMCM and financial institutions.

262. When the GIF began its operations and took over the functions of receiving STR from PJ, it did not take any existing IT system or work procedures from PJ. Also, almost all previous STRs were still held by PJ. One of the reasons for this was because the GIF office at the time of assessment was yet to be fully set up and did not have adequate security to safe-keep the STRs. As a temporary measure, the GIF received only the summary of STRs on some cases currently being investigated and reported to the Public Prosecutions Office. However, after moving to the new office premises at the end of January 2007, the authorities advised that PJ had already handed over all STR records to the GIF.

Receiving, Analysing and Disseminating STRs

263. The Executive Ruling No. 227/2006 authorises GIF to receive, analyse and disseminating STR. Paragraph No. 4 of the said Executive Ruling details of specific roles and powers, namely to:

- receive information provided in accordance with Article 7 of the Administrative Regulation No. 7/2006, and to establish and maintain a database for such information;
- analyse the information received, and report the suspicious ML activities to the Public Prosecutions Office;
- provide assistance to law enforcement agencies, judicial authorities and other entities empowered to prevent or suppress crimes relating to ML or FT, based on their requests with clearly stated reasons, particularly in the form of information giving and technical support;
- provide to, and receive from, entities outside of Macao, China information regarding crimes relating to ML and FT in compliance with regional agreements or any other international law instruments;
- collaborate with public entities to establish and revise anti-ML and counter-FT guidelines;
- develop and promote programs for public awareness about anti-ML and counter-FT; and
- furnish the Secretary for Economy and Finance with an annual report on FIU activities.

264. The GIF has designed a standard STR form to be used by all reporting institutions with effect from 12 November 2006. This was indicated in the Guidelines issued by the relevant supervisory agencies. At the time of on-site visit, submission of STRs by reporting institutions was done either by mail or by hand. The information was then manually entered into the database.

265. Initial feedback by the GIF to the reporting institutions is in the form of an acknowledgment letter, which is issued within seven working days of receipt of an STR. Any incomplete STR form will be follow-up either by phone, fax or mail and the reporting institution needs to provide supplementary information within one week. An Incomplete Information Notice could also be sent to the reporting institutions to require them to complete the form within seven days of notification. If additional information is required, the FIU is authorised under Article 8, Law No. 2/2006 and the Executive Ruling No. 227/2006 to request from the reporting institutions or any public or private entity for further information or for purpose of identifying and tracing property.

266. The final outcome of the STR after being analysed will result either in the STR being filed because it is inconclusive and covers no elements of offences, or being referred to the Public Prosecution Office for investigation on ML/FT offences. The GIF is required by law under paragraph No. 4 (b) of the Executive Ruling No. 227/2006 to report suspicious ML/FT cases to the Public Prosecution Office. The GIF would also inform the originating reporting institution in writing of the outcome status of the said STR.

267. In spite of the existing legislation allowing the GIF to obtain information from any public or private entity, the GIF indicated to the Evaluation Team during the on-site visit that they were looking into a cooperation mechanism with other law enforcement agencies especially with the Judiciary Police in case a cooperation agreement may be necessary. The team was subsequently advised that after several meetings between the GIF, PJ and the Public Prosecutions Office, an information exchange mechanism and contact points was agreed and no cooperation agreement is necessary. Under paragraph No. 4 (c) of the Executive Ruling No. 227/2006, the GIF could provide suspicious ML/FT information to law enforcement or other entities vested with the authority to prevent or suppress crimes relating to ML/FT upon receiving their request that is supported with valid reasons.

268. The GIF is not currently a member of the Egmont Group of FIUs. Nevertheless, the GIF is authorised under Law No. 2/2006 and paragraph No. 4 (d) of the Executive Ruling No. 227/2006 to provide to and receive from, entities outside the jurisdiction of Macao, China, information regarding crimes relating to ML/FT in compliance with regional agreements or any other international law instruments.

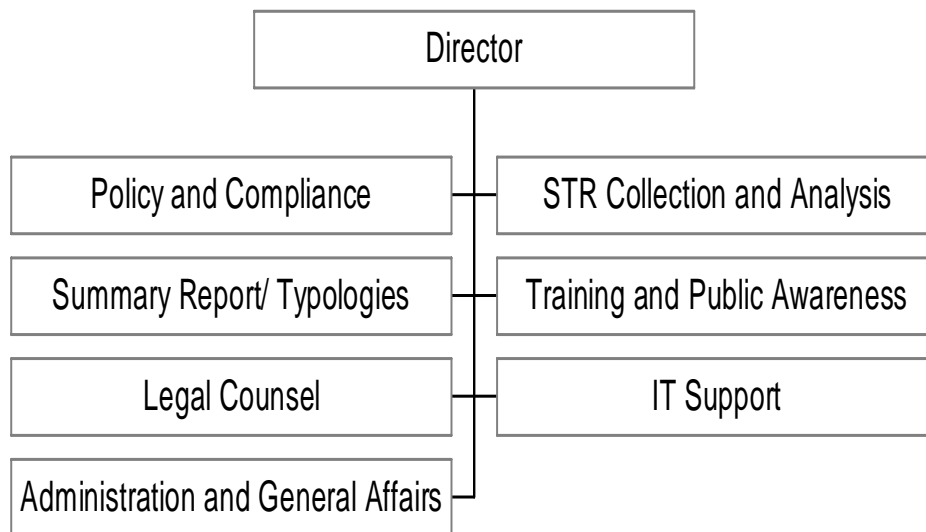
Recommendation 30

Structure of the Financial Intelligence Unit (FIU)

269. The GIF was provided with a budget of MOP 2.6 million for the year 2006. The budget for the year 2007 will be MOP 8.5 million with additional of MOP 1. 3million for IT systems. It relocated to its new premise in mid January 2007 and it was planned for the IT systems to be completely installed by mid February 2007.

270. The GIF budget provides for 22 employees and seven divisions namely Policy and Compliance, STR Collection and Analysis, Summary Report/Typologies, Training and Public Awareness, Legal Counsel, IT Support and Administration and General Affairs. At the time of on-site meeting, the GIF was in the process of recruiting two clerical staff who will be responsible for data entry in the computer and eight examiners from the private sector with a preference for those having experience and background knowledge in financial institutions such as compliance or internal audit.

The FIU organisation chart



Policy and Compliance

271. This division is responsible for keeping track of international developments, obtaining and updating information on international standards, international laws and conventions, changes in domestic rules and regulations, and preparing proposals for implementation of proper measures to conform to the new developments.

STR Collection and Analysis

272. This division is responsible for receiving STRs from reporting institutions and preliminary investigation on the reports which include checking the reports are filled correctly, providing a first feedback to the reporting institutions followed by subsequent follow-up feedback when necessary, and carrying out analysis including data matching with existing records and intelligence provided by the law enforcement and foreign counterparts. When necessary, it will also make further requests to the reporting institutions with regard to information such as tracing the second level of source of funds.

Summary Report and Typologies

273. This division is responsible for preparing monthly statistics of STRs received, providing information with regard to trends and typologies to all supervisory and regulatory authorities, professional bodies and reporting entities concerned.

Training and Public Awareness

274. This division is responsible for training and public awareness programs. Its responsibilities include arranging domestic or overseas training programs and arranging public awareness programs with regard to ML such as on the reporting requirements.

Legal Counsel

275. Legal Counsel is responsible for legal issues, which includes preparation of MoU with foreign counterparts.

IT Support

276. This division is responsible for the development of an STR database and system support for generating periodic statistical data, which will be used to prepare periodic reports to supervisory agencies as part of the feedback system to assess the effectiveness of the supervision and reporting system. Eventually this division will develop a support system for analysis of the STRs with data matching and search functions.

277. In addition to its main function of collecting, analysing and disseminating STRs, the GIF will also function as a coordinator to all the regulatory authorities and self-regulatory bodies within AML/CFT regimes; provide technical assistance to other government agencies including revision of guidelines; implementation of supervision measures; training and public awareness programs, etc. Both the GIF and the AMCM will continue close relationships with international organizations such as the APG and IMF to keep track of international trends and developments on AML/CFT for which proposals will be made to the Government for any new policies in response to changing international requirements.

Recommendation 30 (FIU)

278. AMCM, being the coordinator of the Macao, China's Anti-Money Laundering Working Group, which was established by the government in 2001, has from time to time organised training for relevant government agencies responsible in AML/CFT such as training courses with assistance from the US Consulate in Hong Kong, JFIU Hong Kong, International Law Enforcement Academy in Thailand, and workshops of the APG and FATF. In 2006, only two GIF officers attended training i.e. the APG Typologies held in Jakarta, Indonesia. Nevertheless, all GIF staff who are now being seconded from AMCM and PJ have previously obtained training on ML/FT including those workshops and seminars organized by the US Consulate in Hong Kong, HKJFIU, IMF, ILEA and APG

279. For 2007, the GIF has allocated MOP 200,000.00 as its training budget. It has outlined several in-house training programs to be conducted by experts from relevant domestic government agencies. The proposed training is as follows:

- Investigative techniques by Judiciary Police;
- Investigative techniques with focus on commercial crimes and ML methods by Commission Against Corruption;
- Gaming operations and related control measures on AML/CFT by Gaming Inspectorate;
- AML/CFT in banking institutions by AMCM;
- AML/CFT in insurance companies by AMCM; and
- Licensing requirement and supervision of non-financial offshore companies by IPIM.

280. The GIF has made requests to donors or providers such as IMF for training on analytical skills, and UNODC for training on analytical skills based on IT applications. It also plans to send officers to attend seminars and workshop organised by international organizations such as APG, FATF and IMF. Working visits were also planned to regional FIUs such as JFIU Hong Kong, China.

Recommendation 32 - Statistics

281. Up until 12 November 2006, all statistics with regard to STRs were kept by PJ. From 2002 until June 2006, PJ received 317 STRs involving 342 persons. Out of these, 13 persons were arrested. In addition, up to the end of December 2006, the GIF has received 148 STRs, out of which three cases were reported to the Public Prosecutions Office while 12 cases were passed to the PJ as they were related to STR before 12 November 2006.

TABLE 1: SUSPICIOUS TRANSACTIONS PROCESSED BY JUDICIARY POLICE			
Year	STR Received	Persons Involved	Persons Arrested
2002	68	72	0
2003	107	168	0
2004	109	142	0
2005	194	253	13
2006 (Jan to June)	317	342	0

282. For the same period, 59 files on ML cases had been opened. Out of these, seven cases were brought to prosecution. Refer to Table 2: Cases Under Prosecution.

TABLE 2: CASES UNDER PROSECUTION			
Year	Cases Under Prosecution	Seizure of Assets Related to Crimes	Type of Crimes
2002	3	0	0
2003	1	0	0
2004	0	0	0
2005	2	HKD34,000,000	- Fraud - Kidnapping
2006 (Jan to June)	1	0	0

2.5.3 COMPLIANCE WITH RECOMMENDATION

	Rating	Summary of factors relevant to s.2.5 underlying overall rating
R.26	LC	The GIF is an entirely a new entity and only started operating on 12 November 2006 with 6 officers and its effectiveness is yet to be proven.

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

Judiciary Police (PJ)

283. The Judiciary Police (PJ) is the main police body of Macao, China and the only law enforcement agency responsible and authorised to investigate ML/FT offences in Macao, China. The newly passed Law No. 5/2006 on Organization of Judiciary Police empowers PJ with special functions of investigation on ML and related crimes. This is to cope with the investigation obligation established by Law No. 2/2006 on Prevention and Suppression of Money Laundering and the AML/CFT measures laid down in Administrative Regulation No. 7/2006.

284. There are six departments in PJ, which are the Criminal Investigation Department, Gaming Related and Economics Crime Department, Forensic Science Department, IT and Telecommunications Department, Management and Planning Department, and Judiciary Police Training School. PJ has newly established the Money Laundering Division under the Gaming Related and Economics Crime Department.

285. As of September 2006, PJ has 329 investigators of which only 10 are in charge of ML investigations in the newly established Money Laundering Division. The Money Laundering Division works closely with the Criminal Intelligence Division, Narcotics Division, Economic Crimes Division and Interpol Macao Office. There has not been any FT case reported in Macao, China.

286. As the main investigative body in Macao, PJ has the investigation powers in relation to ML/FT and its predicate offences embedded under various laws and through judiciary orders. These powers include conducting search in premises, search of persons, taking statements, obtaining document, seizure, arrest, forfeiture and special investigative techniques such as undercover operations:

Search premises

287. PJ is empowered to conduct search by judicial order (search warrant) in premises as provided for under Article 159 of the Criminal Procedure Code. A search could also be conducted without the judicial order (without search warrant) if delay in obtaining the order may result in failure to obtain the evidence; persons to be searched or occupying the premises consented to the search; or when there is detention of an offender for a crime punishable by imprisonment. However, a search without the judicial order needs to be immediately communicated to the judge of preparatory hearing or otherwise the search will be considered null. Under Article 158 of the Criminal Procedure Code, PJ may stop people from leaving the premises while search is being conducted. Nevertheless, the power of PJ to conduct a search in premises is somewhat restricted by Article 162 of the Criminal Procedure Code, which stipulates that a search in an inhabited house shall not be made before the rising nor after the sunset. Moreover, search in a law office or doctor's clinic needs to be presided over personally by the judge, otherwise it shall be null and the judge is required to inform in advance the

president of the representative organisation of the respective profession, so that he or his delegate may be present.

Search persons

288. PJ may conduct a search on a person suspected to have committed ML/FT and its predicate offences. This power is provided for under Article 156 of the Criminal Procedure Code. Under Article 161 of the Criminal Procedure Code, a search may be made against people at the place of search in searching for evidence.

Taking statements

289. PJ has the power to notify people to appear before it for the purpose of taking statements. This power is embedded under Article 10 of the Law No. 5/2006. Failure to comply will result in sanction provided by The Code of Criminal Proceedings.

Seizure

290. In general all seizure requires authorisation by the judicial order as stated by Paragraph 3, Article 163 of the Criminal Procedure Code. Anything used for crimes, products leading to crimes, any properties related to profits, expenses or payment, anything left behind by criminals at places where crimes were committed, or any other things used as evidence are liable for seizure. PJ could also affect the seizure without judicial order, as provided for under Paragraph 4, Article 163 of the Criminal Procedure Code, in cases of urgency or if the delay in getting the authorisation would result in failure to obtain the criminal proceeds. Any seizure done without the judicial order needs to be communicated to the judiciary authority within the period of 72 hours. Items such as letters, packages, values, telegrams or any other correspondence could also be seized with a judge's authorisation as provided for under Article 164 of the Criminal Procedure Code. Seizure could also be affected by invoking provision of Article 31 of the Law 6/97/M in relation to seizure of criminal proceeds involved in organised crime.

Seizure in financial institutions

291. According to Article 166 of the Criminal Procedure Code, any instruments, values, amounts and any other objects deposited in financial institutions including in safe deposit box could be seized with order by the judiciary authorities if it is believed to be related to a crime or to be used as evidence. Nonetheless, examination of a financial institution's documents is required to be undertaken by a judge. The judge can request assistance from the police authorities. Article 31 of the Law 6/97/M also provides for the seizure, with judicial order, of properties including proceeds of crime in financial institutions in relation to organized crime.

Arrest

292. According to articles 238 and 240 of the Criminal Procedure Code, PJ could detain a suspect under three different situations:

- a) in the actual commission of an offence, except for cases where the criminal proceedings against the suspects require a complaint by the victim or require an accusation by the victim;

- b) on execution of a mandate by a judge or execution of a mandate by the Public Prosecutions Office in cases where the suspect committed an offence for which he can be remanded in custody;
- c) for cases that allow remand in custody, if there is possibility for the suspects to escape or the delay in getting the appropriate judicial authority may lead to the escape of the suspect

Special investigative techniques

293. PJ is allowed to act or use undercover agents in cases against organised crime as provided for under Article 15 of Law No. 6/97/M. Postponement of arrest on suspected person is not provided under any laws but will be used depending on the circumstances of the cases, for example in order to identify the ultimate offenders in any suspicious cases.

Forfeiture

294. Forfeiture of criminal proceeds or any profits thereof or any instruments associated with the crimes is allowed under Article 101 to 104 of the Criminal Code, Article 22 of Law no. 5/91/M for drug offences,

295. According to PJ, they do not face any problems in getting judiciary orders from the prosecutors. On average, upon request, the orders will be issued in the next working day. For cases that require immediate action, orders may be issued on the same day.

296. Most of cases of ML investigated by PJ involved underlying offences of fraud, kidnapping and organised crime. Crimes of fraud and kidnapping make up 80% of the cases while the remaining 20% are organised crimes.

297. There have been some cases where money was brought to Macao, China through people and underground alternative remittance systems. As of early 2005 there had been 23 underground remittance operators found in Macao, China but the number had been reduced to two by 2006. The PJ indicated that the money brought through these means was relatively small and mainly by people from PRC. According to the PJ, people may make use of the underground alternative remittance systems because it is more efficient and with less charges, but they did also confirm that the ARS were used by gambling tourists in the casinos. The authorities suggest that the money brought into Macao, China by means of these systems may be used for "consumption and investment".

298. PJ has allocated some officers in most of the casinos in Macao, China. Their main functions are prevention of crimes in general such as theft and cheating. In the event any ML/FT crimes were committed, these officers would report for the necessary investigations to be carried out.

299. The Evaluation Team was informed that most of the predicate crimes investigated by PJ did not result in ML prosecutions. Some of the assets seized in predicate offences have involved cars and motorcycles. From the statistics made available, the authorities conclude that the major sources of illegal proceeds came from drug crime, organized crime, kidnap, bribery and illegal gambling. From 2002 until first half of 2006, a total of 1,286 cases were being investigated under those crimes (see table below).

300. The total number of ML cases opened during the same period was 59 (4.6%) with only 7 (0.5%) resulting in prosecutions. The amount of assets seized for those cases under prosecution was HKD34,000,000 (from fraud and kidnapping predicate offences). PJ is provided with the power under Article 4 of the Law No. 5/2006 to carry out acts of surveillance and to conduct checks; and Article 44 of the Criminal Procedure Code to collect criminal information and deter any criminal act and to secure all the evidence; nevertheless, the small number of ML cases investigated and prosecuted in comparison to number of crimes raises concern as to PJ's ability to effectively detect and combat ML/FT in Macao, China.

	2002	2003	2004	2005	The first half of 2006
Criminal Investigations					
Drug crime	155	197	193	173	99
Organized crime	14	24	21	19	9
Kidnap	6	6	3	3	0
Bribery	1	4	6	2	1
Illegal gambling	47	113	79	68	43
Money Laundering Investigations and Prosecutions					
File Opened	26	2	10	9	12
Prosecutions	3	1	0	2	1
Resulting Seizure of Assets					
	0	0	0	HKD 34mil	1

301. Information sharing between PJ and other law enforcement agencies in Macao, China is done on informal basis as and when the need arises. Nevertheless, Law No. 5/2006 does contain provisions that allow PJ to request other law enforcement bodies, public agencies, public entities, private entities and natural persons for cooperation and assistance.

302. PJ has only one formal agreement with a foreign counterpart being Portugal. There are no other formal agreements or MoUs established with foreign jurisdictions. Any request made to PJ for assistance is done through its Interpol division. PJ has made a few requests to foreign jurisdictions but the nature of the requests was general. Statistics below show the requests made by PJ to foreign jurisdictions, as well as requests received:

Year	Requests sent for cooperation	Requests received	Requests refused
2002	1323 requests, most of which regarding internal cooperation with PRC.	40	0
2003	1122 requests, most of which regarding internal cooperation with PRC.	49	0
2004	1487 requests, most of which regarding internal cooperation with PRC.	16	0
2005	987 requests, most of which regarding internal cooperation with PRC.	33	0
2006 to June	480 requests, most of which regarding internal cooperation with PRC.	17	0

303. Statistics below show the number of requests made by foreign jurisdictions in relation to money laundering. Most of these requests are directed to PJ.

Year	Cooperation on AML (requests from other jurisdictions)	Cooperation on AML (provided to other jurisdictions)	Cooperation on CFT (requests from other jurisdictions)	Cooperation on CFT (provided to other jurisdictions)
2002	4	3	---	---
2003	8	6	---	---
2004	20	18	---	---
2005	33	20	---	---
2006 (to June)	19	21	---	---

304. PJ has sent its officers to attend training conducted internally and abroad. Officers have been sent to attend workshops, seminars and training courses organized by international organizations and bodies like APG, FATF, ILEA, etc. It was observed that most of this training was short-term and not fully adequate and comprehensive to cover all other aspects of ML/FT investigations. Training and capability building of PJ's officers, especially in the Money Laundering Division, such as in forensic accounting, net worth analysis, asset tracing, seized asset management, analysis of statistical records, etc are vital to equip the officers with the necessary skills to effectively and successfully investigate ML/FT crimes. Some of the training attended is as follows:

- between 21 March and 1 April 2005 - two criminal investigators attended the "Course on Investigation of Complicated Financial Crimes" organized by the International Law Enforcement Academy;
- September 2005 - Conference Call training section organized by the US Consulate in Hong Kong, China and with speaker from FBI US;
- April 2006 - course on "Financial Crimes Investigative Techniques" organized by the US Treasury Office of Technical Assistance under coordination of the US Consulate in Hong Kong;

305. Prior to establishment of GIF, PJ assumed the function of receiving and disseminating STR. The statistics of STR received are as below:

Year	Suspicious Transactions rec'd	Persons involved	Persons arrested
2002	68	72	0
2003	107	168	0
2004	109	142	0
2005	194	253	13
2006(Jan to June)	317	342	0

Macao Customs Service (SA)

306. Macao Customs Services (SA) has 1,120 total officers of which 1,076 are customs officers and 44 are civilian and seconded officers. Its authorities and functions are prescribed under Law No. 11/2001 and its main responsibilities are as follows:

- Prevent, combat and repress customs fraud;
- Promote the prevention and repression of illicit trafficking;
- Co-ordinate the supervision of external trade and contribute to its development in order to maintain the credibility of the Macao, China internationally;
- Ensure the protection of intellectual property rights in accordance with the law;
- Promote the fulfilment of obligations assumed internationally by Macao, China in the area of customs activity;
- Promote the security and protection of persons and property and the proper execution of the internal security policy of Macao, China; and
- Intervene in the civil defence efforts of Macao, China and in case of emergency.

307. SA does not have the authority to investigate ML/FT offences. In carrying out its duties, if SA officers discover or suspect any offences in relation to ML/TF, such as persons bringing in a large amount of currency or precious stones, it will notify and handed over the persons to PJ to take further action if necessary.

308. During the on-site visit, the SA indicated that it would like to have a bigger and more prominent role in cooperating and providing assistance in preventing and combating ML/FT offences.

Macao Public Security Police

309. Macao Public Security Police (CPSP) is another police body in Macao, China. It is an entity responsible for the public security of Macao, China and its citizens. CPSP Institutional duties are to protect order and public security; to take measures for the prevention, to supervise road traffic; to guard public and private properties and to control illegal migration. It is not authorised to investigate ML/FT offences.

Unitary Police Service

310. Unitary Police Service (SPU) is another police body in Macao, China. Its role is as command and control, and to coordinate joint efforts of the other two police bodies; the PJ and the CPSP. According to Law No. 1/2001, SPU is responsible for inspecting the operational capacity and evaluating the performance of the subordinated law enforcement agencies.

311. SPU is not authorised to investigate ML/TF offences. As and when PJ requires any assistance on ML/FT investigations, SPU will coordinate and command the involvement of CPSP in that investigation.

Commission Against Corruption (CAC)

312. The Commission Against Corruption (CAC) carries out preventive actions and investigations against crimes of corruption. It was established in 20 December 1999. It assumes its power through Law No. 10/2000.

313. Although the CAC has the investigative powers such as the power to search, seize and arrest, these powers are restricted to corruption and related offences only. Its powers cover all public sectors and part of the private sectors.

314. The CAC is not authorised to investigate ML/FT offences, if they are not related to corruption. Seizure and forfeiture of assets can only be done in relation to corruption and related offences. The offence of laundering proceeds of corruption can only be enforced through Law No. 10/2000. In carrying out its duties, if CAC officers discover or suspect any offences of ML/FT not related to corruption, they will need to notify MP or PJ to take the necessary action.

315. During the on-site visit, the CAC indicated that it would like to have a more prominent role in preventing and combating ML/FT offences. So far, the CAC has not received any STRs from GIF but has indicated its willingness to receive STRs in future. The CAC has also indicated its desire to have access to information collected by the GIF to enable it to combat corruption more effectively in Macao, China.

Immigration

316. The Immigration Department of Macao controls the passage of people entering and leaving Macao, China. The department is not authorised to investigate ML/TF offences.

2.6.2 RECOMMENDATIONS AND COMMENTS

317. In relation to law enforcement, the following steps are recommended to Macao, China to effectively enforce the AML/CFT measures:

- At the moment, PJ is the only law enforcement agency responsible for enforcing laws related to ML/FT. It is recommended that the laws pertaining to ML/FT be extended to other relevant law enforcement agencies especially CAC and SA.
- Although laws and regulations as well as administrative arrangements do provide the mechanisms for information and cases be passed over to PJ, in all reality and practical aspects, these mechanisms sometimes do not work as they are intended to. Thus, by granting the other law enforcement agencies to powers in relation to ML/FT, they could continue pursuing their investigations to cover the offence of laundering the proceeds of predicate offences for which they are empowered to investigate. This could result in more cases being investigated and more proceeds of crime being confiscated and forfeited, as well as reduce the bureaucracy of handing over the cases to another agency.
- During the on-site visit the Evaluation Team observed that PJ has taken the necessary measures to establish a dedicated division for ML/FT. Even though PJ had indicated the ML/FT crimes are relatively small in Macao, China nevertheless the existence of casinos, close proximity border with PRC and its open economy do pose a threat to ML/FT activities. Thus, it is recommended that the number of officers allotted to Money Laundering Division be increased to sufficiently to detect and gather intelligence information as well as to investigate ML/FT crimes.

- The PJ should send its officers, especially the Money Laundering Division, to attend training related to ML/FT. Some of the training suggested includes financial investigations, forensic accounting, net worth analysis and asset tracing.
- The PJ also needs to establish a clear and effective work procedure to improve coordination of ML/FT investigations that involve other relevant law enforcement agencies. Information between law enforcement agencies is encouraged to be shared more freely and more often including information received from GIF.
- It is also recommended that PJ extends its cooperation either in the form of formal agreement or MoU with other foreign counterparts to effectively seek and render assistance in ML/FT related matters.
- The PJ needs to hand over all the STR and related information to GIF. It is suggested that PJ also hand over any IT system, work procedures and database that it had in relation to STR to GIF. This would assist GIF in speeding up the process of setting up an effective and functional FIU.
- Other law enforcement agencies such as SA and CAC should have access to GIF information with regard to their predicate offences.
- All law enforcement bodies should keep comprehensive records on investigations, seizure, confiscations, prosecutions and convictions.
- The PJ should maintain comprehensive records on ML/FT investigations, properties seized and confiscated, judiciary orders obtained, prosecutions, and convictions. Comprehensive and detailed records should also be kept for STRs received from GIF, requests for information made to GIF, requests made or received from other domestic law enforcement bodies, and requests made or received from other foreign entities. PJ also needs to consistently analyse the ML/FT trends and typologies.

2.6.3 COMPLIANCE WITH RECOMMENDATIONS 27 & 28

	Rating	Summary of factors relevant to s.2.6 underlying overall rating
R.27	PC	<ul style="list-style-type: none"> • Enforcement of ML/FT laws is limited only to PJ and not extended to other law enforcement agencies especially SA and CAC. • The Money Laundering Division of PJ is a newly set-up unit and its effectiveness is yet to be determined. Past cases investigated only resulted in 6 brought for prosecution during the period 2002-2006. • The number of officers dedicated to ML/FT detection and investigation is not adequate. • Officers do not have adequate training in ML/FT especially on focused and specific training.
R.28	LC	<ul style="list-style-type: none"> • Law enforcement agencies lack power to freeze or seize assets without having to obtain judiciary orders especially for cases that require immediate action.

2.7 CROSS BORDER DECLARATION OR DISCLOSURE (SR.IX)

2.7.1 DESCRIPTION AND ANALYSIS

Special Recommendation IX

318. The designated competent authority relegated to the oversight of illicit cross border currency movement is the Macao Customs Service (SA). According to Law No. 11/2001, the SA is responsible to prevent customs fraud, illicit trafficking and ensure the protection of intellectual property rights. The SA is not responsible for the regulation of legal cross-border currency movements.

319. While the SA is a preventative law enforcement agency that has the authority to detain individuals, the Judiciary Police (PJ) handles all customs related investigations and theoretically works with the SA on leads suspected of customs related crimes – however, as described below, such integrative efforts are not taking place.

320. Macao, China has neither a declaration system nor a disclosure system currently in place. There is also currently no plan by Macao, China officials to put either system in place. In addition, due to both external and internal policies, the system currently in place in Macao, China does little to combat cash smuggling, and in fact could be conducive to such activity, for the following reasons:

- The PRC currency controls (limit of RMB 20,000 per day per person) and many visitors to Macao, China physically carry significant amounts of cash or resort to the use of informal cash transfer mechanisms to and from the mainland;
- In an effort to prevent adverse impact on its gaming industry, Macao, China has traditionally not had AML/CFT provisions similar to those stipulated in SR IX, integrated into its customs requirements and procedures. Thus, Macao, China has neither adopted nor implemented an AML/CFT program to deal with the cross border movement of money.

321. Only recently has Macao, China begun recording the movement of large amounts of cross-border cash (above the threshold of MOP 300,000 or approximately U\$37,500). However, the Evaluation Team's visit with border customs and immigration facilities revealed there to be no current inspection program for such transfers nor a plan to initiate such inspections. Any identification of illicit cash couriers is likely revealed in the course of existing customs inspections/supervision efforts on the part of authorities. If cash movements above the MOP 300,000 are detected, the movement is catalogued and the individual(s) carrying the cash is allowed to proceed. There are currently no provisions in place for reporting such transactions at the moment.

322. There is little to no integration and cooperation between SA and the PJ (Immigration). Immigration databases are not used for targeting efforts to identify cash couriers for potential inspection upon arrival at the border nor any relevant enforcement efforts against those identified.

323. According to Law No. 7/2003 (External Trade Law), Article 10, Macao, China has an import/export declaration system calling for individuals to declare "a value exceeding MOP 5,000 (U\$625). However, this provision is not applicable to "goods

transported as luggage... for the use and consumption of natural persons". For this reason, should cash be carried "as luggage", such cash, even if carried for illicit purposes or derived through illicit means, are not subject to reporting. There is no proactive disclosure or declaration form for cash that is conducted on a targeted basis through leads or initiatives generated through law enforcement or intelligence bases. As described earlier, the integration between judicial police and customs authorities in this manner is lacking.

324. Macao, China has indicated that a declaration system for passengers is under study. The contents or progress of this study so far conducted were not provided to the evaluation team.

325. In the event of a false declaration, Law No. 7/2003 "External Trade Act," Article 37 only makes reference to an ability to levy fines.

326. While in practice, there is no "false" declaration or disclosure for cash couriers entering or exiting Macao, China (as the SA does not ask travellers to either declare or disclose currency), currency may be detected based on x-ray or hand search of luggage of luggage. These efforts do not occur on a systemic or targeted basis.

327. The current practice, as decided by the Director General of the SA is to generate large cash movement reports for all cash couriers carrying over MOP 300,000 whether voluntarily disclosed or detected in the course of Custom searches. When detected, Customs officers are using existing legal powers in an attempt to obtain additional data. Since implementing this practice in November 2006, the Customs Service has documented six large cash movements – those exceeding the threshold – and has passed detailed information to the PJ for further investigation (typically an interview of the cash courier). Beyond these efforts, there have been no follow up actions, nor specific enforcement actions initiated.

328. According to Law No. 11/2001, Article 3, the Customs Service is competent to:

- "Control and inspect vehicles, merchandise imported, exported and in transit in the MSAR, including travellers and their luggage, so as to guarantee the fulfilment of the inherent customs clearance formalities."
- "Conduct the activities necessary for preventing, combating and repressing illicit trafficking and customs fraud, including the collection and compilation of the required data and information for this purpose."
- "Cooperate with the Macao Security Forces and other public agencies and entities within the context of international security and civil defence of the MSAR."

329. As authorized under law, SA officials are able to use the aforementioned authorities to stop or restrain currency or bearer negotiable instruments crossing into Macao, China so as to aid in the investigative efforts of the PJ as to the source or nature of funds. According to Macao, China officials, such efforts have been limited to single follow up interviews with individual courier subjects. There is no evidence of the PJ having arrested a cash courier on suspicion of ML or FT. This also despite the fact that there exist several identified cases by PJ involving the couriership of reportedly large sums of cash.

330. The SA does not enforce a declaration or disclosure system for cross border cash couriers – both into or out of Macao, China. Rather, currency movements are detected through random inspections undertaken in the course of normal customs duties.

331. If a Customs officer suspects ML or FT, a large cash movement report is filed. As noted above, there have been six large cash movements detected since November 2006. However, when asked by the evaluation team for a report template or an exemplar report, the SA was unable to provide such documentation. It does not appear that this information is maintained by the SA. Macao, China's newly created GIF currently does not carry this information.

332. Currently, the SA does not provide any data to Macao, China's newly created GIF. Rather, all suspicious activity is referred directly to the PJ for investigation.

333. The GIF, as empowered by the Executive Ruling of Chief Executive No. 227/2006, Point 5, is competent to require any public entity to supply information. However, there has been no consultation between the GIF, the SA and the Judiciary Police regarding the format or content of the Customs Service reports, nor have any explicit information sharing agreement/MOU being signed regarding such cooperation.

334. Given that the SA has only recently begun to collect data, and that the GIF just began operations, the GIF has yet to request any documentation from the SA. As a result, there is no record of implementation or effectiveness

335. There is no working level coordination between the SA, Immigration (PSP), and/or the GIF, other than the AML/CFT Workgroup. There are reported monthly meetings between the Directors General of the SA and the PJ. Macao, China has not yet formulated a plan for interagency cooperation between these entities.

336. A recent AML/CFT Workgroup served as a mechanism to prepare documentation for the APG Mutual Evaluation itself. Based on discussions with Workgroup participants, as well as a review of meeting minutes, the meetings between the SA, PJ and GIF have not been used for inter-agency cooperation regarding AML/CFT requirements and the enforcement of those requirements.

337. The Immigration database is not used to identify suspected money launders or terrorist financiers for additional levels of inspections and/or scrutiny nor to generate leads for law enforcement investigations. There does not appear to be any joint training or operations between the SA and Immigration.

338. While SA officials were able to site statistics for cases referred to the PJ since November 2006, there is no system for feedback from the PJ and the SA does not track such data.

339. Like many of Macao, China's law enforcement agencies, the SA appears to operate its international liaison and cooperation through informal channels as opposed to well-defined and operational MOUs or agreements.

340. Macao, China is a member of the Regional Intelligence Liaison Organization for Asia Pacific and the World Customs Organization.

341. Additionally, the SA has had a Mutual Administration Assistance Agreement with the PRC since 2004, and there is an annual meeting with counterparts in Hong Kong, China to discuss issues of mutual concern regarding this established Agreement. There is no Agreement in place with Hong Kong, China specifically. This may be somewhat problematic and a vulnerability in both directions given the lack of a declaration/disclosure system currently in place in Hong Kong, China.

342. The SA does not appear to exchange customs data with foreign counterparts. Rather, there is informal investigative cooperation regarding pending action and should foreign counterparts pursue specific cases. There does not appear to be any effort to create or operate a database regarding illicit cross border cash activity regardless of the potential offence.

343. The Customs Service was unable to provide data/statistics regarding international cooperation, which prevented the team from assessing the effectiveness of implementation.

344. According to Law No. 7/2003, "External Trade Act", Article 37, the fines are:

- For failure to complete the required declaration - MOP1,000 to MOP50,000 and the goods shall be confiscated and declared property of the MSAR
- Under reporting of goods – MOP5,000 to MOP100,000 and the goods shall be confiscated and declared property of the MSAR

345. While these provisions currently exist, there is no evidence to suggest that fines have ever been administered against cash couriers suspected of ML or FT. No statistics were made available as to the application of fines in the instances for which reports/cases were generated.

346. While ML is now criminalized in Macao, China there is no criminal sanction for failure to declare or to truthfully declare the carrying of cash of any value, including over the stated threshold.

347. Should Macao, China apply Law No. 7/2003, and instil a system as per SRIX to detect illicit cross border cash movements, the fines described above would appear to be effective, proportionate and dissuasive with respect to such activity.

348. The Immigration Service (PSP) maintains a database that includes individuals designated by the United Nations Al-Qaeda and Taliban Sanctions Committee in accordance with UNSCR 1267(1999).

349. The PJ reports that no individuals named under the Resolution 1267 process have attempted to enter or leave Macao, China.

350. According to Law No. 7/2003 (External Trade Law), Article 10, Macao, China has an import/export declaration system calling for individuals to declare "a value exceeding MOP 5,000 (US\$625). There is no statistical information to suggest that the SA has applied this law to any store of value other than cash (which only began as of November 2006). Thus, while the provision technically exists that such that stores of value – other than cash – could be discovered, such efforts have not been made to date.

351. The PJ is responsible for investigating suspected ML and FT detected by the SA. The PJ has provided the SA with little to no feedback related to suspected incidents of ML or FT. Information obtained from the SA would suggest that the PJ does little more than conduct interviews with suspected money launderers in order to establish the true origin and purpose of such items.
352. That documentation that is currently created regarding existing records appears to be maintained according to local law enforcement standards and protections.
353. Detected cash couriers are detained and held until arrival of the PJ. Data is physically transferred to the PJ upon arrival to scene and can only be used for law enforcement purposes.
354. The GIF is currently operating on a paper format for STRs as submitted by covered institutions. There does not appear to be a process for transmitting large cash movements to the GIF in any systemic way, nor have the few existing records been transmitted to the GIF from Customs authorities.
355. There is no obligation to make a declaration of cash either coming into or leaving Macao, China nor for those movements above a specific threshold.
356. X-ray technology is currently in use at some of the border crossings for use for Customs inspection purposes, however, in practice, only individuals with large sealed boxes/containers are subject to x-ray inspection – and only on suspect of goods being brought in. As described, personal luggage is not inspected.
357. The SA does not appear to have an outreach or training program for land, sea and air carrier employees to detect and report suspicious behaviour based on law enforcement or intelligence or other means.
358. The SA has informally identified flights from Thailand as “high risk” due to the threat of narcotics trafficking. However, the SA has not conducted a risk assessment regarding ML or FT or other financial crimes. Most cash appears to be transported into Macao, China in large suitcases, which are not generally controlled or inspected.
359. There is no passenger/visitor screening or review of data other than by Immigration, which does not appear to refer individuals for further inspection by the SA, or refer suspicious cases to the PJ for additional review.
360. The reverse burden of proof is not applied in Macao, China. Rather, travellers are allowed to import as much currency as desired due to the lack of specific systems or controls in place. Investigations of suspicious travellers appear to consist of traveller interviews only and only on a referral basis. There is no record of any confiscation of currency – generally speaking or those based on false declarations or links to criminal activity.
361. Reports are archived in paper format. According to Customs officials, no database exists.

Recommendation 30

362. The SA functions as an independent agency. Officials did not express concerns regarding the lack of operational independence or attempts at undue influence. Officials indicated that the organizational structure would allow them to address concerns with senior leadership directly. However, there are weaknesses regarding the conduct of their duties in relation to integrative/collaborative efforts with other appropriate agencies, such as the PJ.

363. Customs officials were unable to provide budget details to assist the team in its assessments of whether the SA was adequately structured, funded or staffed. The budget is controlled directly by the Director General. However, similar to other Macao, China Government officials, the SA indicated that budgetary issues were not a problem.

364. Customs has approximately 1076 employees, several dozen of which (not specified) are dedicated to border checkpoint inspection. Approximately 30 officers are dedicated to the Intelligence Division. Based on a site visit to the land border with the PRC, there are insufficient officers present to control a border that has over 200,000 people cross per day. Multiple visits to the Macao, China – Hong Kong, China Ferry Terminal often found one single Customs officer to control and inspect several hundred passengers – and never for cash courier activities.

365. The SA appears to be a labour intensive force. Customs checkpoints are not integrated with Immigration. There are no computer terminals to process large cash movement reports (or declaration forms should authorities need to be enforced against suspect or illicit cash couriers). There is a single x-ray machine (no back up system) for screening large packages.

366. There appears to be a basic background in investigations for all recruits entering the SA including background on confidentiality and the protection of information. There are no re-investigation efforts and there are no levels of investigation based upon access to sensitive information or its use in targeting. There is no government policy governing levels of sensitivity for information and as a result, this continues to be a systemic problem. Confidentiality is addressed in a generic way.

367. All government employees are asked to sign an oath pledging to carry out their duties in an honourable and forthright manner. Individual Customs Officials expressed an ability to direct corruption issues involving their superiors to the senior ranks of the SA or to the CAC.

368. All recruits to the SA appear to receive the same basic training. However, there does not appear to be detailed training for individual posts nor any specific training on SR IX issues and the need/application of AML/CFT provisions. Regarding AML/CFT specifically, only oral training (guidance) has been provided to border officials. No material has been written into manuals, nor have there been any current effort to develop a specific training curriculum.

369. Until November 2006, the SA did not consider the movement of bulk cash as suspicious or possibly related to money laundering, FT or other illicit activity. As a result, there has been no training regarding such activity.

370. Any detection of cash couriers to date has been based on information received in the course of normal custom duties and not the result of any targeted or systemic effort.

Recommendation 32

371. There are publicly available customs statistics related to intellectual property piracy, trade violations (agriculture), illegal immigration and illegal narcotics. There is minimal data regarding the identification of cash couriers since November 2006.

372. Additionally, according to Law No. 7/2003 “External Trade Act”, Article 10, transporters of goods valued at over MOP5,000 are required to make a declaration.. Banks, jewellery shops and any other business entity is required to declare movements of currency, gold, precious stones and metals. However, SA officials were unable to provide statistics related to these few declared cross-border movements. Given that Macao, China does not enforce its declaration system, there are no statistics on the effectiveness and efficiency of its systems.

373. As a systemic problem in multiple instances and in multiple sectors, the Evaluation Team assessed that Macao, China does not appear to view statistics as a diagnostic tool that could be used to improve effectiveness of implementation of its regime. Rather, it is perceived that Macao, China produces statistics in order to satisfy international requirements.

2.7.1 RECOMMENDATIONS AND COMMENTS

374. It is recommended that Macao, China:

- Conduct a threat assessment of cross-border cash movements and known methods for moving cash into and out of Macao, including for illicit purposes;
- Develop and enforce a declaration policy with a threshold appropriate for Macao, China's economy (based on the threat assessment), and in keeping with international standards – SRIX provisions and the SR IX best practices paper;
- Criminalize untruthful or false declarations;
- Consider integrating the Immigration Service and the SA in order to effectively control all border crossings. This would allow for more rigorous inspection of suspicious individuals or known criminal elements;
- For inspection of travellers, consider substantially increasing the number of inspectors available.
- Consider improving the quality and quantity of x-ray and other inspection equipment commensurate with the significant daily throughput in Macao, China.
- Consider using a “constant random” methodology for inspecting passengers in addition to targeted searches based on suspicion or intelligence information.
- Develop and implement a working-level group between the SA and the PJ to coordinate practices and procedures. The PJ should provide the SA with information from investigations that can be incorporated in the threat assessment;
- Incorporate targeted based enforcement, based on law enforcement and intelligence information;

- The SA should maintain detailed computerized reports concerning detected large cash cross-border movements. This information should be used to follow-up with the PJ in order to improve procedures and improve targeting of suspected cash couriers. Additionally, this information should be regularly shared with/reported to the GIF;
- Maintain detailed statistics concerning seizures in order to gauge the effectiveness of inspection techniques. This information should be shared with other law enforcement agencies and the GIF for diagnostic purposes;
- Maintain detailed statistics concerning domestic and international cooperation. This information should reflect requests made and received. This information should be used for follow-up with liaison contacts for diagnostic purposes;
- Train Customs Officers in AML/CFT requirements and the provisions laid out in SR IX and its best practices paper;
- Customs should develop an outreach program to train the employees of land, sea and air carriers regarding the identification of suspicious behaviour.

2.7.3 COMPLIANCE WITH SPECIAL RECOMMENDATION IX

	Rating	Summary of factors underlying rating
SR.IX	NC	<ul style="list-style-type: none"> • Macao, China does not enforce a disclosure or declaration system. • The SA does not have formalized domestic and international cooperation and does not maintain appropriate statistics data on cross border movements or statistics of the same. • The SA is significantly under-equipped and staffed based on travellers into and out of Macao, China. • Training in AML / CFT for Customs Officers is non-existent. • Statistics concerning large cash cross-border movements are incomplete or non-existent. • There is no use of targeted enforcement techniques. • Integration between competent authorities is lacking as is the sharing of necessary information with the GIF.

3. PREVENTIVE MEASURES - FINANCIAL INSTITUTIONS

Customer Due Diligence & Record Keeping

3.1 RISK OF MONEY LAUNDERING OR TERRORIST FINANCING

Relevant laws, regulations and other enforceable means

375. The overarching AML/CFT legislation laying down the framework under which financial institutions operate is Decree Law No. 32/93/M (the Financial System Act, which provides for the AMCM's regulation of money, financial and foreign exchange markets; credit institutions; financial intermediaries; and other financial institutions, and which includes AML/CFT requirements for credit institutions), Law No. 2/2006 (which covers the prevention and suppression of money laundering) and Law No. 3/2006 (which covers the prevention and suppression of the crime of terrorism). Administrative Regulation No. 7/2006 has been made pursuant to article 8(1) of Law No. 2/2006 and article 11 of Law No. 3/2006. This Regulation regulates the duties of financial institutions and the insurance sector, which are under the supervision of the AMCM. Article 106 of the Financial System Act in respect of credit institutions, and Article 7 of Law No. 2/2006 and Articles 3 to 5 of Administrative Regulation No. 7/2006 in respect of financial institutions, establish the basic AML/CFT obligations. These obligations include the identification of customers (described as contractors, clients or patrons as different terms are used in different parts of the financial and non-financial sectors to which the Regulation applies).

376. Three guidelines have been issued by the AMCM. These guidelines are:

Anti-Money Laundering (AML) and Combating the Financing of Terrorism (CFT) Guidelines for Financial Institutions, referred to as the *Guideline for Financial Institutions* in this report These cover:

- a. credit institutions with headquarters in Macao;
- b. Macao, China branches of credit institutions with headquarters abroad;
- c. overseas establishments of credit institutions with headquarters in Macao;
- d. financial intermediaries with headquarters in Macao;
- e. Macao, China branches of financial intermediaries with headquarters abroad;
- f. finance companies;
- g. investment funds and investment fund management companies domiciled in Macao;
- h. offshore financial institutions, excluding those institutions engaging in insurance activities.

AML and CFT Guidelines on Large Cash Transactions These guidelines are referred to as the *Guidelines on Large Cash Transactions* in this report. These Guidelines supplement the Guideline for Financial Institutions when dealing with large cash transactions and wire transfers. They cover:

- b) institutions authorised to carry out money changing activities;

- c) institutions authorised to carry out cash remittance activities;
- d) institutions authorised to carry out financial leasing activities;
- e) institutions authorised to carry out venture capital activities;
- f) institutions authorised to carry out asset management activities;
- g) credit institutions, finance companies, financial intermediaries and any other financial institutions, locally incorporated and/or branches of overseas institutions, authorised under the Financial System Act;
- h) offshore financial institutions, excluding those institutions engaging in insurance activities.

Guidelines on Prevention and Combating Money Laundering and Financing of Terrorism in Insurance. By virtue of Notice No 12/2006 – AMCM of 11 October 2006 these Guidelines cover insurance companies, insurance intermediaries, private pension fund management companies, reinsurance companies, and captive insurance companies. References to insurance companies in the Guidelines generally refer also to the other insurance entities, including insurance intermediaries. These Guidelines are referred to as the *Insurance Guidelines* in this report.

377. The AML/CFT legislation and Guidelines referred to above came into force in November 2006. Institutions were, however, required to observe provisions contained in legislation prior to this date. For example, Decree Law No. 24/98/M contained provisions on the compulsory reporting of suspicious transactions. In addition, the AMCM also issued AML guidelines to financial institutions as early as 1996. This guideline was revised and split into two guidelines in 2002, namely “Anti-money Laundering Guideline for Authorized Credit Institutions” and “Anti-Money Laundering Guideline for Cash Transactions of Large Amount”. These two guidelines sought to incorporate the Basel Committee on Banking Supervision paper on CDD and the then FATF 40 Recommendations.

378. The FATF standards require that the basic obligations under Recommendation 5, 10 and 13 should be set out in law or regulation. A number of criteria in the FATF Assessment Methodology are marked with an asterisk, which means that they include minimal obligations that should be set out in a law or regulation. In this context, “law or regulation” refers to primary and secondary legislation, such as laws, decrees, implementing regulations or other similar requirements, issued or authorised by a legislative body, and which impose mandatory requirements with sanctions for non-compliance. A separate concept referred to in the Methodology is that of “other enforceable means” such as guidelines, instructions or other documents or mechanisms that set out enforceable requirements with sanctions for non-compliance, and which are issued by a competent authority (e.g. a financial supervisory authority) or a self-regulatory organisation (SRO). According to the Methodology, obligations set out in law or regulation as well as in other enforceable means have to be enforceable. The Guidelines issued by the AMCM are “other enforceable means”.

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

Anonymous accounts

Banking and Other Financial Sector

379. Article 106 of the Financial System Act requires credit institutions to verify the identity of customers, record the identity of all customers who make significant transactions and refuse to serve those who decline to provide evidence of their identity. The Article also states that credit institutions are not prevented from offering numbered accounts to customers whose identity is known only to a restricted number of employees.

380. Articles 3 and 4 of Administrative Regulation No. 7/2006 provide a duty to identify customers where transactions and business relationships (described in the Regulation as “operations”) operations would be treated by the courts as meaning transactions and business relationships (a) might indicate the commission of the crimes of ML or the FT, due to, inter alia, their nature, complexity, amounts involved, volume or non-habitual occurrence, relative to the activity of the customer; or (b) the transactions exceed, either taken together or individually the amount established by the AMCM. No de minimis amount has been established by the AMCM, which means that all transactions are subject to CDD.

381. Under Paragraph 6.3 of the Guideline for Financial Institutions, institutions should never agree to establish a business relationship - whatever its value - with a customer who provides a fictitious name or insists on anonymity. Where a numbered account is requested in order to offer additional protection for the identity of the account holder, the identity should be known to a sufficient number of staff to exercise proper due diligence. The Guideline goes on to state that such accounts should in no circumstances be used to hide the customer’s identity from an institution’s compliance function or from AMCM.

382. In the wording of the Methodology the Guidelines are “other enforceable means” because they have been issued by a supervisory authority and have not been issued or authorised by a legislative body. However, the Financial System Act and the Regulations do contain the basic principle and, therefore, financial institutions are not allowed to keep anonymous accounts or accounts in fictitious names.

Insurance Sector

383. Articles 3 and 4 of Regulation 7/2006 also apply to the insurance sector. Paragraph 7 of Annex A of the Insurance Guidelines provides that insurance companies and insurance intermediaries should not keep anonymous accounts or accounts in obviously fictitious names. The Annex goes on to state that insurance companies should identify their clients when establishing business.

384. The AMCM has stated that numbered accounts do not exist in the insurance sector and, therefore, no specific procedures have been established.

385. The Regulations contain the basic principle and, therefore, insurers and insurance intermediaries are not allowed to keep anonymous accounts or accounts in obviously fictitious names. The use of the word “obviously” in the Guidelines prevents full compliance with the FATF standard.

When CDD is required

Banking and Other Financial Sector

386. Articles 3 and 4 of Administrative Regulation No. 7/2006 provide a duty to identify customers where transactions (a) might indicate the commission of the crimes of ML or the FT, due to, inter alia, their nature, complexity, amounts involved, volume or non-habitual occurrence, relative to the activity of the customer; or (b) the operations exceed, either taken together or individually the amount established by the AMCM. Under Article 5 financial institutions must refuse to perform any operation in the absence of the elements necessary for compliance with the duties prescribed in Articles 3 and 4. There is no threshold in the Guidelines for Financial Institutions below which identity need not be obtained.

387. Paragraph 5.4 of the Guideline for Financial Institutions specifies that institutions’ policies should also establish that, if they are unable to obtain the required customer information on a timely basis, accounts should not be opened, or business relations should not be commenced, or transactions should not be performed. Paragraph 6.1 of the Guidelines for Financial Institutions provides that financial institutions should not open an account until the identity of the customer has been satisfactorily established. Paragraph 6.2 adds that the customer identification process should be applied at the outset of the relationship with Paragraph 6.5 specifying that financial institutions should take reasonable measures to verify the identity of persons other than the customer involved with the relationship, such as beneficiaries of transactions, before or during the course of establishing the business relationship.

388. Paragraph 4.4 of the Guideline on Large Cash Transactions states that the institutions covered by the Guideline shall not carry out a cash transaction in an amount exceeding MOP 20,000 or equivalent for a customer unless customer and identification information specified in Paragraphs 4.1 to 4.3 of the Guideline has been recorded. In addition, a threshold of MOP 8,000 is established for the identification requirements for originators and beneficiaries of cross-border wire transfers.

389. The Guidelines for Large Cash Transactions provide guidance in respect wire transfers except in respect of the timing of undertaking CDD. As previously identified, the guidelines are “other enforceable means” and not law or regulation, and therefore the FATF requirement is not fully satisfied. The obligation to undertake CDD when the financial institution has doubts about the veracity or adequacy of previously obtained identification data does not appear to be covered in the Regulation or the Guidelines.

Insurance Sector

390. Articles 3, 4 and 5 of Regulation 7/2006 apply to the insurance sector. Paragraph 30 of the Insurance Guidelines provides that insurance companies should make reasonable efforts to determine the true identity of all customers requesting their services. Insurance companies should institute effective procedures for obtaining identification from new customers and it should be an explicit policy that significant business transactions will not be conducted with customers who fail to produce evidence

of their identity. With reference to Paragraph 3 of Annex A of the Insurance Guidelines, when the insurance entity has doubts about whether an identity document is genuine contact should be made with the Immigration Department or the relevant consulates in Macao, China to ascertain whether the details on the document are correct.

391. Article 3 of the Regulation requires an identity document to be obtained when there is a suspicion of ML or FT for any operation over a designated threshold. No threshold under which CDD need not be undertaken is specified in the Insurance Guidelines. The Insurance Guidelines provide that only significant business transactions need not be conducted if evidence of identity is not provided. In addition, elements c) and e) are not provided for.

Required CDD measures

392. Article 106 of the Financial System Act for credit institutions and Articles 3 and 4 of Administrative Regulation No. 7/2006 for financial institutions provide a legal basis for identifying customers – the Financial System Act also provides a duty of verification of identity.

393. Section 6 of the Guidelines for Financial Institutions covers the requirements for customer identification, while section 7 provides the minimum requirements for establishing business relationships. Paragraph 7.1.2 of the Guidelines provides that financial institutions shall verify identity information against valid original documents of identity issued by governmental authority. Such documents should be those that are the most difficult to obtain illicitly. For Macao, China residents, the proper identification documents are the permanent identity card, the non-permanent resident identity card and the resident identity card issued by the Identification Bureau or equivalent identification documents. Paragraph 4.2 of the Guideline on Large Transactions refers to the name, number of identity card or travel document and place of issue as the necessary identification information to be recorded.

394. For corporate and business customers Paragraph 7.2 of the Guidelines requires incorporation or equivalent documents issued by the relevant government agencies to be obtained. For locally incorporated companies, a company search report, a tax declaration, a certificate of incorporation, a business registration certificate, a memorandum and articles of association, etc are required. For companies incorporated abroad, apart from documents equivalent to those specified for local companies, a certificate of good standing and other relevant documents should be obtained. If original documents cannot be obtained, copies of documents should be properly certified. If possible, institutions should take reasonable measures to verify whether corporate customers operate their stated business at the stated address. Institutions should obtain evidence for all the information specified in the Guideline to verify the legal status of companies. Section 5 of the Guideline on Large Cash Transactions sets up further requirements for customer identification and verification for high risk cash transactions. The Guideline expects adequate CDD measures to be applied

395. Notwithstanding the provisions of Administrative Regulation No. 7/2006 on identification and the provisions in the Guidelines on CDD measures, the overall requirement for verification as opposed to identification of customers applies only to credit institutions. Also, whilst there are provisions in guidelines there is no absolute requirement in law or regulation to use reliable, independent source documents, data or information, although there is a requirement in the Guideline for Financial Institutions for

institutions to verify identity against valid original documents of identity issued by governmental authority.

396. Articles 3 and 4 of Regulation 7/2006 provide a legal basis for identifying customers. Annex A of the Insurance Guidelines sets out the identification and know your customer standards for the insurance sector. Paragraph 2 states that insurance companies should obtain positive identification documents issued by an official or other reputable source, e.g. current valid passport or identity cards. For residents, the prime source of identification is indicated as being the identity card.

397. Notwithstanding the requirements of Annex A of the Insurance Guidelines, the Insurance Guidelines are not law or regulation and there is no requirement in law or regulation to verify identity using reliable, independent source documents, data or information.

Required CDD for legal persons/arrangements

398. Article 3.3 of the Regulation provides that whenever there is knowledge of the fact, or there are grounds for suspicion, that the customer is not acting on his own, the duty to identify customers shall entail obtaining from such customer information concerning the identity of the person for whom he or she is acting. Similar provisions are included at Paragraphs 6.1.1 and 8.1.1 of the Guideline for Financial Institutions. The provision in the Regulation will apply to persons purporting to act on behalf of another but it does not include verification of identity or a person's authorisation to so act. There is no reference to verification of identity or authorisation to act contained in law or regulation, although it is contained in guidelines.

399. Paragraph 6.4 of the Guideline for Financial Institutions requires institutions to set up account opening procedures for different types of accounts, including accounts for a commercial business, a trust, an intermediary or a personalised investment company. Under Paragraph 7.2 of the Guideline, financial institutions should obtain the information on corporate customers, which includes incorporation or equivalent documents issued by relevant government agencies. Paragraph 7.2.4 goes on to state that for other customers with appropriate legal personality similar relevant information should be obtained, recorded and verified.

400. Section 8 of the Guideline also requires enhanced verification procedures for accounts or business relationships with higher risks including, amongst others, trust, nominee and fiduciary accounts. Financial institutions should establish whether customers are acting on behalf of other persons as trustees or nominees. If they are so acting, institutions should obtain satisfactory evidence of the trustees or nominees and of the persons on whose behalf they are acting, as well as details of the nature of the trust or other arrangements in place. The authorities have advised that legal arrangements are considered to be corporate customers in Macanese banking practice and, therefore, financial institutions are required to observe Paragraphs 7.2 and 8.1 of the Guideline for Financial Institutions. However, this interpretation is not obvious to the Evaluation Team, which has concluded that there is not an enforceable requirement to verify the legal status of legal arrangements.

401. Article 3.3 of the Regulation also applies to the insurance sector. Paragraph 6 of Appendix A of the Insurance Guidelines states that where the applicant for an insurance policy is acting on behalf of another person, appropriate steps should be taken

to verify the identity of the applicant and the underlying principal. The Regulation does not cover verification of the applicant's authorisation to act.

402. According to Paragraph 30 of the Insurance Guidelines, insurance companies should make reasonable efforts to determine the true identity of all customers requesting the company's services. All insurance companies should institute effective procedures for obtaining identification from new customers. This provision covers both individuals as well as corporate customers. However, a requirement to institute effective procedures can be different to an explicit requirement to actually obtain identification from new customers. The AMCM advises that, with regard to legal persons, it is essential to obtain documents of incorporation issued by authorities, such as a company search report, business registration certificates, etc. However, there are no statements in the Guidelines about verifying the legal status of legal persons or legal arrangements.

Identification of beneficial owners

403. Paragraph 6.1 of the Guideline for Financial Institutions requires institutions to establish systematic procedures for verifying the identity of new customers and beneficial owners, and not to open an account until the identity of a new customer is satisfactorily established. As required by Paragraph 6.5, institutions should identify beneficial owners and take reasonable measures to verify the identity of those persons before or during the course of establishing business relationships or conducting transactions for occasional customers. Institutions are advised to require a declaration from customers to disclose and confirm the identity of the beneficial owners, if any. For individuals, Paragraph 7.1 of the Guideline refers to the verification of information against valid original documents of identity issued by governmental authority. For corporate and other business relationships, Paragraph 7.2 refers to a valid identification document of the principal shareholders, beneficial owners, directors and other persons authorised to operate the accounts.

404. Article 3 of Administrative Regulation No. 7/2006 stipulates that whenever there is knowledge of the fact, or there are grounds for suspicion, that the contractor, client or patron is not acting on his own, the duty to identify shall entail obtaining from such contractor, client or patron information concerning the identity of the person for whom he or she is acting. The Macanese authorities have advised that this is the explicit requirement in law or regulation to identify the beneficial owner of a business relationship. The Regulation does not extend to verification or to the use of information or data from a reliable source.

405. Paragraph 6 of Annex A of the Insurance Guidelines states that, where the applicant for an insurance policy is acting on behalf of another person, appropriate steps should be taken to verify the identity of the applicant and the underlying principal. The AMCM advises that this means, for example, that identification documents are required from both parties. The AMCM also advises that verification of the relationship between the applicant and the principal is essential prior to the inception of an insurance contract and that, with regard to beneficial owners, an insurable interest is always a pre-requisite for a life insurance policy. Under Paragraph 2 of Annex B of the Guidelines, in order to ensure a satisfactory audit trail to establish a financial profile of a suspect account, where intermediaries are involved, the identification of the owner and beneficial owner would need to be by way of a chain of verification procedures undertaken by the

intermediaries concerned. The AMCM advises that insurance agents and brokers are obliged to act on behalf of an insurance company to verify the identity of the insured.

406. There is an explicit requirement in law or regulation to identify the beneficial owner of a relationship, but article 3 of Administrative Regulation 7/2006 does not extend to verification or the use of information or data from a reliable source. In addition, there are no clear statements in the Insurance Guidelines about verifying the identity of beneficial owners using information or data from a reliable source.

Customer acting on behalf of another person

407. Article 3.3 of Administrative Regulation No. 7/2006 requires institutions having knowledge or suspicion that a customer is not acting on his own to identify the person for whom he is acting. This requirement is supported by Paragraphs 6.1.1 and 8.1.1 the Guidelines for Financial Institutions, although these Paragraphs also include a requirement to verify the identity of the person for whom the customer is acting. In addition, Paragraph 4.2 of the Guideline on Large Cash Transactions requires that institutions should understand whether the cash transactions are realised by a customer on behalf of other persons. In such cases the identification information of all of the persons involved in the transactions should be recorded.

408. Article 3.3 of the Regulation does not refer to taking reasonable steps to verify the identity of the underlying principal for whom the customer is acting even though the Guidelines for Financial Institutions do require verification.

409. Article 3.3 of the Regulation also applies to the insurance sector. This article is supported by Paragraph 6 of Appendix A of the Insurance Guidelines, which add the requirement to verify the identity of the underlying principal. For the same reasons identified above, the requirement under the FATF standard is not entirely satisfied by the Regulations.

Ownership and control

410. Under Paragraph 7.2 of the Guideline for Financial Institutions, institutions should obtain incorporation or equivalent documents issued by the relevant government agencies, including a company search report, tax declaration, certificate of incorporation, business registration certificate, memorandum and articles of association, etc. Institutions must also obtain a valid identification document for the principal shareholders, beneficial owners and other persons authorised to operate the account. Paragraph 7.2.3 states that institutions should understand the structure of companies sufficiently to determine the true identity of the ultimate owners or those beneficial owners who have control over the companies and funds. In relation to customers that are legal arrangements (express trusts or similar arrangements) Paragraph 8.2 provides that institutions should take reasonable measures to identify the settlors, trustees, beneficiaries and any other persons involved in the structuring of the arrangement. Legal arrangements are considered to be corporate customers. In the absence of an explicit statement in the Guideline, there is no requirement to understand the ownership and control structure of trusts and other legal arrangements.

411. Article 3 of Administrative Regulation 7/2006 requires financial institutions to identify the beneficial owner of a business relationship. Although the Guideline adds to the Regulation, there is no explicit requirement in law or regulation to determine the

natural persons who exercise ultimate effective control over a legal arrangement. It would also be helpful for the Regulation to not limit the requirement to identify persons for whom contractors, clients and patrons are acting whenever they have knowledge or suspicion.

412. Paragraph 6 of Annex A of the Insurance Guidelines specifies that where the applicant for an insurance policy is acting on behalf of another person, appropriate steps should be taken to verify the identity of the underlying principal. The AMCM has advised that for a corporate customer, the proper authority of the representing signatory is required and the ultimate ownership of the customer has to be ascertained.

413. The AMCM also advises that life insurance customers are mostly individuals rather than corporations. Should there be corporate customers, in order to verify the ultimate controller of the company; the AMCM has indicated that insurers will obtain incorporation documents issued by competent authorities, including a company search report and a certificate of incorporation.

414. While there is an obligation to verify the identity of a person for whom the customer is acting, there is no obligation to take reasonable measures to understand the ownership and control structure of the customer.

415. There is no requirement in law or regulation to determine who are the natural persons that ultimately own or control the customer. In addition, the Guideline for Insurers is silent on this subject.

Purpose and intended nature of business relationship

416. Under Paragraph 7.2.1 of the Guideline for Financial Institutions, institutions are required to obtain information on the purpose and nature of the account or facility when establishing a business relationship.

417. It is stated in Annex B of the Guideline for Insurers that insurance operators should ensure that they have in place comprehensive procedures to:

- (i) to provide initial proposal documentation including fact finding, analysis of needs, details of payment method, identification documents produced and illustration of benefits;
- (ii) to retain all records associated with the maintenance of the contract post sales, up to and including maturity of the contract; and
- (iii) to provide details of the maturity processing and/or claim settlement which will include completed "discharge documentation".

418. While this information may help to reveal the nature of the business relationship and purpose of the insurance policy, there is no specific requirement for insurers to obtain information on the purpose and intended nature of the business relationship.

Ongoing due diligence

419. Section 9 of the Guideline for Financial Institutions deals with the ongoing monitoring of high risk accounts. Under Paragraph 9.1, institutions should have a reasonable understanding of the normal account activity of their customers so as to identify transactions falling outside the regular pattern of an account's activity.

Paragraph 9.2 specifies that, for all accounts, financial institutions should have systems in place to detect unusual or suspicious patterns of account activity. The Paragraph goes on to say that the systems can be established by introducing certain parameters for a particular class or category of accounts to detect unusual or irregular transactions that require particular attention. Any transactions not consistent with the normal activities of customers should be recorded for review by a senior officer or the AML/CFT Compliance Officer. In addition, under Paragraph 9.3 institutions should establish control systems for monitoring high risk accounts. The Guideline would benefit from renaming the section so that it is clear that section 9 covers all accounts not just high risk accounts and also to require ongoing due diligence to take place – not only to have systems to carry out ongoing due diligence.

420. There is no explicit requirement in law or regulation for institutions to conduct ongoing due diligence on the business relationship.

421. As stated in Paragraph 32 of the Insurance Guidelines, insurance companies should have a set of procedures and policies in place so that their staff would be able to identify the existence of suspicious transactions and to report them immediately to the relevant law enforcement authorities. The AMCM considers that this provision, together with Annex C of the Guidelines, constitutes measures for ongoing due diligence on the business relationship, for example, identifying a suspicious transaction which falls outside the customer's normal business or normal insurance practice. Annex C deals with the recognition and reporting of suspicious transactions. Paragraph 1 of the Annex provides that insurance companies must base their decisions relating to occasional customers and execution only business on normal commercial criteria and internal policy. Paragraph 2 of the Annex highlights that a suspicious transaction will often be one which is inconsistent with a customer's known, legitimate business or personal activities or with the normal business for that type of policy holder. The AMCM has also advised that, as insurance is a kind of personal financial service, ongoing due diligence would also rest on insurance intermediaries who carry out periodic reviews on customers' accounts, and that abnormal transactions could be spotted during in-person visits or telephone contact. The Guidelines would benefit from having an explicit requirement for insurance entities to conduct ongoing due diligence on the business relationship.

422. There is no explicit requirement in law or regulation for institutions to conduct ongoing due diligence on the business relationship.

423. Section 9 of the Guideline for Financial Institutions requires institutions to have a reasonable understanding of the normal account activity of their customers so as to identify transactions falling outside the regular pattern of an account's activity. This approach over simplifies the requirements of the FATF standards, which specifies that ongoing due diligence should include scrutiny of transactions undertaken throughout the course of the relationship to ensure they are consistent with the institution's knowledge of the customer, their business and risk profile, and where necessary the source of funds.

424. Paragraph 32 of the Insurance Guidelines requires insurance companies to have in place procedures to recognise suspicious transactions but there is no explicit requirement for institutions to scrutinise transactions in order to have a reasonable

understanding of the normal account activity of their customers so as to identify transactions falling outside the regular pattern of an account's activity.

425. Under Paragraph 6.2 of the Guideline for Financial Institutions, institutions are required to carry out regular reviews of existing records to ensure the records remain up-to-date and relevant. Special attention should be exercised in the case of high-risk customers to safeguard the institutions from being used for ML or FT. The Guideline goes on to require a regular review where suspicion is noted (eg where there are unusual transactions or transactions not in line with the nature of the business or profession stated by customers); where there is a material change (eg a significant change in business or profession, or in other information, or in the way the account is operated); or where records are obsolete.

426. Paragraph 5 of Annex B of the Insurance Guidelines adds to Paragraph 32 and Annex C and requires insurers and insurance intermediaries to have adequate procedures to maintain up-to-date records of proposal documentation, records associated with the maintenance of the contract up to the maturity of the contract. The Insurance Guidelines do not, however, contain a requirement to regularly review transactions.

Higher risk categories of customers

Banking and Other Financial Sector

427. Under Paragraph 6.7 of the Guideline for Financial Institutions, there should be enhanced due diligence measures for establishing business relationships with high-risk customers, including senior level approval, extra documentation or information, and cautious verification. For example, institutions may verify the identity and background of high risk customers by referring to publicly available information, making additional data searches and/or seeking third party verification such as references from other bankers of such customers. Paragraph 6.2 requires special attention to be paid to high risk customers to safeguard the institution from being used for ML or FT. Section 8 of the Guideline points out examples of business relationships which require enhanced due diligence, which include non-resident customers, customers of private banking, legal persons, arrangements such as trusts that are personal asset holding vehicles, companies that have nominee shareholders or shares in bearer form and politically exposed persons.

Insurance Sector

428. Paragraphs 1 and 6 of Annex A of the Insurance Guidelines provide that insurance companies, in instituting effective procedures for obtaining identification of new customers, should pay particular attention to payments offered in cash, payments offered by way of share exchange, payments offered by way of a third party cheque without apparent connection with the prospective client, and payments by cheque where the applicant is acting on behalf of another person. Paragraphs 8 and 9 of the Annex also direct insurance companies to take particular care when dealing with non-face to face business.

429. In light of the AMCM's perception that non-resident customers are the major higher risk customers and therefore require enhanced due diligence, the AMCM issued Notice No. 9/2001 in 2001 to stipulate the requirement for non-residents to sign an insurance application personally in Macao, China. Both the insurance agent and the

customer are required to sign the photocopy of the Customs entry document to prove the presence of the applicant in Macao, China. Regarding due diligence measures, extra documentation is required such as source of income, source of wealth and source of funds.

430. While the AMCM has helpfully provided examples of higher risk means of payment and imposed additional due diligence requirements for non-face to face business and foreign customers, these provisions should be enhanced by a general requirement for institutions to perform enhanced due diligence for higher risk categories of customer, business relationship or transaction.

Reduced or simplified measures in low-risk situations

431. Article 106 of the Financial System Act requires credit institutions to verify the identity of customers. Article 3 of Administrative Regulation No. 7/2006 imposes a duty to demand an identity document when the operations exceed the amounts established by a regulatory body – the AMCM has not set any threshold under which CDD need not be undertaken. Neither the Regulations nor the Guideline for Financial Institutions provides for reduced or simplified CDD measures.

432. The requirements of the Insurance Guideline appear to make only one provision for reduced or simplified CDD procedures. With regard to postal business, a payment cheque drawn on another institution may be relied upon as the sole means of verification where it is a personal cheque drawn on a personal account. In light of the enhanced approach to CDD which the AMCM has applied to foreign customers, this postal concession is limited in practice to Macanese business. The Guideline also states that particular care should be taken by the insurance company when undertaking such business to ensure that the identity of the prospective client has been verified to the satisfaction of the company, agent or broker concerned.

433. The Guidelines to not preclude the simplified approach to postal business being undertaken when there is a suspicion of ML or FT.

Timing of verification

434. Article 5 of Administrative Regulation No. 7/2006 states that institutions must refuse to perform any operation in the absence of the elements necessary to comply with articles 3 and 4 (ie obtaining an identity document on the customer). According to Paragraph 6.2 of the Guideline for Financial Institutions, the customer identification process should be applied at the outset of the relationship. Paragraph 5.4 adds that institutions' policies should establish that, if they are unable to obtain information on a timely basis, accounts should not be opened, or business relations should not be commenced, or transactions should not be performed..

435. Article 5 of Regulation 7/2006 also applies to the insurance sector. Paragraph 30 of the Insurance Guidelines states that it should be an explicit policy that significant business transactions will not be conducted with customers who fail to provide evidence of their identity. This text implies that non-significant transactions may be undertaken when verification has not been completed. The text also refers to policies being in place rather than imposing a direct requirement on the timing of verification. Annex A of the Guidance Note requires insurance companies to institute effective procedures for

obtaining identification of new customers but not to verification – the point made earlier on procedures also applies.

436. The Regulation does not refer to verifying the identity of customers. The Insurance Guidelines allow verification of customers with non-significant business transactions after a transaction has taken place. There is also no reference to verifying the identity of beneficial owners.

437. Paragraph 6.1 of the Guideline for Financial Institutions states that systematic procedures for verifying the identity of new customers and beneficial owners, and should not open an account until the identity of a new customer is satisfactorily established. Under Paragraph 6.5 of the Guideline, institutions should identify customers and beneficial owners before or during the course of establishing business relationships or conducting transactions. For personal customers financial institutions are advised to require from customers a declaration disclosing and confirming the identity of any beneficial owners. If this approach is not practicable, institutions should complete identification and verification procedures as soon as possible after the establishment of the relationship.

438. The deferment of verification for personal customers and beneficial owners is not limited to undertaking such procedures to when it is essential not to interrupt the normal conduct of business and provided that the ML risks are effectively managed. This does not meet the requirement in respect of personal customers and beneficial owners.

439. Paragraph 30 of the Insurance Guidelines provides that insurance companies should make reasonable efforts to determine the true identity of all customers requesting the companies' services. It should be an explicit policy that significant business transactions will not be conducted with significant customers who fail to provide evidence of their identities. Paragraph 1 of Annex A specifies that all insurance companies should institute effective procedures for obtaining information of new customers. The AMCM suggests that in practice insurance contracts are usually only transacted if the identity of the insured is verified. It also suggests that on the occasions the beneficial owner's identity is not yet available, insurers will verify identity after issue of the policy and that, since it affects payout of benefits in future, the insured or the policy owner will be co-operative in providing adequate documentation.

440. There is no law, regulation or guideline which stipulates the procedure to be followed when it is not possible to complete identification and verification prior to the establishment of the relationship.

441. Although there is no requirement under the Guideline for Financial Institutions to restrict the number, type and amount of transactions that can be performed if a customer is permitted to use the relationship prior to verification or to monitor large or complex transactions, financial institutions are required to carry out enhanced monitoring for high risk customers under section 8 and section 9 of the Guideline. Any transactions not consistent with the normal activities of customers should be recorded for timely review by senior officers or the AML/CFT Compliance Officers.

442. There are no guidelines on risk management procedures where verification has not been completed prior to the establishment of the business relationship.

443. The AMCM considers that market practice and the nature of insurance policies requires appropriate verification to take place. Hence, no specific procedures have been established in the Insurance Guidelines for the insurance sector to adopt risk management procedures where the customer uses the relationship prior to verification.

444. Whilst there may be difficulties in undertaking an insurance transaction prior to proper identification, this is not the case with verification and there are no requirements to manage the risk in such situations.

Failure to satisfactorily complete CDD

445. Under Article 5 of Administrative Regulation No. 7/2006, financial institutions have an obligation to refuse transactions if an identity document cannot be obtained for CDD purposes. Paragraph 6.1 of the Guideline for Financial Institutions requires institutions not to open an account until the identity of a new customer has been satisfactorily established.

446. Although institutions are not permitted to open an account, there is no requirement for them to consider making a suspicious transaction report where they have been unable to complete CDD and the relationship has therefore not been commenced.

447. Article 5 of Regulation 7/2006 also applies to the insurance sector.

448. Paragraph 30 of the Insurance Guidelines requires insurance companies to have an explicit policy that significant business transactions will not be conducted with customers who fail to provide evidence of their identities.

449. Paragraph 1 of Annex C states that, where practicable, insurance companies are requested to seek and retain relevant identification documents for all transactions concerning occasional customers and execution only business and to report the offer of suspicious funds. Paragraph 2 deals with regular customers and indicates that a suspicious transaction will often be one which is inconsistent with a customer's known, legitimate business or personal activity or with the normal type of business for that type of policyholder. Paragraph 8 provides that all cases where an employee of an insurance company knows that a customer has engaged in drug trafficking or other indictable offences and where the customer seeks to take out a policy with the institution, a report must be made promptly to the Compliance Officer who, in turn, must immediately report the details to the GIF. Paragraph 9 adopts a similar approach to cases where an employee suspects or has reasonable grounds to believe that a customer might have carried on drug trafficking or might have been engaged in indictable offences and where the customer seeks to take out a policy. Here, the Compliance Officer must promptly evaluate whether there are reasonable grounds for such belief and must immediately report the case to the GIF unless he considers that reasonable grounds do not exist.

450. Although institutions are not permitted to open the account where an employee suspects or has reasonable grounds to believe a serious crime might have taken place, there is no requirement for them to terminate the relationship and to consider making a suspicious transaction report where they have not completed CDD.

451. Article 5 of Administrative Regulation No. 7/2006 refers to the refusal to perform any operation if an identity document on the customer and written information on the

nature, object, amount and methods of payment have been obtained. Paragraph 6.1 of the Guideline for Financial Institutions requires that, once an account has been opened, where institutions have subsequent doubts about the customer's true identity which they cannot resolve satisfactorily they should take steps to terminate the business relationship.

452. There is no requirement to consider whether a suspicion report should be made where satisfactory verification information has not been obtained once a business relationship has been commenced and the relationship has been terminated.

453. Article 5 of Regulation 7/2006 also applies to the insurance sector. Paragraph 30 of the Insurance Guidelines requires insurance companies to have an explicit policy that significant business transactions will not be conducted with customers who fail to provide evidence of their identities. However, there are no provisions for suspicious transaction reports to be made in circumstances where a relationship has been commenced and satisfactory CDD not obtained.

454. There is no requirement to consider whether a suspicion report should be made where satisfactory verification information has not been obtained once a business relationship has been commenced and the relationship has been terminated

Existing customers

455. Paragraph 14.5 of the Guideline for Financial Institutions requires institutions to implement the measures stipulated in the Guideline for all new accounts or new business relationships to existing accounts or business relationships. Financial institutions are required to take a risk based approach to identifying higher risk customers, who should be subject to review on a priority basis. Financial institutions are also required to establish criteria for triggering reviews of lower risk accounts or business relationships, eg unusual transactions, transactions in large amounts or transaction patterns not commensurate with the background of the account or relationship.

456. Article 5 of Regulation 7/2006 also applies to the insurance sector. Regarding all customers, Paragraph 3 of the Insurance Guidelines notes that a suspicious transaction will often be one which is inconsistent with a customer's known, legitimate business or personal activities or with the normal business for that type of policyholder. The AMCM considers that the first key to identifying suspicion is sufficient knowledge of a customer's business to recognise that a transaction, or series of transactions, is unusual and that CDD will be required once an insurance entity becomes aware of unusual business or a higher risk transaction. The Guideline for Insurers does not have provisions in respect of CDD requirements for existing customers.

457. Article 106 of the Financial System Act requires credit institutions to verify the identity of the customers, record the identity of all customers who make significant transactions and refuse to serve those who decline to provide evidence of their identity. The article also states that credit institutions are not prevented from offering numbered accounts to customers whose identity is known only to a restricted number of employees. Articles 3 and 4 of Administrative Regulation No. 7/2006 and Paragraph 14.5 of the Guideline for Financial Institutions are also applicable.

458. It is possible for financial institutions to consider that the provisions of the Guideline for financial institutions on existing customers do not apply to historic

anonymous accounts, accounts in fictitious names and numbered accounts established with non-credit institutions prior to the coming into force of the existing legislation and the Guideline.

459. Paragraph 7 of Annex A of the Insurance Guidance Note states that insurance companies should not keep anonymous accounts or accounts in obviously fictitious names. Numbered accounts are not used in the insurance sector. There is no requirement in the Insurance Guidelines to perform CDD requirements on existing customers.

Implementation

460. Whilst the AMCM has not yet conducted AML/CFT on-site inspections in respect of the insurance sector it plans to conduct such inspections in 2007. For some years the AMCM has carried out on-site inspections to banks and the other financial institutions. The checklist used prior to November 2006, reviewed customer acceptance and customer identification policies in detail. The checklist has been updated following the issue of the new Guidelines. The Evaluation Team met with ten institutions covered by the FATF's definition of financial institutions. There was a good grasp by the institutions of the importance of CDD. In one case an institution had delegated CDD to its parent and it knew only the names of its customers.

Recommendation 6 – Politically Exposed Persons (PEPs)

461. Paragraph 8.3 of the Guideline for Financial Institutions establishes requirements for financial institutions to exercise enhanced due diligence in connection with PEPs. The Guideline requires financial institutions to set up an enhanced monitoring system for PEPs in jurisdictions outside Macao, China including heads of state or of government, senior politicians, senior government, judicial or military officials, senior executives of state-owned corporations, important political party officials, their family members and close associates. Institutions are also required to gather sufficient information to determine whether or not a customer is a PEP; to obtain senior level approval for establishing such relationships and for continuing a relationship where the customer or beneficial owner is subsequently found to be or become a PEP; to take reasonable measures to establish source of wealth and source of funds of customers and beneficial owners identified as PEPs; and to conduct enhanced ongoing monitoring on relationships with PEPs. It was clear from the Evaluation Team's meetings with financial institutions that there was an awareness of the risks posed by PEPs and it appeared that an enhanced approach to PEPs was in place.

462. Paragraph 30 of the Insurance Guidelines covers PEPs. In respect of PEPs, the Guidelines state that insurers are required to:

- a. Have an appropriate risk management system to determine whether a customer is PEP. The senior management of the insurer shall establish the acceptance policy for PEPs, bearing in mind the inherent reputation and other risks;
- b. Obtain senior management approval for establishing business relationships with such type of customers;
- c. Take reasonable measures to establish the source of wealth and source of funds; and

- d. Conduct enhanced ongoing monitoring of the business relationship.

463. The issuance of the Guidelines shortly before the Mutual Evaluation means that insufficient time had elapsed for implementation to be demonstrated at the time of the onsite visit. However, it was made clear to the Evaluation team at the time of the assessment that the AMCM intended to introduce an on-site inspection program in 2007 and that this program would consider compliance by the insurance sector with the guidance on PEPs. This program was commenced within two months of the assessment.

Recommendation 7 – correspondent banking

464. Section 8.5 of the Guideline for Financial Institutions covers correspondent banking. It provides for institutions to consider the following factors when establishing respondent relationships: the respondent institution's management; their major business activities; where the institution locates (institutions should avoid establishing relationships with respondent institutions that locate in jurisdictions with poor CDD standards or jurisdictions that are included in the FATF's NCCT list); the purpose or nature of the account or facilities; and the identity of any third parties that may have access to the correspondent services. Institutions should also gather sufficient information on their respondent institutions to understand their business nature, reputation and supervision, and to see whether there are any ML or FT investigations or regulatory actions against the respondent institutions. They should avoid establishing business relationships with any shell institutions, including shell banks.

465. Paragraph 8.5.3 of the Guideline requires financial institutions to assess and ascertain if the respondent institutions' AML/CFT controls are adequate and effective. The Paragraph also requires top management approval before establishing any new correspondent relationships and the respective responsibilities of each institution regarding AML/CFT to be documented.

466. Paragraph 8.5.4 of the Guideline requires that where a correspondent relationship involves the maintenance of "payable-through accounts", institutions must be satisfied that the respondent institutions have performed all normal CDD obligations on those customers that have direct access to the accounts of the correspondent institutions and the respondent institutions are able to provide relevant customer identification data upon request to the correspondent institutions.

467. The AMCM reviews correspondent banking during its on-site inspections. There are very few correspondent banking relationships in Macao, China. This was verified during the Evaluation Team's meeting with banks.

Recommendation 8 – new technologies, non-face to face business

Misuse of technological developments

468. The AMCM has required the financial sector to enhance risk management to prevent misuse of technological developments in ML and TF and to encourage the financial sector to develop and use modern and secure techniques for conducting financial transactions. Under the Financial System Act financial institutions must seek

permission from the AMCM before introducing new products and services. The AMCM advises that, in exercising its powers of review, it is mindful of the need to consider financial institutions' AML/CFT measures and the prevention of the misuse of technological developments. The AMCM considers that the practical effect of the use of its powers in this way meets the intended objective of FATF standard in this area. However, from the perspective of the expectations of the FATF Methodology for law, regulation or guidelines, the Evaluation Team notes there is no requirement in Administrative Regulation No. 7/2006 or the Guideline for Financial Institutions for institutions to have in place policies, procedures or controls in place in order to prevent the misuse of technological developments in ML or FT schemes. The obligation to ensure financial institutions have policies and measures to prevent misuse of technological developments in ML/FT is therefore not met, notwithstanding the AMCM's policies in exercising its powers under the Financial System Act.

469. There is no requirement in Administrative Regulation No. 7/2006 or the Insurance Guidelines for policies, procedures or controls to be in place in order to prevent the misuse of technological developments in ML or FT schemes for the insurance sector. The experience of the AMCM is that the ML risk relating to technological developments is low for the insurance sector as no insurers in Macao, China offer insurance products via the Internet. The AMCM also considers that the provisions in the Insurance Guidelines on non-face to face transactions (see below) mitigate the risks of not referring to technological developments in the Guidelines. The Insurance Guidelines are silent on the misuse of technological developments.

Risks from non-face to face business

Banking and Other Financial Sector

470. The requirements in respect of non-face to face customers are laid down in Paragraph 8.2 of the Guideline for Financial Institutions. For local customers, accounts should not be opened without the customer being interviewed in person. Account opening procedures should be exercised to ensure the verification of customers. For non-resident customers, institutions should apply equally effective customer identification procedures as for those available for interview. There should also be specific and adequate measures to mitigate the higher risk including:

- certification of documents presented;
- requisition of additional documents to complement those required for face-to-face customers, such as information provided by another institution subject to similar CDD standards;
- referral by an introducer who is subject to identification procedures; and
- requiring the first payment to be carried out through an account in the customer's name with another institution subject to similar CDD standards.

471. The AMCM advises that non-face-to-face transactions are only carried out after establishment of the business relationship. Under Article 17 of the Financial System Act, credit institutions are required to give prior notice to the AMCM about the launch of new products or services – including services to non-face to face customers. Upon receipt of such notice, the AMCM will assess the adequacy of the institution's internal control and risk management systems including AML/CFT systems before allowing the launch of new products and services to non-face to face customers.

472. Paragraph 8.2 of the Guideline identifies the need for specific and adequate CDD measures to mitigate the higher risk associated with non-face-to-face business. Paragraph 9.3 of the Guideline states that for high risk customers such as those covered in section 8 of the Guideline, which includes non-face to face business, institutions should establish control systems to monitor such accounts. Whilst the AMCM advises that currently no banks in Macao, China are allowed to open accounts for non-face to face customers and that an institution would need to obtain approval from the AMCM should it wish to undertake such business, the Guideline does not cater for permission being granted to undertake non-face to face business.

Insurance Sector

473. Paragraph 1 of Annex A of the Insurance Guidelines requires all insurance companies to institute effective procedures for obtaining identification of new customers. The Annex goes on to state that any mechanism which avoids face-to-face contact between a company, agent or broker and its client, or where mass selling techniques or coupon applications are involved, inevitably poses difficulties for client identification and produces a useful loophole that money launderers or terrorists may exploit. Particular care should be undertaken when undertaking such business to ensure that the identity of the prospective client has been verified to the satisfaction of the company, agent or broker concerned

474. The Insurance Guidelines do not cover ongoing monitoring in relation to non-face to face business. The Insurance Guidelines do not include specific measures for application to non-face to face customers.

3.2.2 RECOMMENDATIONS AND COMMENTS

475. With the coming into force of Administrative Regulation No. 7/2006 and the introduction of revised Guidelines in November 2006, the AMCM has clearly sought to comply with the FATF standards. The Regulation and the Guideline provide solid foundations on which institutions can build AML/CFT policies, procedures and controls. These are, for example, comprehensive provisions on PEPs. The Evaluation Team noted that the bringing into force of the Regulation and the Guidelines shortly before the assessment meant that more time will need to elapse for implementation to be demonstrated. The Evaluation Team also noted that the Banking Department of the AMCM intended to continue its AML/CFT on-site inspection program, taking full account of the new Guideline for Financial Institutions, and that the Insurance department intended to introduce such a program (this program was started by the Insurance Department shortly after the assessment. The main technical issues, reflected in the recommendations below, are that additional CDD elements should be incorporated in law or regulation and that, in an attempt to provide practical guidance, the contents of the Guidelines are to some extent minimalist. In addition, elements of what the AMCM sees as market practice in the insurance sector could usefully be added to the Insurance Guidelines.

476. The Evaluation Team makes the following recommendations:

- remove from the Insurance Guidelines the concept of “obviously” fictitious names, the concept of “reasonable” efforts to determine the true identity of customers and the concept of only “significant” business transactions not being conducted if evidence of identity is not provided;

- place in law or regulation the need to undertake CDD when there is a suspicion of ML or FT and when the institution has doubts about the veracity or adequacy of previously obtained customer identification data;
- place in law or regulation the requirement to verify identity and that reliable, independent source documents, data or information should be used;
- place in law or regulation the requirement to verify a person's authorisation to act on behalf of a customer;
- place in the Insurance Guidelines a requirement to verify the legal status of legal persons and legal arrangements and in the Guideline for Financial Institutions a requirement to verify the legal status of legal arrangements;
- consider how best to reword the Insurance Guidelines so that there is a requirement to verify the identity of new customers in addition to the existing requirement to have in place effective procedures;
- place in law or regulation the requirement to take reasonable measures to verify the identity of beneficial owners and include explicit guidance in the Insurance Guidelines;
- place in law or regulation the requirement to verify the identity of persons on whose behalf the customer is acting;
- add to the Insurance Guidelines a requirement to understand the ownership and control structure of legal arrangements;
- place in law or regulation the requirement to determine the natural person exercising ultimate effective control over a legal arrangement and add guidance to the Insurance Guidelines;
- add a requirement in the Insurance Guidelines to understand the purpose and nature of the business relationship;
- place in law or regulation the requirement to conduct ongoing due diligence, enhance the reference to the establishment of systems in the Guideline for Financial Institutions and include guidance on ongoing due diligence in the Insurance Guidelines;
- enhance the Insurance Guidelines by adding a requirement to scrutinise transactions in order to have a reasonable understanding of account activity so as to identify transactions falling outside the regular pattern of the account's activity;
- include in the Insurance Guidelines requirements to undertake review of existing records to ensure that documents, data or information collected under the due diligence process is kept up to date and relevant; to undertake enhanced due diligence for higher risk categories of customers, business relationship or transaction; to specify that the simplified approach to postal business cannot be undertaken whenever there is suspicion of ML or FT; and to verify the identity of beneficial owners and of non-significant customers before a transaction takes place.
- amend the Insurance Guidelines to require identification of the customer and beneficial owner prior to the establishment of the relationship and completion of verification (i) provided that this occurs as soon as possible, (ii) provided this is

essential and (iii) provided that the ML risks are effectively managed and include elements (ii) and (iii) in the Guidelines for Financial Institutions;

- revise the Guidelines to include a requirement for risk management procedures where a personal customer may use the business relationship prior to verification;
- amend the Guidelines to state that institutions should consider making a suspicious transaction report where they have been unable to complete CDD, whether or not the relationship has commenced;
- add CDD requirements for existing customers to the Insurance Guidelines and, in respect of the Guidelines for Financial Institutions, to review any historic anonymous accounts, accounts in fictitious names and numbered accounts;
- amend the Guidelines to require institutions to put in place measures to prevent the misuse of technological developments;
- enhance the Insurance Guidelines to require institutions to put in place specific and effective CDD measures to address the specific risks of non-face to face business and the ongoing monitoring of such business.

3.2.3 COMPLIANCE WITH RECOMMENDATIONS 5 TO 8

	Rating	Summary of factors underlying rating
R.5	PC	<ul style="list-style-type: none"> • While Guidelines on CDD have been issued to financial institutions and the insurance sector, time will be needed for implementation to be demonstrated. • The majority of key CDD obligations are not included in law or regulation; • The Insurance Guidelines do not cover verification of the legal status of legal persons and legal arrangements; the requirement to understand the ownership and control of legal arrangements; the scrutiny of transactions in order to have a reasonable understanding of account activity; enhanced due diligence for higher risk transactions/relationships; and are incomplete regarding delayed verification.
R.6	LC	<ul style="list-style-type: none"> • The Guidelines cover PEPs, however, there was insufficient time between the issue of the Insurance Guidelines and the assessment for full implementation to be demonstrated.
R.7	C	<ul style="list-style-type: none"> • This recommendation is fully observed
R.8	PC	<ul style="list-style-type: none"> • None of the Guidelines contains requirements to address the specific risks associated with the misuse of technological developments; • The Insurance Guidelines refer to non-face to face business, but do not completely cover the requirements for ongoing monitoring of such business and the need to have specific and effective procedures.

3.3 THIRD PARTIES AND INTRODUCED BUSINESS (R.9)

3.3.1 DESCRIPTION AND ANALYSIS

Reliance on third parties

477. Paragraph 7.3 of the Guideline for Financial Institutions stipulates the requirements for introduced business. Under Paragraph 7.3.1 c), all relevant identification data and other documentation pertaining to the customer's identity should be immediately available to the institution, who should carefully review the information provided. The AMCM has confirmed that "relevant" documentation means all of the CDD information referred to in the Guideline pertaining to the type of customer in question. However, the absence of an explanation as to what is meant by "relevant" documentation throws into doubt whether institutions would always obtain the necessary information.

478. In accordance with Paragraph 9 of Annex A of the Insurance Guidelines, extra care should be taken when undertaking postal business to ensure that the identity of the prospective client has been verified to the satisfaction of the company, agent or broker concerned

479. The AMCM also advises that under article 9 of the Insurance Agents and Brokers Ordinance, insurance intermediaries have to inform the insurer of the exact nature of risks to be covered, and to comply with all the current legal and regulatory provisions applicable to the insurance sector, i.e. the requirements of Law 2/2006, Law 3/2006, Regulation 7/2006 and the Insurance Guidelines, when they are acting on behalf of insurance companies.

480. The Insurance Guidelines apply to insurance intermediaries and to insurance companies. The AMCM has confirmed that it would expect intermediaries to pass the CDD information it possesses to the insurer (albeit that some CDD elements are not included in the Insurance Guidelines) as the insurer must still meet the obligations of the Guidelines even where business is being introduced. Hence, entities subject to the Insurance Guidelines are not relying on third parties in the manner envisaged by Recommendation 9.

Availability of identification data

481. Under Article 106 of the Financial System Act, credit institutions have to keep records of customer identification. In addition, under section 12 of the Guideline for Financial Institutions, all records of customer information, including entries of the accounts, details of transactions and business correspondence should be retained. Paragraph 7.3.1 of the Guideline also states that, in respect of introduced business, all relevant information pertaining to the customer's identity should be immediately available to institutions. The AMCM has confirmed that "relevant" documentation would be all of the CDD information of the customer in question. "Relevant information" is not defined.

482. Pursuant to Paragraph 5 of Annex B of the Guidelines for Insurers, insurance companies should have in place procedures to provide proposal documentation, to retain all records associated with the maintenance of the contract post sale, and be able to provide details of maturity processing or claim settlement. Agents and brokers are

generally subject to the same provisions. The Insurance Guidelines apply equally to insurers and insurance intermediaries. The Guidelines do not establish introducer relationships in the manner foreseen by Recommendation 9 as, irrespective of the existence of an intermediary, the insurer must meet all the requirements of the Guidelines.

Regulation of third parties

483. Paragraph 7.3.1 of the Guideline for Financial Institutions states that institutions should only rely on the introducers that are properly regulated and supervised for referring customers or businesses.

484. The AMCM regulates insurance intermediaries under the Insurance Agents and Brokers Ordinance and failure to comply with the Ordinance is subject to sanctions such as fines, or the suspension or revocation of a licence. As discussed above, the Insurance Guidelines do not establish the kind of introducer relationships envisaged by Recommendation 9.

485. As stipulated in Paragraph 7.3.1 of the Guideline for Financial Institutions, the introducers referring customers and businesses should follow the same CDD practices identified in the Guidelines. The Guidelines do not appear to provide for the AMCM to have provided information on jurisdictions which are assessed to adequately apply the FATF Recommendations.

486. The AMCM advises that it is rare for insurance companies to rely on third parties overseas for transacting new business. Such third parties are likely to be part of the same group as the insurance company (eg the company's head office). The AMCM also advises that overseas primary insurers of insurance companies in Macao, China are all located in jurisdictions where FATF Recommendations apply. The Evaluation Team notes that reliance on third parties as envisaged by Recommendation 9 is not catered for by the Insurance Guidelines and it is important that this is monitored during on-site inspections by the AMCM.

Ultimate responsibility for customer identification and verification

487. According to Paragraph 7.3.2 of the Guideline for Financial Institutions, the institutions relying on CDD performed by other institutions or introducers are still responsible for verification of the identity of the customers so referred.

488. The Insurance Guidelines do not provide for reliance on third parties as envisaged by Recommendation 9. There is no specific statement in the Insurance Guidelines that the ultimate responsibility for customer identification and verification should remain with the insurance entity relying on a third party but reliance is not catered for in the Guidelines – the insurer must comply with the Guidelines in full even when an intermediary is involved.

Implementation

489. The new on-site inspection checklist used by the AMCM for inspection after the issue of the Guideline for Financial Institutions cover intermediary business – this area of business is not explicitly mentioned in the previous version of the checklist, although it could be covered in the review of customer take-on procedures. Intermediary business

is not common in the banking sector but it is prevalent in the insurance sector. The insurance sector firms which met the Evaluation Team took the issue seriously and were aware of the risks of AML/CFT of using intermediaries.

3.3.2 RECOMMENDATIONS AND COMMENTS

490. Macao, China has made a good effort to comply with the FATF's standards for introduced business. The framework is new and implementation of both the Guideline for Financial Institutions and the Insurance Guidelines will need to be monitored. The framework for introduced business in Macao, China would be enhanced by making the following changes:

- during on-site inspections to the insurance sector ensure that reliance is not being placed on third parties in the manner envisaged by Recommendation 9. If the Guidelines were to allow reliance, substantial amendments will be necessary to comply with Recommendation 9;
- clarify the reference in the Guideline for Financial Institutions as to the relevant information provided by introducers; and
- in respect of the Guideline for Financial Institutions add reference to which jurisdictions the AMCM consider adequately applies the FATF Recommendation.

3.3.3 COMPLIANCE WITH RECOMMENDATION 9

	Rating	Summary of factors underlying rating
R.9	LC	<ul style="list-style-type: none"> • In light of the introduction of new Guidelines shortly before the assessment, time will be needed to judge implementation. • The insurance sector should be monitored to verify reliance is not being placed on third parties. • The Guideline for Financial Institutions does not clarify the reference to relevant documentation and the jurisdictions which adequately apply the FATF Recommendations.

3.4 FINANCIAL INSTITUTION SECRECY OR CONFIDENTIALITY (R.4)

3.4.1 DESCRIPTION AND ANALYSIS

491. The members of credit institutions and other financial institutions and professions like lawyers and doctors, who are allowed or imposed to observe the duty of secrecy, regarding the knowledge of information obtained during the performance of their duty, may refuse to testify (Article 122 of Criminal Code). However, the same provision states that this duty ceases, if the court concludes that the refusal is illegitimate or if the lift of secrecy is justified taking in account the principles of criminal law applicable in a case-by-case decision. The Financial System Act (Decree-Law 32/93/M) imposes the duty of secrecy to credit institutions and other financial institutions' personal.

492. AML and CFT legislation, under the provisional measures, demand from financial and non-financial institutions, public and private, to perform several duties, such as the duty of collecting, retaining and reporting information which may indicate crimes relating to ML and FT, as well as the duty of collaborating with competent authorities in the prevention and repression of ML (Article 7 of Law 2/2006 and Article 11 of Law 3/2006). Supervising authorities issued Guidelines, which ruled the content of each duty, defined the supervision system and its compliance and also stipulated the administrative sanctions applicable to non-compliance with those duties.

493. Concerning the cooperation between financial entities and the entity in charged of suspicious transactions reporting, and under Article 8 of Law 2/2006, Article 11 of Law 3/2006 and Executive Ruling No. 227/2006, the Office of Financial Intelligence (GIF) was already set up with the competence to centralize, analyse and disclose information resulting from the reporting of suspicious transactions both on ML and FT. The Office was settled and begun operating in 12 November 2006 in line with the Administrative Regulation No. 7/2006. The entity is empowered to request information from any public or private entities and provide information to entities outside Macao, China, in accordance with regional agreements or any other international conventions.

494. Under Paragraph 3 of Article 7 of Law 2/2006, also applicable to Law 3/2006, the disclosure of information, in good faith, in compliance with the requirement duties, shall not constitute breach of any secrecy, nor shall no one be held liable for making such disclosure.

495. Concerning the cooperation between financial entities and judicial authorities and law enforcement agencies, under Paragraph 1 (6) of the above mentioned article, all the financial and non-financial entities have also the duty to cooperate with judicial authorities and law enforcement agencies empowered to investigate, prosecute and judge ML and FT crimes. Paragraph 5 of the same Article determines, that the information disclosed, can only be use for the purpose of criminal proceedings or for the prevention and suppression of ML and FT crimes.

496. Concerning the cooperation between financial entities and the supervising authorities, and under Article 79 of the Financial System Act, there are also some exceptions to the secrecy rules for credit institutions and other financial entities, once they are obliged to provide AMCM all information, documents and books asked, when performing its supervising activity, which includes the supervision of compliance with the duties imposed by ML and FT laws.

497. Also the supervising authorities have to report to the Public Prosecutions Office any facts, if a suspicion of ML and FT arises, when performing supervisory activity (Paragraph 3, Article 2 of Administrative Regulation No. 7/2006).

3.4.2 RECOMMENDATIONS AND COMMENT

498. Macao, China has in place legal provisions and regulations that ensure that financial institution secrecy laws do not inhibit implementation of FATF Recommendations. The financial industry and supervising authorities as well as all other preventive and repressive ML and FT authorities showed to be aware of their respective duties or abilities, concerning cooperation and sharing of information.

3.4.3 COMPLIANCE WITH RECOMMENDATION 4

	Rating	Summary of factors underlying rating
R.4	C	This recommendation is fully observed

3.5 RECORD KEEPING AND WIRE TRANSFER RULES (R.10 & SR.VII)

3.5.1 DESCRIPTION AND ANALYSIS

Recommendation 10

Transaction records

499. Article 106 of the Financial System Act requires credit institutions to record the identity of customers. Article 6 of Administrative Regulation No. 7/2006 requires financial institutions to keep the identity documents for customers and written information concerning the operation of customers concerning, inter alia, their nature, object, amount and the methods of payment employed for five years. Paragraph 12 of the Guideline for Financial Institutions provides that institutions should keep all records of customer information, including entries involving the transfer of funds, for at least five years from the date of completion of the transactions, notwithstanding that the customers may have terminated the account relationship with the institutions subsequent to the transactions. Institutions should also keep records of the identification data obtained through the CDD process, account files and business correspondence for at least five years after termination of the business relationship. Records should be available to the competent authorities for investigation when necessary – this provision is limited to the time frame specified in Administrative Regulation No. 7/2006. Another piece of legislation is relevant, namely the Commercial Code. Article 49 of the Code, which covers the record keeping requirements of commercial businesses (including the businesses subject to the AML/CFT framework), requires books, correspondence, documentation and other items recording business activity to be maintained for at least 10 years after the closure of the business. The termination of the business does not terminate the responsibility to maintain records. The duty devolves to the heirs or liquidator as necessary. The authorities confirmed that the reference to “items” in Article 49 of the Code covers all necessary records on transactions, both domestic and international. The requirement to keep transaction records is not included in Administrative Regulation No. 7/2006 (the Regulations referring to identity documents, not transaction records), the requirement is contained in law or regulation, namely the Commercial Code.

500. However, there is no requirement in law or regulation to maintain records for longer than five years at the request of a competent authority on appropriate authority. The Evaluation Team notes that in practical terms the Commercial Code will probably cover most periods requested by the competent authorities. The existence of a separate, relevant record keeping requirement in the Commercial Code, outside the main AML/CFT framework, is not ideal for financial institutions in trying to meet AML/CFT obligations.

501. Article 6 of Regulation 7/2006 and Article 49 of the Commercial Code also apply to the insurance sector. Annex B of the Insurance Guidelines deals with record keeping. According to Paragraph 4 of Annex B, in the case of long term insurance, full documentary evidence is usually retained based on material completed at the initiation of the proposal of the contract, together with evidence of processing of the contract until the contract matures. Companies, agents and brokers should follow the usual procedures and retain the records of those contracts until they have been settled by maturity, claim or cancellation, for a period of at least five years after settlement, ie to comply with the statutory limitation. The reference to “usually” may mean that the Guidelines are open to interpretation by the insurance sector.

502. The Commercial Code is interpreted to provide the basic requirement to maintain transaction records for at least five years, although there is no provision in law or regulation for transaction records to be kept for longer if requested by a competent authority on appropriate authority. As above, the Evaluation Team notes that in practical terms the Commercial Code will probably cover most periods requested by the competent authorities.

Reconstruction of transactions

503. The requirements of article 6 of Administrative Regulation No. 7/2006 and Section 12 of the Guideline for Financial Institutions are broad. All records of customer information, including entries of the accounts and details of transactions involving fund transfers should be kept for at least 5 years from the date of completion of the transactions.

504. According to Paragraph 2 of Annex B of the Insurance Guidelines, in order to ensure a satisfactory audit trail, by way of example the following information may be sought on transactions relating to single premium business: the origin of funds, the form in which the funds were offered, the identity of the person undertaking the transaction, the destination of the funds, and the form of instruction and authority. The effect of this paragraph is that specific information on transaction records is not required even though the aim is to retain information sufficient to provide an audit trail for suspected drug related or other laundered money or FT and to be able to establish a financial profile of the suspect account. Paragraph 7 states that in situations where the records are being used in ongoing investigations, or where the transactions are the subject of a disclosure, records should be retained until it is confirmed that the case has been closed. The Insurance Guidelines would benefit from a less permissive approach to the examples of transaction records detailed.

Identification data, account files and business correspondence

505. Article 6 of Administrative Regulation No. 7/2006 requires financial institutions to maintain customer identification records and records on the operations of customers for

a period of five years. Section 12 of the Guideline for Financial Institutions provides further information on record keeping. The records of identification data obtained through the CDD process, account files and business correspondence should be kept for at least 5 years after termination of the business relationships. The authorities advise that identification data, account files and business correspondence are covered by the language of Article 49 of the Commercial Code. The period of five years after the end of a business relationship may be longer than the period of ten years after the expiry of a financial institution and there is not a reference in law or regulation for records to be kept longer if requested by a competent authority. The requirements of the Guideline on retaining records until at least five years after termination of the business relationship could helpfully be specified in the Regulation.

506. Article 6 of Regulation 7/2006 also applies to the insurance sector. Paragraph 2 of Annex B of the Insurance Guidelines states that to provide an audit trail an example of the kind of information that may be sought is information on the owners and beneficial owners of policies. Paragraph 5 states that insurance companies should have adequate procedures in place to provide initial proposal documentation, to retain all records associated with the maintenance of the contract post sale, and to provide details of maturity processing and/or claim settlement. Under Paragraph 4, full documentary evidence is usually retained based on material completed at the initiation of the proposal of the contract, together with evidence of processing of the contract up to the point of maturity. In addition, insurance companies, agents and brokers should follow the usual procedure and retain the records of those contracts which have been settled by maturity, claim or cancellation, for a period of at least five years after that settlement. Article 49 of the Commercial Code is also relevant as specified above. Whilst there is a requirement to keep identity documents for five years in Administrative Regulation 7/2006, together with requirements in the Commercial Code, the requirements of the Code may not extend to five years after the end of the termination of an account or business relationship. There is also no specific reference in law or regulation to keeping documents for longer if requested by an appropriate authority.

Access to records by competent authorities

507. Section 12 of the Guidelines for Financial Institutions specifies that records of the identification data obtained through the CDD process, account files and business correspondence should be available to the competent authorities in Macao, China for investigation when necessary. Paragraph 4.5 of the Guideline on Large Cash Transactions specifies that records of transactions, business correspondence and the required customer information should always be available for investigation by the AMCM and/or other law enforcement agencies. The necessary obligations are not laid down in law or regulation. A law or regulation should specify that all customer and transaction records should be available on a timely basis to domestic competent authorities.

508. Paragraph 3 of Annex B of the Insurance Guidelines states that an important objective of record keeping is to ensure that insurance companies can, at all stages in a transaction, retrieve relevant information to the extent that it is available without undue delay. There is no requirement in law or regulation for all customer and transaction records to be retained in a format which ensures they are available on a timely basis for competent authorities.

Implementation

509. The AMCM's on-site inspections cover the retention of records by banks and other financial institutions. It appeared to the Evaluation Team that institutions were aware of, and complied with, the Regulation and Guidelines.

Special Recommendation VII

Originator Information

510. Paragraph 4.1 of the Guideline on Large Cash Transactions stipulates the minimum information for outward and inward cross border wire transfers that should be obtained and kept by financial institutions: transaction date and reference number; transaction type, currency, amount and value date; instruction details (including name, address or account number of beneficiary, name and address of the beneficiary institution, and the remitter's message to the beneficiary, if any); name and valid identification document (issued by a governmental authority) of the remitter or his representative, which should be verified if appearing in person, and the telephone number and address of the remitter. Paragraph 4.2 stipulates the verification of identity requirements. In addition, Paragraph 8.4 of the Guideline for Financial Institutions requires that, for all fund transfers, ordering institutions should obtain and maintain the information of customers and other relevant information in accordance with the Guideline on Large Cash Transactions. While the international standards require the name of the originator, the originator's account number (or a unique reference number if no account number exists) and the originator's address (or national identity number, customer identification number, or date and place of birth) to be obtained and maintained by the ordering financial institution), the word "or" in Paragraph 4.1 of the Guideline on Large Cash Transactions means that not all of these elements are compulsory. The AMCM confirmed that in its experience all of the details required by the FATF standards are maintained by payment service providers but the optional approach in the Guideline means that the requirement is not wholly satisfied.

Batch transfers

511. Paragraph 4 of the Guideline on Large Cash Transactions requires all necessary originator information to accompany all fund transfers which are contained within a batch transfer.

Domestic wire transfers

512. Paragraph 8.4.1 of the Guideline for Financial Institutions requires ordering institutions to meet the requirements of Paragraph 4.1.1 of the Guideline on Large Cash Transactions in respect of all funds transfers whether they are domestic or cross-border. The Guideline on Large Cash Transactions would benefit from clearly including all measures on wire transfers.

Intermediary institutions

513. Neither the Guideline on Large Cash Transactions nor the Guideline for Financial Institutions makes any reference to the requirements in respect of wire transfers handled by intermediary institutions. The AMCM has confirmed that in practice there are no intermediary financial institutions in Macao, China and that all originator information that accompanies a transfer is transmitted with the transfer.

Technical limitations

514. Neither the Guideline on Large Cash Transactions nor the Guideline for Financial Institutions makes any reference to the requirements in respect of wire transfers when technical limitations prevent the full originator information accompanying the transfer. The AMCM has confirmed that records are maintained in practice, although the absence of language in the Guidelines is not clear.

Missing or incomplete information

515. Paragraph 4.4 of the Guideline on Large Cash Transactions requires institutions to try to obtain and record the required information if it is not available. However, there is no requirement for institutions to have procedures in place for identifying and handling wire transfers that are not accompanied by the required information or for considering whether the lack of information is a factor in assessing whether a wire transfer of a related transaction is suspicious. The AMCM has confirmed that in practice payment service providers meet the obligations, although there is an absence of language in the Guideline.

Monitoring of compliance

516. Article 8 of the Financial System Act provides the AMCM with the power to carry out periodic onsite inspections to each of the financial institutions to ensure that the operations of the institutions comply with the requirements of AMCM, including AML/CFT aspects.

517. The AMCM's Guidelines for on-site examination procedures for the banking sector and other financial institutions includes a section on wire transfers and scrutiny as to whether institutions comply with the Guideline on Large Cash Transactions.

Sanctions

518. Articles 126 to 130 of the Financial Systems Act provide for the following penalties: fines; suspension of the voting rights of any shareholder for a period of one to five years; prohibition from holding any board position or carrying out management or directorship duties in any institution under the AMCM's supervision for a period of six months to five years; loss of capital invested in the operations carried out and publication of the sanctions; or a simple warning to the offender instructing him to rectify the offence within a period fixed by AMCM. Article 35 provides for the revocation of an authorisation.

519. Article 131 of the Financial System Act provides AMCM with the responsibility for preparing and initiating proceedings arising from any of the offences provided for in the Act.

520. Article 124 of the Financial System Act provides that the liability of the entity shall not preclude the individual liability of the board members, shareholders, directors, managers or those acting legally or voluntarily on their behalf.

521. The majority of the criteria of SRVII do not have any specific application in respect of the insurance industry in Macao, China as the transfers would be made using a bank or other financial institution regulated by the AMCM. Paragraph 6 of Annex B of the Insurance Guidelines, requires that when an insurer or an insurance broker sends to or receives from its customer outside Macao, China a sum of money of MOP20,000 or

above or an equivalent amount in any other currency, it should record the transaction serial number; the currency and amount involved; the date and time of receiving instructions from customers/instructor, if any; instruction details, if any; the name, identity card/passport number, telephone number and address of the customers/instructors; bank accounts involved, if any; and the date and time of delivery and receipt, if any. As a result the information required to accompany wire transfers is required to be obtained by the insurance institution and the elements of SRVII which apply to the insurance sector are satisfied.

3.5.2 RECOMMENDATIONS AND COMMENTS

522. Administrative Regulation No. 7/2006 and the Guidelines provide a sound basis for institutions' record keeping requirements and procedures for wire transfers. Notwithstanding the absence of the language of some of the FATF requirements for wire transfers, the AMCM considers that, from its experience, payment service providers meet the expectations of the Special Recommendation in practice. Administrative Regulation No. 7/2006 requires identity documents to be kept for five years. The shortfall regarding Recommendation 10 is that the asterisked requirements are not quite met by law or regulation. The need for institutions to interpret commercial legislation to meet AML/CFT requirements is not ideal and it would be helpful for those requirements to be more obvious.

523. It is recommended that Macao, China amend:

- Administrative Regulation No. 7/2006 to refer to the maintenance of all necessary records on transactions, which should be kept for longer than five years at the request of a competent authority;
- the Insurance Guidelines so that language such as when documentary evidence is "usually" retained is made more explicit. Also, amend the Insurance Guidelines to maintain all records on transactions rather than providing examples;
- Administrative Regulation No. 7/2006 so that records on identification data, account files and business correspondence are kept for at least five years after the end of the business relationship; and
- the Guideline on Large Cash Transaction to include requirements for transfers handled by intermediary institutions; for procedures where technical limitations prevent full originator information from accompanying a transfer; and for procedures for identifying and handling wire transfers that are not accompanied by the required information or for considering whether the lack of information is a factor in assessing whether a transfer is suspicious.

3.5.3 COMPLIANCE WITH RECOMMENDATION 10 AND SPECIAL RECOMMENDATION VII

	Rating	Summary of factors underlying rating
R.10	LC	<ul style="list-style-type: none"> • Time will be needed to demonstrate implementation of record keeping requirements

SR.VII	PC	<ul style="list-style-type: none"> • The Guidelines do not address requirements for all of the originator information; for ; intermediary and beneficiary institutions to ensure all originator information accompanies the transfer, or for identifying and handling transfers not accompanied by complete originator information. • It is too early since the introduction of the Guideline to assess effective implementation
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Unusual and Suspicious Transactions

3.6 MONITORING OF TRANSACTIONS AND RELATIONSHIPS (R.11 & 21)

DESCRIPTION AND ANALYSIS

Recommendation 11

Paying special attention to unusual transactions

524. Article 3 of Administrative Regulation No. 7/2006 states that an identity document should be demanded from customers when the operations might indicate the commission of a crime of ML of FT due to, inter alia, their nature, complexity, amounts involved, volume or non-habitual occurrence, relative to the activity of the customer. Section 8 of the Guideline for Financial Institutions provides examples of the type of business relationship requiring enhanced due diligence, such as fiduciary accounts opened by professional intermediaries, non-face to face customers and PEPs. Section 9 of the Guideline requires financial institutions to have systems in place to detect unusual or suspicious patterns of account activity by establishing certain parameters for a particular class or category of accounts. Any such transactions or transactions not consistent with the normal activities of the customers should be recorded for review and follow-up of senior officers or AML/CFT Compliance Officers. For these higher risk accounts, the Guideline requires institutions to establish control systems to monitor them. The authorities have stated that Paragraphs 9.1 and 9.2 of the Guideline for Financial Institutions cover not only scrutiny of all unusual and suspicious transactions, but also all complex or large transactions, because the meaning of the words “unusual transaction” in Chinese covers complex and/or large transactions and any large and complex transactions which are not consistent with the normal activities of customers will be recorded for review and follow-up by senior officers or AML/CFT Compliance Officers. Paragraph 5 of the Guideline on Large Cash Transactions requires institutions to establish a monitoring system, including additional control measures and ongoing monitoring, to deal with high risk cash transactions above a threshold of MOP 250,000.

525. Article 3 of Regulation 7/2006 also applies to the insurance sector. Paragraph 2 of the Insurance Guidelines indicates that the first key to recognising a suspicious transaction is knowing enough about the customer's business to recognise that a transaction, or series of transactions, is unusual. In February 2006 the AMCM issued a booklet on indicators of suspicious transactions of ML in insurance and specific examples of ML involving insurance. The AMCM's intention was to alert insurers to pay special attention to all complex, unusual and large transactions or unusual patterns of

transaction. Some of the examples do cover such transactions but it is not made clear in the Guidelines or the booklet on indicators that the insurance sector should pay special attention to all complex, unusual transactions, or unusual patterns of transactions, that have no apparent or visible economic or lawful purpose.

Examining the background and purpose of unusual transactions

526. Paragraph 5 of the Guideline on Large Cash Transactions requires financial institutions to apply adequate CDD measures to high risk cash transactions, including the purpose of transactions. Periodic reports for such transactions should be submitted to the AML/CFT Compliance Officer or other senior officers for reviewing and monitoring. Paragraph 9 of the Guideline for Financial Institutions requires institutions to identify transactions falling outside the regular pattern of an account's activity and to detect unusual or suspicious patterns of account activity. As explained above, the Macao, China authorities have confirmed that in Chinese "unusual transactions" also means complex or large transactions. Periodic reports with adequate information on higher risk accounts, including but not limited to unusual transactions and aggregate total of business relationship with institutions should be provided to senior officers and/or AML/CFT Compliance Officers for review. Management in charge of private banking should be aware of the personal profiles of high-risk customers and be alert to sources of third party information. Transactions in large amounts by these customers should require senior level approval.

527. Although the Guidelines require measures to be taken in respect of unusual or suspicious transactions (and complex or large transactions) they do not refer explicitly to unusual patterns of transactions or a requirement to examine the background and purpose of such transactions and to set forth findings in writing.

528. Under Paragraph 2 of Annex B of the Insurance Guidelines, it is suggested that in respect of single premium business, by way of example, insurance companies may seek information on the origin of funds (if known), the form in which the funds were offered or withdrawn, the identity of the person undertaking the transaction, the destination of the funds, and the form of the instruction or authority are required to establish a financial profile of the suspected accounts. Paragraph 2 of Annex C refers to the key to recognising a suspicious transaction as knowing enough about the customer's business to recognise that a transaction, or series of transactions, is unusual.

529. There is no provision requiring insurance entities to examine the background and purpose of complex, unusual large transactions, or unusual patterns of transactions, that have no apparent or visible economic or lawful purpose, and to set forth their findings in writing.

Keeping Records

530. Paragraph 4.5 of the Guideline on Large Cash Transactions and Paragraph 12 of the Guideline for Financial Institutions require that customer information records, including transaction records, should be readily available to the competent authorities in Macao, China for investigation when necessary. Periodic reports listing high risk cash transactions are required by Paragraph 5 of the Guideline on Large Cash Transactions to be reported to the AML/CFT Compliance Officer. Section 9 of the Guideline for Financial Institutions requires that senior officers and/or AML/CFT Compliance Officers of institutions should be provided with periodic reports with adequate information on

higher risk accounts, including but not limited to unusual transactions. The requirements for maintaining records are set out above in relation to Recommendation 10.

531. The Guidelines refer to keeping records of customer information, identification data, account files and business correspondence, but do not require all findings of the examination of the background and purpose of transactions of complex, unusual large transactions, and unusual patterns of transactions, that have no apparent or visible economic or lawful purpose, to be retained. Administrative Regulation No. 7/2006 and the Guidelines contain requirements to maintain records on identity documents and customer information. It is also possible that the institution's own examination of transactions is not covered by the record keeping requirements.

532. Paragraph 3 of Annex B of the Insurance Guidelines states that an important objective of record keeping is to ensure that insurance companies can, at all stages in a transaction, retrieve information to the extent that it is available without undue delay. Paragraph 2 of Annex C indicates that the first key to recognising a suspicious transaction is knowing enough about a customer's business to recognise that a transaction, or series of transactions, is unusual. Neither Administrative Regulation No. 7/2006 nor the Guidelines contain requirements for all findings of an examination of the background and purpose of transactions of complex, unusual transactions, and unusual patterns of transactions, that have no apparent or visible economic or lawful purpose, to be maintained.

Recommendation 21

Countries that do not or insufficiently comply with the FATF Recommendations

533. Section 5 of the Guideline for Financial Institutions requires institutions to develop clear customer acceptance policies. The policies should set up basic account opening requirements for customers, with low risk and higher requirements and enhanced due diligence for high risk customers. One of the criteria suggested (but not required) in the risk assessment of customers is the country of origin. The criterion in the Guideline states that foreign customers are higher risk than local customers. Customers coming from jurisdictions with lower standards of legal or judicial systems or where the political environment is unstable are noted as having higher risk. The Guideline goes on to state that an institution's policies should determine proper procedures to avoid establishing business relationships with customers who are terrorists designated as such by the United Nations Security Council, the Macao, China Government, other jurisdictions and other organisations or entities under inter-regional and international legal instruments, or customers who are designated as entities subject to sanctions announced locally or abroad, or customers covered in the FATF's NCCT list or in other sanction lists with international implications. Institutions' policies should establish that, if they cannot obtain the required customer information on a timely basis, accounts should not be opened, or transactions should not be performed.

534. Although institutions are required to consider the country of origin when assessing the due diligence requirements for new business there is no requirement for them to pay special attention to relationships and transactions from jurisdictions which do not or insufficiently apply the FATF Recommendations, albeit business relationships should not be established with customers from jurisdictions listed by the FATF as NCCTs. While Section 8 of the Guideline deals with business relationships requiring enhanced due diligence the specific types of relationships and transactions are not

mentioned. The Macao, China authorities have advised that under Paragraph 5.2 of the Guideline for financial institutions, institutions are required to have higher account opening requirements with enhanced due diligence (ie attention) for customers coming from jurisdictions with lower standard of legal or judicial systems, implicitly covering those not applying sufficiently FATF recommendations. However, the English translation of the Guideline does not make this provision compulsory.

535. No specific guidance has been established for the insurance sector to deal with business relationships with persons from jurisdictions which do not or insufficiently apply the FATF Recommendations.

Measures to advise financial institutions of weaknesses in AML/CFT systems of other countries

536. Paragraph 5.2.2 of the Guideline for Financial Institutions suggests it would be helpful for institutions to obtain information from public statements by international bodies on the risk of foreign customers. United Nations Security Council terrorist lists are published in the Official Gazette and circulated by the AMCM to banks. Such publication has the force of law in Macao, China. In May 2006 the AMCM published a review of ML typologies which was circulated to banks. The review contains examples of ML in Macao, China which originated outside the jurisdiction. There is a procedure in place that can be used to ensure that institutions are advised about AML/CFT weaknesses of other jurisdictions.

537. The Insurance Guidelines do not contain provisions similar to those in the Guideline for Financial Institutions. The AMCM does have the ability to notify the insurance sector of weaknesses in the AML/CFT systems of other jurisdictions. In a different context this ability has been demonstrated by the AMCM's circulation to the insurance sector of lists of suspected terrorists published by the United Nations Security Council.

Examining transactions and keeping written findings

538. Section 5 of the Guideline on Large Cash Transactions requires financial institutions to have a monitoring system for high risk transactions, and for such transactions to have additional measures and ongoing monitoring applied to them. The source of funds and the purpose of the transactions should be ascertained. Periodic reports listing such transactions should be submitted to the AML/CFT Compliance Officer or other senior officers for reviewing and monitoring. Section 9 of the Guideline for Financial Institutions requires institutions to have a reasonable understanding of the normal account activity of customers so as to identify transactions falling outside the regular pattern of an account's activity and to detect unusual or suspicious patterns of account activity. Periodic reports with adequate information on higher risk accounts, including but not limited to unusual transactions, should be provided to senior officers and/or AML/CFT Compliance Officers for review. Management in charge of private banking should also be aware of the personal profiles of high risk customers and be alert to sources of third party information. Nevertheless, there are no specific requirements to examine the background and purpose of transactions with no apparent or visible lawful purpose, and to keep any findings available.

539. Paragraph 2 of Annex B of the Insurance Guidelines discusses the importance of ensuring a satisfactory audit trail and Paragraph 3 provides that an important objective

of record keeping is to ensure that relevant information can be retrieved to the extent it is available without undue delay. Nevertheless, there is no requirement to examine transactions that have no apparent or lawful purpose and to keep the written findings of any examination available to assist competent authorities.

Ability to apply counter-measures

540. Section 5 of the Guideline for Financial Institutions provides that institutions can pay more attention to foreign customers as they have higher risk than local customers. Customers coming from jurisdictions with lower standards of legal or judicial systems or where the political environment is unstable are also described as having higher risk. Paragraph 5.3 states that business relationships should not be established with customers from jurisdictions listed as NCCTs by the FATF. Hence, the AMCM can use the Guideline to apply appropriate counter-measures where jurisdictions continue not to apply or insufficiently apply the FATF Recommendations.

541. The Insurance Guidelines do not take the same approach to risk as the Guideline for Financial Institutions, concentrating instead on features of the business relationship. For example, Paragraph 6 of Annex A advises institutions to take particular care when payment is offered in cash. Nevertheless, counter-measures can be applied through the Insurance Guidelines.

542. The Guidelines contain standards on dealing with unusual and higher risk business relationships and transactions. The Guidelines also cover business relationships and transactions which should not be accepted.

3.6.2 RECOMMENDATIONS AND COMMENTS

543. The Evaluation Team makes the following recommendations:

- amend the Insurance Guidelines to require institutions to pay special attention to all complex, unusual, large transactions, or unusual patterns of transactions, that have no apparent or visible economic or lawful purpose and amend the Guideline for Financial Institutions to cover complex, large transactions and unusual patterns of complex, large transactions;
- amend the Guidelines to require institutions to examine unusual patterns of transactions that have no apparent or visible economical or lawful purpose, to set forth their findings in writing and to keep such findings available for five years. Also amend the English translation of the Guideline for Financial Institutions to make it clear that it covers complex and unusual transactions and amend the Insurance Guidelines to require examination of complex, unusual, large transactions; and
- amend the Guidelines to require institutions to give special attention to business relationships and transactions with persons from jurisdictions insufficiently applying the FATF Recommendations;
- amend the Guidelines to require institutions to examine the background and purpose of transactions with no economic or visible lawful purpose, and to keep any findings available.

3.6.3 COMPLIANCE WITH RECOMMENDATIONS 11 & 21

	Rating	Summary of factors underlying rating
R.11	PC	<ul style="list-style-type: none">• The Insurance Guidelines do not cover the essential criteria for complex, unusual, large transactions, or unusual patterns of transactions.• The Guidelines do not refer to setting forth examination findings in writing and maintaining these findings.
R.21	PC	<ul style="list-style-type: none">• The Guideline for Financial Institutions does not compel institutions to give special attention to relationships and transactions with jurisdictions insufficiently applying the FATF Recommendations generally.• While the Guideline for Financial Institutions requires institutions to detect unusual activity, there is no explicit requirement to examine the background and purpose of transactions with no economic or visible lawful purpose

3.7 SUSPICIOUS TRANSACTION REPORTS AND OTHER REPORTING (R.13-14, 19, 25 & SR.IV)

3.7.1 DESCRIPTION AND ANALYSIS

Recommendation 13 & Special Recommendation IV

544. Macao, China has enacted AML/CFT laws and regulations, which make it mandatory for reporting institutions to identify, record and report STRs. AMCM and other competent regulatory agencies and self-regulatory organizations have also issued guidelines on obligation to report STR.

545. The legal requirements of obligation for reporting institutions to report STRs to GIF are embedded in Article 6 and 7(5) of Law No. 2/2006; Article 11 of Law No. 3/2006; and Articles 2 and 7 of Administrative Regulation No. 7/2006. Prior of the establishment of FIU, reporting institutions submitted their STRs to PJ until 11 November 2006.

546. Article 6 indicates the reporting entities which are obliged to report STRs. Article 7(5) of Law No. 2/2006 states that:

“Article 7: The entities referred in the previous article are subject to the following duties:

5) Duty of communicating the operations, when these provide indicia of the commission of the criminal offence of money laundering; “

547. Article 11 of Law No. 3/2006 indicates that:

“The rules of Articles 6, 7 and 8 of Law No. 2/2006 shall be applicable with the necessary adaptations, for the purpose of prevention and suppression of the financing of terrorism.”

548. These obligations are also included in the AML/CFT Guideline for financial institutions and the AML/CFT Guideline on large cash transactions, which is suspected

to be of ML crime and/or FT crime, or transactions involving converting, transferring or dissimulating illegally obtained funds or properties.

549. Prior of the invocation of Law No. 2/2006, STR obligation arose under Decree Law No 24/98/M and STRs were provided to the PJ. Reporting institutions submitted their STR to GIF instead of the PJ after 11 November 2006.

550. STR reporting requirements are embodied in law and regulation, however, there are concerns with effectiveness of implementation and particular weaknesses in the insurance sector (see table at paragraph 555 below).

Recommendation 14

551. Under Paragraph 3 of Article 7 of Law No. 2/2006, and Article 11 of Law No. 3/2006, the disclosure of information, in good faith, in compliance with the required duties of reporting and co-operating, shall not constitute breach of any secrecy or confidentiality duty, nor shall anyone be held liable for making such disclosure.

552. Under Paragraph 4 of Article 7 of Law No. 2/2006 and Article 11 of Law No. 3/2006, reporting entities are prohibited to disclose information to a customer, parties or any third parties involved in the suspicious transactions in relation to fact that a suspicious transaction report was fulfilled and reported or cooperation with (provision of or information to) competent authorities was given.

553. In addition, according to Paragraph 13.5 of the ML/FT Guidelines for financial institutions and Paragraph 6.4 of the ML/FT Guidelines on large cash transactions, the shareholders, directors, officers and any employees of the financial institutions covered in the Guidelines cannot disclose any information enclosed in the suspicious transaction report to any third parties including the customers related with the suspicious transactions.

554. Also the law enforcement officers of Judiciary Police, staff members of GIF and staff members of other regulatory agencies including AMCM are subject to professional secrecy, according to each professional statutory provisions and the general regime of public servants.

555. Compliance with the duty of secrecy is ensured by disciplinary and administrative sanctions. If the duty of secrecy is breached, in order to help a perpetrator to commit a crime, ML and FT included, such as performing counselling acts, the person who broke secrecy or confidentiality duties may be prosecuted and punished as a main perpetrator or accomplice.

Recommendation 19

556. Section 5 of the Guideline on large cash transactions issued by AMCM requires financial institutions to establish monitoring system for high-risk cash transactions. Any cash transactions equal to or exceeding MOP/HKD 250,000 (approx. USD 31,250) or equivalent are considered high-risk cash transactions. These transactions are subject to additional control measures and ongoing monitoring. However, at the moment, there is no requirement or IT infrastructure for these transactions to be reported on-line. In lieu of this, reporting institutions are required to make periodic reports of such transactions;

and the related documents and information should be properly filed and readily available for investigation by AMCM and/or other law enforcement agencies.

Recommendation 25

557. At the time of the assessment, although GIF was just newly established, it had put in place a feedback mechanism including immediate acknowledgement of receipt of STR and subsequent notice to the reporting entity in the event that the STR is reported to the Public Prosecution Office. Such feedback had previously been provided by the Banking Supervision Department of the AMCM. Feedback was provided in May 2006 by way of a document providing a review of ML and FT typologies between 2002 and 2005. The review covered brief statistics, trend analysis and sample cases extracted from the local reported suspicious cases.

Recommendation 32

558. The following statistics for 2002 to August 2006 show numbers of STRs filed by reporting institutions:

Year	Suspicious Transaction Report		Reporting Financial Institutions	
	FIs	Insurance	FIs	Insurance
2002	77	5	7	1
2003	107	0	9	0
2004	109	1	9	1
2005	193	0	15	0
8/2006	367	0	17	0

3.7.2 RECOMMENDATIONS AND COMMENTS

559. Macao, China has clear legal provisions related to the protection of the disclosure of information imposed by legal, regulatory and administrative provisions, when suspicious reporting is performed in good faith. The law clearly prohibits and punishes the disclosure of the fact that a STR or related information has been reported to GIF or other authority.

560. In the absence of an FIU, the AMCM's feedback to local institutions is creditable. However, it appears to be a one-off exercise. Going forward, it will be important for GIF to establish a program of feedback. Therefore, GIF should introduce a program of feedback.

561. The FIU and other authorities responsible for AML/CFT, in addition to providing general ML/FT typologies, should also continuously provide feedback to reporting institutions on trends, methods and techniques actually used in cases in Macao, China.

562. The Summary Report and Typologies Division of the FIU should not only commence preparing the monthly statistics on STR received but should also conduct

study and research on ML/FT typologies especially on actual cases in Macao, China and its surrounding jurisdictions.

563. Continuous discussion between FIU, AMCM and other authorities on how to develop a quality STRs and what is the vital information needed to mount a successful case on ML/FT.

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	LC	<ul style="list-style-type: none"> Reporting requirements are embodied in law and regulation, however, there are concerns with effectiveness of implementation and particular weaknesses in the insurance sector
R.14	C	<ul style="list-style-type: none"> This recommendation is fully observed
R.19	C	<ul style="list-style-type: none"> This recommendation is fully observed
R.25	PC	<ul style="list-style-type: none"> Comprehensive feedback was provided by the AMCM in 2006. However, this cannot replace the systematic feedback expected of an FIU.
SR.IV	LC	<ul style="list-style-type: none"> Reporting requirements are embodied in law and regulation, however, there are concerns with effectiveness of implementation and particular weaknesses in the insurance sector

Internal controls and other measures

3.8 INTERNAL CONTROLS, COMPLIANCE, AUDIT AND FOREIGN BRANCHES (R.15 & 22)

3.8.1 DESCRIPTION AND ANALYSIS

Recommendation 15

Internal policies and procedures to prevent ML and FT

564. Section 11 of the Guideline for Financial Institutions states that the board of directors of institutions should establish an effective AML/CFT system and ensure its effective implementation by establishing appropriate procedures. In this regard, section 5 of the Guideline deals with customer acceptance policy, section 6 with customer identification, section 7 with the minimum requirements for establishing business relationships, section 8 on business transactions requiring enhanced due diligence, section 9 with the ongoing monitoring of high risk accounts, section 10 with the AML/CFT compliance officer, section 12 on the retention of records and section 13 on the reporting of suspicious transactions. Paragraph 11.3 of the Guideline specifies that

all institutions should have an ongoing employee training program so that staff members are adequately trained in AML/CFT measures and other procedures. In addition, the Guideline on Large Cash Transactions contains requirements for record keeping and identification (section 4), ongoing monitoring of high risk cash transaction (section 5) and the reporting of transactions (section 6).

565. Paragraph 30 of the Insurance Guidelines states that insurance companies should have in place policies, procedures and controls with a view to assisting in the suppression of ML and the FT through insurance business. Paragraph 36 provides that insurance companies are expected to have in place a clear statement of policies in relation to money laundering, and which adopts the Insurance Guidelines. The statement should be communicated in writing to all management and relevant staff and be reviewed on a regular basis. The Paragraph goes on to state that insurance companies' instruction manuals should set out procedures for: selling insurance products, customer identification, recordkeeping, the acceptance and processing of insurance proposals, and the issue of insurance policies. In addition, measures should be taken to ensure that staff are trained on the matters contained in the Guidelines. Annex A of the Guidelines covers verification of identity, Annex B covers record keeping, Annex C covers the recognition and reporting of suspicious transactions and Annex D covers education and training. The Guidance Notes reference to "expected" in Paragraph 36 should be amended in favour of more emphatic language.

Compliance management arrangements

566. Paragraph 10.1 of the Guideline for Financial Institutions requires institutions to designate a Compliance Officer responsible for AML/CFT compliance. The designation of the AML/CFT Compliance Officer requires prior approval of the AMCM. In addition to appropriate competence and experience, the Compliance Officer should have an appropriate management or senior position within the organisational structure. The Compliance Officer's role should not be compromised by undue influence from line management. Paragraph 11.2 specifies that institutions should have internal procedures to assess whether AML/CFT policies and legal requirements for reporting suspicious transactions are satisfied.

567. Paragraph 5 of Appendix C of the Insurance Guidelines requires each institution to formally designate an officer to be responsible for ML deterrence and reporting procedures. Paragraph 7 of the same Annex C states that every insurance company should appoint a designated officer or officers (compliance officer(s)) who should be responsible for reporting to the GIF where necessary and to whom all internal reports should be made. Although there is a requirement for a compliance officer to be appointed, there are no guidelines as to the management level of the appointee.

Compliance officer access to information

568. Paragraph 10.1.3 of the Guideline for Financial Institutions requires that AML/CFT Compliance Officers should have timely access to all customer files, transaction records and other relevant information.

569. Under Paragraph 8 of Annex C of the Insurance Guidelines, an employee of an insurance company knows a customer has engaged in drug trafficking or other indictable offences, and where the customer seeks to take out, maintain or redeem a policy, the employee must promptly make a report to the AML/CFT Compliance Officer, who must

immediately report the details to the GIF. Paragraph 9 deals with suspicion and reasonable grounds for suspicion – such suspicion must be promptly reported to the AML/CFT Compliance Officer, who must promptly evaluate whether there are reasonable grounds for suspicion and, if appropriate report the details to the GIF. There is no requirement for CDD information and other relevant information to be available on a timely basis to the AML/CFT Compliance Officer.

Audit function

570. Under Paragraph 11.2 of the Guideline for Financial Institutions, institutions are advised that internal audit plays an important role in independently evaluating risk management and controls. Institutions are required to incorporate a compliance check for AML/CFT policies and procedures in their internal audit programs to ensure the effectiveness of the control systems. There is no reference to sample testing or the internal audit function being adequately resourced.

571. Paragraph 36(f) of the Insurance Guidelines states that insurance companies should instruct their internal audit/inspection departments to verify, on a regular basis, compliance with policies, procedures and controls relating to ML and FT activities. There is no reference to sample testing or the internal audit function being adequately resourced.

Employee training

572. Paragraph 11.3 of the Guideline for Financial Institutions states that all financial institutions should have an ongoing employee training program so that staff members are adequately trained in AML/CFT measures and other relevant procedures. The training program should be designed according to the different needs of staff, in particular, new staff, front line staff, supervisory staff and staff with compliance and audit functions. For example, new staff members should be educated in the importance of AML/CFT measures and other basic requirements of the institution. Front line staff who deal directly with the public should be trained to use reasonable measures to verify the identity of customers, to exercise ongoing due diligence measures in handling the accounts of existing customers, and to detect patterns of suspicious transactions. Supervisory staff members should be trained in skills in monitoring proper execution of policies and procedures. The training for staff members with compliance and audit functions should be focussed on those fields. Regular refresher training should be provided to ensure that all staff members are reminded of their responsibilities and are kept informed of new developments. There is no reference in the Guideline to training covering ML and FT techniques, methods and trends or to AML/CFT laws.

573. Annex D of the Insurance Guidelines deals with education and training. Paragraph 1 indicates that staff must be aware of their personal obligations under the specific laws about ML and the FT, and that they can be personally liable for not reporting information to the authorities. Paragraph 2 adds that it is essential that insurance companies introduce comprehensive measures to ensure staff are fully aware of their responsibilities. Paragraph 3 goes on to provide information on the training that should be put in place for new employees, sales/advisory staff, processing staff, and administration/operations supervisors and managers. For new employees, a general appreciation of the background to ML and the FT, and the subsequent need for identifying and reporting any suspicious transactions to the appropriate designated point, should be provided as new employees will be dealing with customers or their

transactions, irrespective of their level of seniority. They should be made aware of the importance placed on the reporting of suspicious transactions by the insurance company, that there is a legal requirement to report, and that there is a statutory legal requirement in this respect. The paragraph concludes that it is necessary to make arrangements for refresher training at regular intervals to ensure that staff do not forget their responsibilities. It is suggested that this might be best achieved by an annual or biannual review of training or, alternatively, a review of the instructions for recognising and reporting suspected ML or FT transactions. Annex D of the Guidelines makes no reference to training on current ML and FT techniques, methods and trends.

Screening procedures

574. Articles 47 and 48 of the Financial System Act provide that the board of directors of credit institutions - together with the managers of branch operations - should be suitable, and be both able and experienced to carry out their functions. Such directors and senior management must register their appointment with the AMCM before carrying out their duties. there is no requirement on financial institutions to put in place screening procedures when hiring new staff.

575. As set out in Paragraph 36 of the Insurance Guidelines, insurance companies should have in place adequate screening procedures when hiring employees. the procedures do not require insurance companies to ensure high standards when hiring employees.

Implementation

576. A considerable part of the AMCM's on-site inspections are devoted to internal audit and compliance and to staff education and training. As indicated in connection with Recommendation 5 one financial institution was aware of the names of its customers but had not verified their identity. That institution relied completely on the audit and compliance procedures of its parent. Generally, compliance and training appeared to be taken seriously, although one further institution relied to a very large degree on the AML/CFT Compliance Officer of its parent.

Recommendation 22

577. The AMCM advised the Evaluation Team that it meets the intended objective of Recommendation 22 by virtue of meeting the Basel Committee on Banking Supervision's principles on consolidated supervision and the exercise of its responsibilities under Article 9 of the Financial System Act for consolidated supervision. This Article states that, without prejudice to supervision of financial institutions on an individual basis, the supervision of financial institutions with a head office in Macao, China shall be performed on the basis of consolidation of their financial situation with other companies in which the institution has a holding of over fifty percent. In the case of holdings of equal to or less than fifty percent the AMCM shall decide whether supervision should be done on a consolidated basis and in which manner. The Article goes on to state that the AMCM shall adopt practices to permit and facilitate supervision on a consolidated basis by the competent authority of the home country of institutions which have branches or subsidiaries in Macao, China and may, for this purpose, enter into agreements with the relevant authorities. In addition, Paragraph 2.1.3 of the Guideline for Financial Institutions, stipulates that overseas establishments of credit institutions with headquarters in Macao, China including branches and subsidiaries, are

required to observe the Guideline. The FATF standard will be fully met when this provision extends to the overseas establishments of financial institutions other than credit institutions.

578. The AMCM advises that there are no branches of local insurers and corporate intermediaries operating in another jurisdiction. There are no requirements should the situation change.

Branches and subsidiaries in countries which do not or insufficiently apply the FATF Recommendations

579. The comments above in relation to consolidated supervision also apply here. Although article 32 of the Financial System Act requires financial institutions to obtain prior approval for overseas establishments, this places on the AMCM the responsibility of applying the FATF standard for paying particular attention to the AML/CFT standards of jurisdictions in which overseas establishments of credit institutions are proposed to be based. There are no enforceable obligations on require financial institutions to pay particular attention with respect to their branches and subsidiaries in jurisdictions that do not or insufficiently apply the FATF Recommendations.

580. There are no branches or subsidiaries of local insurers established in other jurisdictions. There are no requirements in the Insurance Guidelines should the situation change.

Application of higher standard when home/host requirements differ

581. Any credit institution which intends to establish a subsidiary, a branch or a representative office overseas is required by article 32 of the Financial System Act to first obtain authorisation from the AMCM. Although overseas establishments set up by locally incorporated banking and other financial institutions are very few, these overseas establishments are subject to the consolidated supervision of the AMCM. The AMCM advises that, if home and host requirements differ, higher standards are applied under consolidated supervision principles. Nevertheless, there is no requirement in law, regulation or the Guideline for overseas operations to apply the higher, Macanese, standard to the extent host country laws and regulations permit.

582. Article 45 of the Insurance Companies Ordinance specifies that the opening of sub-offices of authorised insurers is subject to the prior authorisation of the AMCM. Sub-offices are subject to the consolidated supervision of the AMCM. If home and host requirements differ, the AMCM advises that higher standards are applied under consolidated supervision principles. However, in the absence of a requirement in law, regulation or the Insurance Guidelines of a requirement for sub-offices located outside Macao, China to apply the higher, Macanese, standard to the extent host country laws and regulations permit.

Informing home supervisor when a foreign branch/subsidiary is unable to observe appropriate AML/CFT measures

583. The comments above in relation to consolidated supervision also apply here. The AMCM has also indicated to the Evaluation Team that, to date, the overseas establishments of Macanese financial institutions have located only in jurisdictions where high AML/CFT standards are applied. There is an absence of a requirement in law, regulation or other enforceable means for financial institutions to inform the AMCM when

a foreign operation cannot observe appropriate AML/CFT measures because this is prohibited.

584. Locally incorporated insurance companies do not have overseas branches or representations. There is no requirement to inform the AMCM when a foreign branch or representative cannot observe appropriate AML/CFT measures because this is prohibited.

3.8.2 RECOMMENDATIONS AND COMMENTS

585. Regarding Recommendation 22 and the application of Macanese AML/CFT standards to overseas branches and subsidiaries, the AMCM exercises this application through its consolidated supervision instead. There are also some positive approaches to compliance in the Guidelines, especially the Guideline for Financial Institutions. Where aspects of this Recommendation are not satisfied, this is to do with the detail of the Recommendation not being included in law, regulation or the Guidelines.

586. The Evaluation Team makes the following recommendations:

- Amend the reference in the Insurance Guidelines to insurance companies being “expected” to have in place a clear statement of AML/CFT principles;
- Amend the Insurance Guidelines to state that the AML/CFT Compliance Officer should be at least management level and that the Compliance Officer should have timely access to CDD and other relevant information;
- Include a reference to sample testing in the Guidelines and to adequate resourcing of the internal audit function;
- Add to the Guidelines that training should cover ML and FT techniques, methods and trends and add to the Guideline for Financial Institutions that training should cover AML/CFT laws;
- Include in the Guideline for Financial Institutions a requirement about screening procedures when hiring new staff and add a requirement about ensuring high standards when hiring new employees;
- Consider whether the Guidelines should emphasise the importance of Macanese institutions remaining responsible for compliance even if there is assistance from head office in another jurisdiction;
- Require the overseas operations of non-credit institutions and the insurance sector to be consistent with Macanese AML/CFT measures to the extent host country laws and regulations permit;
- Require all institutions to pay particular attention where host jurisdictions do not or insufficiently apply the FATF Recommendations and, if home and host requirements differ, to apply Macanese standards;
- Require all institutions to advise the AMCM when a foreign branch or subsidiary cannot observe appropriate AML/CFT measures because this is prohibited.

3.8.3 COMPLIANCE WITH RECOMMENDATIONS 15 & 22

	Rating	Summary of factors underlying rating
R.15	LC	<ul style="list-style-type: none"> • The Insurance Guidelines do not specify the management status of the AML/CFT Compliance Officer or his/her time access to information. • AML/CFT training in the three Guidelines is covered but does not specify ML/TF techniques, methods and trends. • There are no screening standards in the Guideline for Financial Institutions.
R.22	PC	<ul style="list-style-type: none"> • Outside of the reference to credit institutions, the other elements in the Recommendation are not included in the Guidelines.

3.9 SHELL BANKS (R.18)

3.9.1 DESCRIPTION AND ANALYSIS

587. Article 19 of the Financial System Act requires the approval of the Governor to be provided before a credit institution may be incorporated in Macao, China. The law contains detailed procedures on the application process for authorisation. For example, with regard to potential branches of credit institutions incorporated overseas, article 24 require the application to include an explanation of the economic and financial reasons behind the institution's application to operate in Macao; a document issued by the supervisory authority in the applicant's home country proving that the institution is legally constituted and authorised to set up the branch, with an indication of the operations which it is entitled to carry out; the memorandum and articles of the credit institution; the annual report and accounts for the preceding three years; a resolution from a general meeting of shareholders, or an authorisation from the legal representatives of the institution, on the establishment of an operation in Macao; and the identity of the managers of the branch, together with the management mandate for the operation. Article 20 onwards provides information on the application requirements for incorporated credit institutions. Other provisions in the law impose requirements on credit institutions such as capital requirements for incorporated credit institutions and provide the AMCM with supervisory tools to carry out its functions

588. In addition to the Financial System Law, offshore financial institutions are subject to the Offshore Sector Law. This law supplements the Financial System Law and, in places, adds requirements for offshore institutions. In a few places the requirements are reduced – for example, article 17 requires the share capital of an offshore institution to be at least half of the share capital for exactly the same kind of institution licensed to operate with residents. The supervisory framework for offshore credit institutions is similar to that to institutions with resident customers.

589. All banks are required to comply with the Guideline for Financial Institutions. Section 8.5 of the Guideline covers correspondent banking relationships (see Recommendation 7 above). Paragraph 8.5.2 requires institutions to avoid establishing a business relationship with any shell institutions, including shell banks.

590. The Evaluation Team saw no evidence of shell banks.

3.9.3 COMPLIANCE WITH RECOMMENDATION 18

	Rating	Summary of factors underlying rating
R.18	C	<ul style="list-style-type: none">This recommendation is fully observed.

Regulation, supervision, guidance, monitoring and sanctions

3.10 THE SUPERVISORY AND OVERSIGHT SYSTEM - COMPETENT AUTHORITIES AND 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

Adequate AML/CFT regulation and designated competent authorities for financial institutions

591. The Financial System Act provides the AMCM with the authority to regulate and supervise banks and other financial institutions. This authority is exercised by the Banking Supervision Department of the AMCM.

592. The Act is supplemented by the Offshore Sector Law and by Regulation 7/2006. Article 2 of Administrative Regulation No. 7/2006 specifies that compliance with the duties in the Regulation in relation to the entities subject to its supervision falls to the AMCM. Article 8 of the Regulation specifies that all assistance, especially the disclosure of information and the delivery of documents, shall be provided to, as and when requested by, the AMCM for the prevention and suppression of the crimes of ML and the FT. The AMCM advises that this power is interpreted to provide the AMCM with authority to conduct on-site inspections. Article 7 of the Financial System Act states that institutions subject to the AMCM's supervision shall submit to the AMCM at such time and in such manner as the latter may prescribe all relevant information as the AMCM may deem necessary for the proper discharge of its functions stipulated by law. Article 8 adds that the supervision of financial institutions may be carried out on their own premises. Article 10 of Decree Law 14/96/M which establishes the functions of governing rules of the AMCM states that in exercise of its inspection, the AMCM may examine at any time, with or without prior notice, transactions, books, accounts and other records or documents. These articles give the AMCM the power to make on-site inspections.

593. Inspections are carried out on the basis of an annual plan. In considering the schedule of inspections, the AMCM takes into account whether a follow-up inspection is needed to a previous inspection, the focus of the inspection, off-site reviews, control measures for new business, reports in the media and complaints. A risk based approach is adopted. Investment business is considered to be a relatively high risk area and it is reviewed as part of the inspection of banks. The AMCM carries out inspections,

using a detailed checklist. It has amended the on-site checklist used prior to November 2006 to take account of the new Guidelines. Inspections are undertaken with, and without, providing notice to the institution. Interviews are conducted with key executives such as the chief executive and the AML/CFT Compliance Officer – an important aim is to understand the AML/CFT framework and the channels for reporting a suspicion. A database of persons referred to in UN sanctions is required to be maintained by institutions and the adequacy of this is checked. A sample of customer files is reviewed, normally a minimum of 10 to 20 files for each business line. On average, each bank has a few thousand customers.

594. The Banking Supervision Department of the AMCM has carried out the following number of on-site inspections since 2003:

- 2003 – eight banks, 10 money changers, one exchange counter and two remittance companies;
- 2004 - five banks;
- 2005 - 11 banks; and
- 2006 (up to 15 November) - five banks, three money changers, two exchange counters and two remittance companies;

595. This is a considerable proportion of the banks and other financial institutions in Macao, China and for example includes 21 of Macao, China's 26 banks, three of the four exchange counters and the equivalent of more than one inspection of each money changer. It does not include the two financial intermediaries which are currently operating in Macao, China the one finance company and the one "other financial institution". The off-site monitoring team is also mindful of the ability of its analysis of financial returns to identify significant change and risk areas which would indicate supervisory action such as an on-site inspection. The off-site team follows up the actions taken by institutions to resolve recommendations arising from an on-site inspection. In addition, all new products and services to be launched by a bank are subject to prior approval by the AMCM. The off-site team is responsible for assessing proposals for new products and services, and such assessment includes consideration of banks' AML/CFT countermeasures to deal with the risks.

596. The Macau Insurance Ordinance provides the AMCM with the authority to regulate and supervise insurance companies. In addition, the Insurance Agents and Brokers Ordinance gives the AMCM authority to regulate and supervise insurance intermediaries, which are defined in the Ordinance as being insurance agents, insurance salesmen and insurance brokers. This regulation and supervision is exercised by the Insurance Supervision Department of the AMCM.

597. With regard to the insurance sector, article 2 of Regulation 7/2006 specifies that compliance with the duties in the Regulation in relation to the entities subject to its supervision falls to the AMCM. Article 8 of the Regulation specifies that all assistance, especially the disclosure of information and the delivery of documents, shall be provided to, as and when requested by, the AMCM for the prevention and suppression of the crimes of ML and the FT. The AMCM advises that this power is interpreted to provide the AMCM with authority to conduct on-site inspections. Article 10 of the Macau Insurance Ordinance states that the duty of inspection shall be carried out by the AMCM and it goes on to specify that the AMCM shall be vested with powers to carry out inspections of insurers and re-insurers so as to regularise, inter alia, the technical and

legal aspects of their activity. Under article 12, the AMCM may request insurers and re-insurers to furnish any particulars and information deemed necessary for a complete execution of its functions. Article 13 provides that the inspection of insurers' activities may be carried out by the AMCM at the insurers' premises. Similar provisions are not included in the Insurance Agents and Brokers Ordinance, although the AMCM's interpretation of article 8 of Regulation 7/2006 means that AML/CFT inspections of insurance intermediaries could still be undertaken. In addition, article 10 of Decree Law 14/96/M covers the AMCM's supervision of the insurance sector.

598. The AMCM has undertaken ad hoc on-site inspections of insurance companies. Since 2004, the AMCM has have conducted 10 on-site inspections, nine on insurance companies, and one on suspected unauthorized insurance intermediary activity. The purpose of the on-site inspections was to ascertain whether insurance companies have complied with the various rules and regulations in force, the level of internal controls, management oversight, underwriting procedures, claims procedures, etc. To date AML/CFT on-site inspections of insurance companies and insurance intermediaries have not been undertaken by the AMCM. However, the AMCM has plans to carry out AML/CFT inspections to insurance companies and the Evaluation Team was provided with the checklist proposed to be used by the AMCM. The AMCM intends to inspect all life insurers during the next three years. It is proposed that the insurance intermediary inspection program will be limited to corporate brokers and corporate agents as these entities are perceived to present the highest potential risks. As AML/CFT on-site inspections have not yet been carried out.

Adequate resources for competent authorities

599. In all, the AMCM has 140 staff divided into 11 departments. The Banking Supervision Department - which is also responsible for other financial institutions - consists of 22 staff, 17 of whom are examiners. A Deputy Director heads the Department. Three Senior Bank Examiners coordinate the department's three teams - licensing and policy (three staff in total), on-site inspection (seven staff in total), and off-site surveillance (ten staff in total). Many of the staff have audit or accounting backgrounds. The department also has a member of staff responsible for information technology issues. In addition, the department has one adviser on banking and supervisory matters. The intention is to recruit five additional staff in all, as well as further advisers, during 2007. The department anticipates that one of these new staff will have a legal background. The opportunity will also be taken to consider the operation of the department. The technical and space resources appear to be sufficient. The funding of the Banking Supervision Department is received from the budget of the AMCM. The AMCM considers that the role and responsibilities specified for it in the Financial System Act mean that it has operational independence and autonomy. The Secretary for Finance authorises the issue of licences and sanctions on behalf of the Chief Executive but this has not led to any lack of independence or autonomy by the Banking Supervision Department in practice. The Banking Supervision Department needs additional staff

600. The Insurance Supervision Department is the division of the AMCM responsible for the supervision and regulation of insurance companies and insurance intermediaries in Macao, China. The Department has 14 staff, led by a Director and a Deputy Director. There are three streams of operations in the Department, namely (i) the insurance supervision section with four staff (ii) the administrative section with three staff and (iii)

the statistics and private pension funds section with five staff. The department is mature, with staff having significant experience at the AMCM – 13 of them have 10 or more years' experience – and some, varying, private sector experience. Many of the staff have degrees. Between them the staff have five masters' degrees, a qualification in actuarial techniques and one is a registered accountant. The Director of the department intends to recruit three further staff in 2007. The technical and space resources appear to be sufficient. The funding of the Insurance Supervision Department is received from the budget of the AMCM. The AMCM considers that the role and responsibilities specified for it in the legislation administered by the department mean that the department has operational independence and autonomy and that the Secretary of Finance's powers, delegated by the Chief Executive, has not led to any lack of independence or autonomy.

601. The Insurance Supervision Department needs additional staff.

Professional standards and training

602. All staff members of the Banking Supervision Department are subject to the secrecy obligation stipulated in article 78 of the Financial System Act. The article states that persons currently or previously employed by the AMCM, and all those who have provided the AMCM with services on a permanent or casual basis, are bound by the duty to maintain secrecy concerning information obtained during the course of their employment or the provision of services and shall not reveal or take advantage of the information obtained. Article 122 specifies that violations of the Act are contraventions to which the sanctions in the Act apply. Ongoing professional training is given to all relevant staff members in order to maintain high professional standards, high integrity and appropriate technical skills. Staff of the AMCM are required to comply with the code of professional ethics and conduct of public servants, which covers guidance on such matters as conflicts of interest. Information was provided by the AMCM on training held in 2005 and 2006. Training seminars attended by staff have covered issues such as the implementation of the AML/CFT framework, typologies, investigation techniques, supervisory measures for financial institutions and financial intelligence. In 2005 thirteen staff attended six training events, while in 2006 21 staff attended 12 events. The organisations providing the training included the APG, the IMF, the United States Drug Enforcement Administration and the Narcotics Division of the Securities Bureau of Hong Kong, China. After the attendance of staff at training events, in-house briefings are held in order to disseminate the knowledge obtained. The AMCM also provided the Evaluation Team with a training plan for 2007.

603. All staff members of the Insurance Supervision Department are subject to the secrecy stipulation in article 11 of the Macau Insurance Ordinance. The article states that the board and members of the AMCM, together with employees, auditors, specialists and other persons who are rendering or who have rendered their services on a permanent basis or occasionally shall keep professional secrecy regarding the facts which have come to their attention exclusively in the course of their duties. Article 120 provides that any violations of the Macau Insurance Ordinance shall constitute infringement punishable under the Ordinance. As with the Banking Supervision Department staff of the Insurance Supervision Department are required to comply with the code of professional ethics and conduct of public servants. Training seminars attended by staff have covered basic money laundering, the repression of ML and FT, and financial investigation. The training has been a combination of in-house training and

seminars by the Hong Kong Police Force, the United States Drug Enforcement Administration and the United States Department of the Treasury. It is proposed that staff will undertake further training in 2007.

Authorities Powers and Sanctions – R.29 & 17

604. The AMCM has adequate powers to monitor and ensure compliance by financial institutions with the requirements to combat ML and FT. On-site inspections carried out by the AMCM include reviews of policies, procedures, books and records, and extend to sample testing. The AMCM has power to compel the production of records, documents or information – a court order is not required.

605. The AMCM has adequate powers to monitor and ensure compliance by the insurance sector with the requirements to combat ML and FT. The AMCM has authority to carry out on-site inspections but has not conducted AML/CFT inspections – plans are in hand to commence a program of such inspections. The AMCM has the power to compel the production of records, documents or information without a court order. Comments about implementation are made in connection with Recommendation 23.

606. Article 10 of Administrative Regulation No. 7/2006 states that the administrative authorities (ie the supervisory authorities) specified in the Regulation are responsible for the institution and preparation of enforcement procedures under the Regulation. Under article 9 of the Regulation non-compliance with the requirements of the AML/CFT preventive measures in the Regulation are subject to a fine from MOP 10,000 to MOP 500,000 for natural persons, and from MOP 100,000 to 5,000,000 for legal persons.

607. The Financial System Act also provides a framework of sanctions which may be used for non-compliance with AML/CFT requirements, including the requirements in the Guideline for Financial Institutions. Article 122 states that all acts which violate regulations contained in notices or circulars from the AMCM are contraventions punishable under chapter 2 of the Act. Articles 126 and 127 state that the contraventions referred to in article 122 are punishable by fine; suspension of the voting rights of any shareholder for a period of one to five years; prohibition from holding any board position or carrying out management or directorship duties in any institution under the AMCM's position for a period of six months to five years; loss of capital invested in the operations carried out; and publication of the sanctions. Article 128 specifies that a fine levied by the AMCM will be fixed at between MOP 10,000 and MOP 5,000,000. In the case of a repeated offence, the minimum and maximum limits for the fine are twice the originals. When the economic benefits gained by the offender exceed half the maximum limit, the fine may be increased to the value of twice the benefits. Where the offence can be remedied and has not resulted in significant damage to Macao, China's economy or its financial or monetary system, article 130 allows the AMCM to issue a warning to the offender, instructing him to rectify the offence within a fixed period. Articles 131 onwards lay down a procedural framework for the sanctions regime, specifying that it applies to natural persons, legal persons even when not legally incorporated and associations with no legal identity. The framework includes a potential fine of up to MOP 10,000 if a person fails to appear at proceedings initiated by the AMCM. Article 35 of the Financial System Act deals with the revocation of authorisations. An authorisation may be revoked, inter alia, when an institution, in a systematic and serious manner, fails to observe the laws and regulations of Macao, China or the decision and guidelines issued by the Governor or the AMCM.

608. Paragraph 13.7 of the Guideline for Financial Institutions and Paragraph 6.6 of the Guideline on Large Cash Transactions refer to the regimes for sanctions in Administrative Regulation No. 7/2006 and the Financial System Act for failure to meet the Guidelines.

609. The AMCM has applied sanctions on two occasions, one of which was for poor AML/CFT measures. In each case the on-site inspection team asked the AMCM's legal department to consider whether a breach had taken place. Once the legal department had confirmed a breach has taken place, administrative proceedings were commenced and the institution has an opportunity to defend its position. The final decision as to whether or not a sanction should be levied is taken by the Secretary. In one case a fine of MOP 100,000 was applied to an institution for a failure to report suspicions to the GIF. The AMCM also conducted a follow up on-site inspection to ascertain if the failing had been corrected. In the second case a financial institution had been carrying out unlicensed activity and a fine of MOP 1,000,000 was applied. The AMCM advises that the sanctions process, from identifying a potential breach to the application of a sanction, would normally be expected to take three months.

610. Regulation 7/2006 also applies to insurance companies and insurance intermediaries and provides the AMCM with legal power to impose sanctions in respect of poor AML/CFT measures by such entities. According to article 120 of the Macau Insurance Ordinance, any violation of the Ordinance, or the regulatory provisions contained in notices or circulars of the AMCM, constitute infringements punishable under the Ordinance. Articles 121 and 122 of the Ordinance define the penalties as being a fine; suspension of the administrative body or of another body with similar functions for a period from six months to five years; the temporary suspension of the authorisation to carry out insurance activity; revocation of the authorisation; confiscation of the capital invested in the operations carried out; and publication of the sanctions applied. Article 123 onward provides procedures for levying sanctions. Article 126 gives the AMCM the ability to issue warnings, mirroring the Financial System Act. Article 128 specifies that the amount of a fine shall be not less than MOP 10,000 and not more than MOP 1,000,000, with the maximum limit being doubled where the financial benefit obtained by the infringer is higher than MOP 500,000. Article 130 indicates that directors, general representatives and persons responsible for the establishment of insurers are jointly and severally liable for the payment of fines. Article 132 permits the AMCM to revoke an authorisation for serious infringements which justify the permanent cessation of particular classes of insurance or all insurance activity. Article 135 allows the preventive suspension of individuals where such a measure is deemed necessary to conduct the case or to safeguard policyholders' interests. Any person who does not attend proceedings can be fined up to MOP 10,000 under article 137.

611. Article 30 onwards of the Insurance Agents and Brokers Ordinance provides the AMCM with the power to issue sanctions in respect of insurance intermediaries. Non-compliance with the law and with complementary legislation is subject to a fine and the temporary suspension or revocation of the authorisation. The ability to suspend or revoke an authorisation does not appear to apply to poor AML/CFT measures but article 32 specifically provides that fines of between MOP 5,000 and MOP 50,000 may be issued for the contravention of regulatory norms laid down in the AMCM's notices. The penalty may be published by virtue of article 37.

612. Paragraph 25 of the Insurance Guidelines refers to the penalties in the Regulation.

613. Although sanctions have not been applied in respect of AML/CFT failings, the AMCM does use its powers where breaches are uncovered. Since the beginning of 2001, seven insurance intermediaries have been fined amounts of between MOP 5,000 and MOP 50,000 for the misappropriation of funds.

Recommendation 17

Effective, dissuasive, and proportionate sanctions

614. Article 3 of Law No. 2/2006 on the prevention and suppression of ML makes it a criminal offence to convert or transfer advantages, to assist or facilitate money laundering, or to conceal or disguise the true nature, source, location, disposition, movement or ownership of advantages. The maximum penalty applicable is imprisonment of 2 to 8 years. Article 7 of Law No. 3/2006 on the prevention and suppression of the crimes of terrorism and specifies a penalty of 1 to 8 years' imprisonment for any person who renders available or collects funds with the purpose of financing terrorism. The framework for administration sanctions is covered in Recommendation 29 above. The sanctions for breaches of Administrative Regulation No. 7/2006 are limited to fines of up to the equivalent of MOP 500,000 for individuals and other natural persons, and MOP 5,000,000 for legal persons. In addition, the AMCM is able to use sanctions under regulatory legislation – these have been used for AML/CFT failings twice in 2002.

615. Paragraph 614 above is equally applicable to the insurance sector, with the exception that no sanctions have been applied in respect of AML/CFT failings. However, the Evaluation Team noted that sanctions have been applied for other failings. Nevertheless, as the AMCM is in a transitional phase where attention is now being focused on AML/CFT, the Evaluation Team is not wholly satisfied that the effectiveness of the sanctions framework for AML/CFT cannot be demonstrated.

Designated authority to apply sanctions

616. According to article 10 of Regulation 7/2006, the supervisory authorities, including the AMCM, are competent within their respective area of supervision in relation to administrative infractions of the regulations. The Chief Executive has the final decision – based on proposals by the AMCM – on the issue of a penalty. The AMCM also has the ability to issue sanctions under the Financial System Act.

617. According to article 10 of Regulation 7/2006, the supervisory authorities, including the AMCM, are competent within their respective area of supervision in relation to administrative infractions of the regulations. The Chief Executive has the final decision – based on proposals by the AMCM – on the issue of a penalty. The AMCM also has the ability to issue sanctions under the Macau Insurance Ordinance and the Insurance Agents and Brokers Ordinance.

Sanctions for legal persons, directors and senior management

618. Sanctions are available in relation to legal persons that are financial institutions, and also to their directors and senior management.

619. The AMCM is able to impose disciplinary and financial sanctions, and revoke an authorisation.

Market entry – R.23

620. The Financial System Act lays down the basic framework for preventing criminals or their associates from holding or being the beneficial owner of a significant or controlling interest, or holding a management function in a financial institution. Article 16 provides that only credit institutions which have been duly constituted and authorised under the terms of the Act or under other legislation may operate a business involved in accepting deposits and other repayable funds from the public.

621. Article 22 specifies the procedures for application for an incorporated credit institution. The procedures include the provision to the AMCM of personal and professional identification of the founding shareholders, the percentage of their respective holdings in the share capital and a statement confirming the adequacy of the shareholding structure with regard to the stability of the institution. If there are shareholders who are corporate bodies with a holding equal to or greater than five percent of the share capital of the institution to be incorporated, the following information must also be provided:

- memorandum and articles of association;
- annual report and accounts in respect of the preceding three years;
- names and personal details of the members of the board of directors;
- distribution of the share capital and a list containing the names of shareholders who hold over five percent of the respective share capital;
- names of other companies in whose capital they have qualifying holdings and the structure of the respective group.

622. The AMCM may require any further information it deems necessary to be provided to it to allow a full analysis of the application. The decision on the application must, inter alia, take into account the suitability of the qualifying shareholders.

623. In respect of the establishment of branches, no.1b) of article 24 of the Financial System Act requires the AMCM to be provided with a document issued by the supervisory authority in the home country proving that the institution is legally constituted and authorised to set up the branch, together with the identity of the managers and the management mandate. Article 30 states that the managers of representative offices must be resident in Macao, China. Article 40 provides that no individual or corporate body may acquire directly or indirectly, a qualifying holding of a credit institution incorporated in Macao, China or increase the same by over five percent of the share capital or voting rights without prior approval from the AMCM, unless by its nature this should prove to be impossible. In such cases the AMCM must be informed within 30 days. Article 41 gives the AMCM power to oppose the acquisition of or increase in the qualifying holding if it is not satisfied that the shareholders can ensure the sound and prudent management of the institution. Grounds for opposition are specified in the

article and include doubts about the legitimacy of the source of funds to be applied in acquiring the holding, or doubt about the true identity of the owner of those funds. Article 42 adds that voting rights may not be exercised where the AMCM has not given its approval to the acquisition of or increase in a qualifying holding. Article 47 states that the board of directors must be suitable. At least two members of the board must be resident in Macao, sufficiently able to carry out their duties and have full powers to effectively direct the institution. Branches of credit institutions must be managed by at least two persons resident in Macao, China who are suitable, have adequate professional experience and have powers to effectively direct the institution. Article 48 specifies the criteria for the suitability of managers of managers of branches, with article 49 specifying that directors of incorporated institutions and managers of branches must register with the AMCM prior to commencing their duties and the procedure for registration. Failure to comply with the registration requirement can lead to the revocation of the institution's authorisation.

624. Articles 116 to 120 of the Financial System Act deal specifically with financial intermediaries and financial institutions other than credit institutions. Article 118 specifies that no person shall conduct a business as a financial intermediary or any other financial institution unless it is authorised by the Governor, on advice through AMCM, by an order which shall define the scope of business. Financial intermediaries and other non-credit financial institutions must not be incorporated with a share capital of less than the minimum specified by special law or in the order granting the authorisation. As required by no.1 of article 119 any entity wishing to conduct financial intermediation or other non-credit financial authority must provide the AMCM with documents, which include:

- An explanation of the economic and financial reasons behind the entity's intent to operate in Macao;
- Specification of the activity which the entity intends to conduct with a feasibility study on the investment plans with specific information concerning the capital, technical and human resources to be used;
- Description of the type of company, indicating its administrative and accounting structure;
- Full identification of the applicants as well as the partners or shareholders, their respective holdings and, in the case of a corporate body, a copy of the existing or drafted memorandum and articles of association.
- Full identification of the persons in charge of the management of the company and their respective professional curricula;
- Any other additional information which AMCM may consider necessary to process the application.

625. In deciding the application, the AMCM must take into account objectives of the applicant; the existence of sufficient financial resources and an adequate legal form; the reputation and the suitability of the applicant and of the persons who hold qualifying holdings in the case of a corporate body.

626. Article 17 and 18 of the Offshore Sector Law contain specific requirements for the establishment of offshore entities. These include receipt by the AMCM of previous notification in the state or territory of origin, identifying those responsible for the Macanese institution and that the transactions to be carried out fall within the terms of

the licence granted to the institution in the state or territory of origin. Article 21 states that the board of directors, administrative board and management of offshore financial institutions must be suitable and be sufficiently able and experienced to carry out their duties.

627. Other decree laws supplement but do not replace the Financial System Act, namely the ones for Finance Companies, Venture Capital, Management of Assets on Behalf of Third Parties and Investment Funds Management Companies.

628. Article 6 of Decree Law No. 15/83/M on the Finance Companies sets out the authorisation procedures for finance companies. The application must be accompanied by details of the founder shareholders and their respective holdings in the share capital, together with any other information the AMCM considers necessary. Article 9 goes on to add registration requirements – the register will include the up-to-date list of shareholders and their respective holdings. Pursuant to article 29 of Decree-Law No. 15/83/M for Finance Companies, the provisions of the Financial Systems Act (except for Part III of the Act for financial intermediaries and other financial institutions) are applicable to finance companies. This means that the AMCM can apply fit and proper tests for the directors and senior management of finance companies.

629. Article 9 of Decree-Law No. 54/95/M on Venture Capital Companies specifies that holders of qualifying shareholdings in such companies are subject to the fit and proper requirements of the Financial System Act. Article 82 of Decree-Law No.83/99/M on Investment Funds/Fund Management Companies has a similar provision in respect of the qualifying shareholders and management of investment fund management companies.

630. The Macau Insurance Ordinance stipulates the conditions and criteria for granting the authorisation of insurance companies. For insurers with their head office in Macao, article 19 states that, in appraising an application for authorisation, the AMCM must consider the integrity of the founder members and the integrity, qualifications and professional experience of the persons who effectively manage the insurer. Integrity and experience are defined in articles 20 and 21. The authorisation procedure in article 22 requires the AMCM to be provided with the personal and professional identification of the founder members, indicating their respective share in the capital, and a confirmation on the suitability of the shareholding structure on the stability of the insurer. Where the founder members are corporate entities with a qualifying shareholding, the application should also include the composition of the share capital, a list of shareholders with 10 percent or more of the share capital, a list of other companies in whose capital the corporate entities hold a qualifying holding and the structure of the respective group. Article 22 also required information on human resources to be provided to the AMCM and the AMCM can require any further information and documents it deems necessary to complete the application process. The fitness and propriety of directors and senior management is evaluated by the AMCM. Article 25 onwards of the Ordinance contains similar requirements as article 40 onwards of the Financial System Act (including the five percent threshold) on the acquisition or increase of qualifying shareholdings and the AMCM's ability to oppose such holdings.

631. For branches of overseas insurers, article 35 lays down minimum conditions for licensing. These include the effective establishment of the business as reflected, inter alia, by a sufficiency of human resources. Article 36 specifies that the management of

the branch shall be entrusted to a general representative whose moral and professional competence is acceptable to the AMCM, and who shall be conferred with the necessary powers to act on behalf of the insurer. Article 38 states the authorisation procedure for branches – the same information is required as for incorporated insurers in article 22, together with other elements. These elements include a certificate issued by the home territory supervisor declaring that the applicant is legally incorporated and organised and holds a licence to carry out insurance activity of a kind which the applicant intends to carry out in Macao, China.

632. Article 92 provides that, for any insurer, any alteration of the share capital, or any transfer of ownership, merger, amalgamation or any other form of transformation requires the prior approval of the AMCM.

633. Articles 3 and 4 of the Insurance Agents and Brokers Ordinance provide that persons undertaking insurance intermediary activity must be authorised.

634. Article 14 states that insurance agents applying for authorisation who are individuals must provide identification information to the AMCM. In relation to the authorisation of corporate bodies, identification details of all partners and their respective share capital, together with identification details of directors or managers, must be provided. For insurance agents with a head office overseas, the application must also contain a document issued by the relevant entity attesting that the applicant is legally formed and registered with the entity, together with a Record of No Criminal Conviction issued less than ninety days before the date of application in respect of the personal representative, or where its mandatory is a body corporate, in respect of the person in charge of such body corporate. Applicants who are individuals must also not have been sentenced or indicted for serious crimes such as fraud. For applicants with corporate personality none of the partners, directors, managers or the representatives in Macao, China must have been sentenced or indicted for serious crimes. For insurance agents with a head office overseas representation in Macao, China shall rest with an individual or corporate person considered to be fit and proper by the AMCM.

635. Article 15 applies the application procedures in article 14 to insurance salesmen, together with a declaration from the insurance company, the corporate insurance agent or the insurance broker, as the case may be, that the applicant is its employee and is free to carry on insurance intermediary business.

636. Article 24 specifies that the documentary requirements of article 14 also apply to insurance brokers. In the case of an insurance broker with a head office overseas, the application for authorisation must include a document of proof that it has been authorised as such in the territory of origin or registered with the association of insurance brokers, together with a Record of No Criminal Conviction as outlined above. Article 25 provides that brokers with overseas head offices must be authorised to act as an insurance broker in the overseas territory or be a member of an association of insurance brokers, and none of the partners, directors, managers or representatives in Macao, China must have been sentenced or indicted for serious crimes.

Ongoing supervision and monitoring – R.23 & 32

Recommendation 23

637. Financial institutions are regulated and supervised by the AMCM and are covered by AML/CFT Guidelines. The financial institutions are subject to authorisation and ongoing supervision under the Financial System Act. The Act enables the AMCM to undertake on-site and off-site supervision and apply sanctions in respect of financial institutions' activity, AML/CFT activity or otherwise. The AMCM has confirmed that its supervisory activity is applied in respect of AML/CFT activity in a manner similar to its supervision of other activity.

638. Insurers and insurance intermediaries are regulated by the AMCM and are covered by AML/CFT Guidelines. Insurers and insurance intermediaries are subject to authorisation and ongoing supervision under the Macau Insurance Ordinance and the Insurance Agents and Brokers Ordinance respectively. The Ordinance confers powers on the AMCM to perform on-site and off-site supervision and apply sanctions in respect of an insurance sector entity's activity, AML/CFT activity or otherwise. The AMCM has confirmed that its supervisory activity in respect of AML/CFT by, for example, the issue of AML/CFT Guidelines is applied in a similar manner to its supervision of other activity.

Recommendation 32

639. The number of on-sites conducted by the AMCM to banks and other financial institutions is contained above. The sanctions applied are referred to above. In 2006, there were almost one hundred cases of communications with overseas regulators in relation to common supervisory matters, in which some were related to AML/CFT. With reference to implementation, the Evaluation Team encourages the AMCM to routinely maintain the statistics required under the FATF standards so that they are reviewed periodically.

640. The AMCM has conducted no on-site inspections to the insurance sector, no sanctions have been applied in respect of AML/CFT breaches and there have been no formal requests for assistance relating to or including CFT. There are no statistics to be maintained but, with regard to implementation this nil response has not been reviewed periodically.

Guidelines – R.25 (Guidance for financial institutions other than on STRs)

641. Article 2 of Administrative Regulation No. 7/2006 states that the duties established in the Regulation fall under the responsibility of the AMCM for banks and other financial institutions and the insurance sector. As indicated elsewhere in this report not all of the issues covered under the relevant FATF Recommendations are covered in the guidelines. In May 2006 the AMCM issued a document on ML and FT typologies to financial institutions. In addition, typologies are contained in the Insurance Guidelines.

642. Article 17 of the Financial System Act provides that only credit institutions (defined in Article 5 as banks, the Post Office Savings Department, financial leasing companies and other companies legally classified as such) may operate a business involved in accepting deposits and other repayable funds from the public. The

designated operations are similar to the business carried out under FATF's definition of financial institutions, except that the insurance sector in Macao, China is covered by the Insurance Companies Ordinance. It appears, therefore, as though the Regulation and the Guidelines cover all financial institutions. However, the guidance does not cover all of the relevant areas of the FATF Recommendations – as outlined in part 3 of this report.

3.10.2 RECOMMENDATIONS AND COMMENTS

643. The supervisory and oversight system of the AMCM is very good – the only substantial point in respect of recommendations 17, 23, 25, 29, 30 and 32 are that the Insurance Supervision Department's program of AML/CFT on-site inspections to the insurance sector has yet to commence. In turn, this will require additional resources and put the department in a position where the effectiveness of the framework for sanctions for poor AML/CFT measures can be considered. The Insurance Supervision Department will also need to bear in mind that a comprehensive monitoring program for the whole insurance sector will require more than three additional staff. The Evaluation Team makes the following recommendations:

- the Insurance Supervision Department of the AMCM should commence an on-site inspection program for the insurance sector;
- the Banking Supervision and Insurance Supervision Departments of the AMCM should recruit additional staff;
- supervisory statistics should be maintained routinely and reviewed; and
- the Guidelines issued by the Banking Supervision and Insurance Supervision Departments should be extended to cover all of the issues under the relevant FATF Recommendations.

	Rating	Summary of factors relevant to s.3.10 underlying overall rating
R.17	LC	<ul style="list-style-type: none"> • The lack of sanctions in respect of the insurance sector means effectiveness cannot be demonstrated.
R.23	LC	<ul style="list-style-type: none"> • The on-site inspection program to the insurance sector has not yet commenced.
R.25	LC	<ul style="list-style-type: none"> • Guidance (including typologies) issued to financial institutions and the insurance sector does not cover all of the issues in the relevant FATF Recommendations.
R.29	C	<ul style="list-style-type: none"> • This recommendation is fully observed
R.30	PC	<ul style="list-style-type: none"> • The Banking Supervision and Insurance Supervision Departments of the AMCM need additional staff resources.
R.32	PC	<ul style="list-style-type: none"> • Routine maintenance and implementation (eg periodic review) needs to take place in respect of supervisory AML/CFT statistics.

3.11 MONEY OR VALUE TRANSFER SERVICES (SR.VI)

3.11.1 DESCRIPTION AND ANALYSIS

644. Other than registered financial institutions, there are two authorized money/cash remitters in Macao, China. In addition, there is a cooperation between a global money remitter and the Post Office Savings Department (a fully licensed credit institution subject to the AMCM's regulation) to provide remittance services in Macau.

645. The Macao, China government registers remittance companies through the AMCM, which has the ultimate authority regarding the oversight and supervision of this sector. The registration of these entities requires that private operators place a MOP 1,000,000 (US\$125,000) bond, and there is a 3-month probationary period for such registration.

646. The primary client base of the remittance houses appears to be the Filipino expatriate population in Macao, who use such services primarily for the sending of earnings to families in the Philippines. Most of the Filipino customers appear to be employed by casinos or in other domestic capacities in Macao, China. In either case remittance companies are able to determine and record the source and origin of funds being remitted by this primary consumer base, but through the provision of estimates in annual income of each customer, and an assessment of the nature of their business/employment. The volume of incoming remittances into Macao, China appears to be fairly low.

647. Remittance companies in Macao, China are limited in their daily volume of transactions: up to MOP 20,000 (US\$2,500) per customer per day. For any individual transaction above MOP 8,000 (US\$1,000) remittance houses require specific client/remitter information (ID, complete address in Macao, China and telephone number), and these implementation of these requirements are overseen by the AMCM. The Banking Supervision Department of the AMCM is the department responsible for registering, regulating and inspecting remittance companies within Macao, China. The Department maintains a list of the names and addresses of registered remittance operators, and is responsible for ensuring compliance with registration requirements

648. The Banking Supervision Department conducted on-site inspections to the two money/cash remitters in 2006 (and, before that, in 2003) but implementation of the new 2006 AML/CFT framework has yet to be tested. In light of its history of on-site inspections, it is clear that the AMCM intends to monitor compliance by money remitters with the new framework. Indeed, the Macao, China authorities have advised that the AMCM carried out on-site inspections to the two remittance companies between the assessment and the end of 2006.

649. Decree-Law No. 15/97/M gives the AMCM regulatory oversight of "companies of express delivery of cash." Under this Law, the AMCM is authorized to limit movements of money and obligates remitters to "record all operations."

650. Chapter 1, Article 2 of Administrative Regulation No. 7/2006 identifies the AMCM as explicitly responsible for entities under its supervision, which includes money remitters. Chapter 2 clearly describes the obligations with respect to due diligence, reporting, record keeping and cooperation for all registered entities under supervision by the AMCM.

651. According to Law No. 2/2006 "Prevention and suppression of the crime of money laundering", Chapter III, Article 6, remittance companies are specifically obligated

to comply with Article 7 of the Law as entities supervised by the AMCM and therefore face the obligations as all registered entities with the AMCM, including those related to AML/CFT.

652. Article 7 of the same law indicates that remitters are obligated to identify parties to contracts whenever the operations “might provide indicia of the commission” of ML or “involve substantial amounts”. Remitters are also obligated to refuse operations if certain information can not be obtained, to keep records for a reasonable period of time, to communicate the operations to competent authorities and to collaborate with all authorities on their obligations.

653. The AMCM has issued two guidelines to its regulated entities (which supplement previous guidelines), including money remitters:

1. Anti-money Laundering (AML) and combating the Financing of Terrorism (CFT) Guideline for Financial Institutions; and
2. Anti-money Laundering (AML) and combating the Financing of Terrorism (CFT) Guideline on Large Cash Transactions.

654. These guidelines contain the basic foundations for Customer Due Diligence (CDD) criteria set forth in the FATF Recommendations – the assessments team’s comments on these guidelines are contained elsewhere in this report. Additionally, specific guidance for money changers and cash remittance companies are provided for the reporting of Large Cash Transactions.

655. The AMCM advised that senior officers of the remitters however have participated in AML/CFT seminars it has organised, including the identification of suspicious transactions. It would be beneficial for specific examples of suspicious transactions relating to remittance houses to be added to the guidelines

656. The AMCM regulates MVT service operators and is responsible for ensuring compliance with the FATF 40 + 9 Recommendations. The Banking Supervision Department is responsible for the issuance of specific guidelines, and for conducting both off-site surveillance and on-site inspections. Inspection manuals have been updated to reflect new AML/CFT requirements and the AMCM is charged with monitoring the implementation of these requirements.

657. Due to limited market size, the AMCM advises that Macao, China based MVT service operators do not have any agents within Macao, China. As such, each private operator manages a single point of business, with no other third party-led operations.

658. According to Article 11 of Decree law No. 15/97/M, MVT service operators must seek the approval of the AMCM prior to opening any office. The Macao, China authorities have confirmed that under these legal provisions, any MVT service operators should obtain prior approval from AMCM to run MVT operations in Macao, whether by the appointment of agents or otherwise. It is also forbidden for service operators to open branches or representative offices outside Macao, China. Also, according to Article 18 of the same Law, MVT service operators must maintain a file with all contracted parties outside of Macao, China as well as with relevant authorities.

659. According to Article 22 of Decree law No. 15/97/M, sanctions (“offences”) are covered under Title IV of the Financial System Act of Macao, China.

660. Articles 122 to 138 of Decree Law No. 32/93/M, the new Financial System Act, identify unauthorized /prohibited activities, describe sanctions, and describe the process for administering sanctions. Example sanctions include:

- Monetary penalties/Fines;
- Suspension of voting rights of any shareholder for a period of one to five years; and
- Prohibition from holding a board or management position for six months to five years.

661. Article 128 establishes monetary penalties/fines between MOP10,000 (US\$1,250) and MOP5,000,000 (US\$625,000) depending.

662. The AMCM has confirmed that no serious deficiencies had been detected during its on-site inspections to remittance companies. Consequently there has been no need to apply sanctions in respect of poor AML/CFT measures. Section 3.10.1 of this report deals with the AMCM's powers of sanction and its use of such powers against regulated institutions.

663. Guidelines have been issued by the AMCM, although there are some gaps in those guidelines. There are systems in place for monitoring MVT service operators, for on-site inspections of the new framework and the application of sanctions. Although sanctions have not been applied against money remitters to date, there are only two authorized remitters in business in Macao, China and an agency operated through the Post Office. The Evaluation Team met representatives of both firms – both firms are small and were aware of their AML/CFT responsibilities.

664. The Judiciary Police (PJ) were historically tasked with identifying informal/illegal financial institutions and MVT service operators. In 2006, the PJ identified over 20 operations of suspected criminals involved in unauthorized financial activities such as foreign exchange trading or the secret movement of illegal funds. These unauthorized activities were part of activities where criminals and entities were subject to criminal proceedings and sanctions in the Criminal Code. In addition, the AMCM has also been engaged in taking measures to identify suspicious entities engaging in unauthorized financial activities, such as maintenance of a database to collect information from other government agencies such as the Macao Commercial Registry, the Judiciary Police, the Public Prosecution Office, the Financial Department, the Consumer Council information from public complaints, information from other overseas regulators and supervisory authorities. On-site inspections were taken jointly with the Judiciary Police to eliminate the unauthorized financial activities referred to above. According to its records, there were 8 cases of infringement initiated by the AMCM in 2002. These cases involved unauthorized money changing activities and the respective entities were fined and closed down. Similar actions were taken against 8 cases in 2003, 4 cases in 2004, 4 cases in 2005 and 3 cases in 2006. All these cases involved unauthorized financial activities such as money changing or forex trading. None of the cases involved casinos. The AMCM has advised that it consulted with the remittance firms before the issue of the new guidelines and provided training/explanations on the guidelines.

3.11.2 RECOMMENDATIONS AND COMMENTS

665. Macao, China has developed a robust regulatory regime that includes registration requirements and the application of AML/CFT provisions to the money service business sector. Although the AMCM evaluated the effectiveness of the pre-November 2006 AML/CFT framework, implementation and effectiveness of the new framework cannot be assessed by the Evaluation Team at the time of the assessment given the short period of time since its inception.

666. The authorities should consider criminalizing informal banking/informal MVTs so that the Judiciary Police can investigate and recommend prosecution and the appropriate regulatory authorities can enforce against non-compliance with AML/CFT obligations

667. The AMCM should provide focussed examples of ML/FT risk to remittance houses (including electronic transfer providers) and carry out the awareness raising campaign to remittance houses planned for 2007 to seek to ensure that MVT personnel can identify suspicious transactions.

668. The AMCM should continue to work with the Judiciary Police to develop a strategy to identify and take enforcement action against unregistered MVTs.

3.11.3 COMPLIANCE WITH SPECIAL RECOMMENDATION VI

	Rating	Summary of factors underlying rating
SR.VI	LC	<ul style="list-style-type: none">• Implementation of the November 2006 AML/CFT framework cannot be judged given the short period of time since its implementation.• The Guidelines lack focused examples of suspicion in the context of remitters.

4. PREVENTIVE MEASURES – DESIGNATED NON-FINANCIAL BUSINESSES AND PROFESSIONS

4.1 CUSTOMER DUE DILIGENCE AND RECORD-KEEPING (R.12)

4.1.1 DESCRIPTION AND ANALYSIS

669. The DNFBP in Macao, China is dominated by the casino and gaming sector. Given the nature of this activity, the casino and gaming sector is key in terms of mitigating ML/FT risk. This factor has caused the assessors to attribute significant weight to this sector when considering a rating for recommendation 12.

670. A number of instructions, guidelines or preventive measures have been issued in respect of DNFBP. These documents are:

- instructions issued by the Gaming Inspection and Coordination Bureau (DICJ) in 2006 specifically recording of transactions and patrons involved in gaming transactions (these regulations exist in addition to those that apply with respect to the admission and the admission control of casinos and gaming rooms);
- instructions in respect of general procedures to be adopted with a view to preventing ML crimes and FT issued by the Macao Economic Services in respect of trust and company service providers. These instructions are described as the TSP/CSP Instructions in this report;
- instructions in respect of general procedures to be adopted with a view to preventing ML crimes and FT issued by the Macao Economic Services in respect of realty activities or the purchase and resale of real estate property. These instructions are described as the Real Estate Instructions in this report;
- instructions in respect of general procedures to be adopted with a view to preventing ML crimes and FT issued by the Macao Economic Services in respect of traders in goods of high unit value. These instructions are described as Traders Instructions in this report;
- guidelines on ML and the FT issued by the Legal Affairs Bureau in respect of notaries and registrars. These Guidelines are described as the Notaries/Registrars Guidelines in this report;
- preventive measures on anti-ML and combating the FT issued by the Macao Trade and Investment Promotion Institute in respect of offshore business activities for commercial offshore services institutions and auxiliary offshore services institutions. These preventive measures are described as the Offshore Preventive Measures in this report;
- instructions regarding the procedures to be adopted in order to comply with duties regarding the prevention of ML and the FT issued by the Macao Lawyers Association in respect of lawyers and trainee lawyers. These instructions are described as the Lawyers Instructions in this report;
- the anti-ML guideline issued by the Independent Commission for the Exercise of the Disciplinary Power over solicitors. in respect of solicitors. This guideline is described as the Solicitors Guideline in this report; and

- the instructions for prevention and suppression of ML and FT for auditors, accountants and tax consultants issued by the Finance Services Bureau, through the Committee for the Registry of Auditors and Accountants. These instructions are described as the Accountants Instructions in this report.

671. The analysis of AML/CFT measures below is divided into two categories, first the measures for casinos and, second, consideration of the other DNFBP.

Background of the gaming industry

672. Detailed background and statistics on the gaming industry are included at section 1.3 of this report and are not repeated here.

673. In 2005, the three gaming concessionaries - SJM, Venetian and Galaxy generated a total MOP\$44.72 billion in gross revenue, an increase of 11% over the same period of 2004. This was a new record for revenues across the sector. Until August 2006, the year-to-date total gross revenue for these three casino concessionaries was MOP\$34.1 billion. Gross revenue growth has represented an explosive trend in the past five years, averaging 23% annually. Based on future projections and expected entrants into the market in 2006, it is expected that revenues will approach close to MOP\$50 billion. Tax revenue earned from gaming activities in Macao, China in 2005 was MOP\$17.2 billion.

Casinos/Gaming Sector

674. The AML/CFT preventative measures that apply more generally to all designated non-financial businesses and professions are the following: Laws No. 2/2006 and 3/2006, and Administrative Regulation No. 7/2006. Specifically, those sectors covered by these provisions include auditors, accountants, tax advisors, lawyers, solicitors, notary-public, registrars, casinos, offshore companies, pawn shops, dealers of precious metals, stones and vehicles and company services providers. For the purposes of this section of the report, those laws, regulations and guidance notes that apply specifically to the casino/gaming sector itself are discussed. Supervisory authorities governed by these Laws are obligated, as a matter of course to provide individual sector specific guidance on the application of these provisions as well as are responsible for the oversight and compliance with the relevant obligations. Furthermore, the supervisory authority in this case, thus carries sanctions powers in the event of non-compliance with the appropriate regulations or for other enforcement-related or regulatory reasons.

675. The Gaming Inspection and Coordination Bureau (DICJ) is the lead supervisory agency for the gaming/casino sector, and thus also has responsibilities with respect to oversight and measure of compliance with AML/CFT obligations. Specifically, according to Article 6 of Law 2/2006, those subject to the supervision by the DICJ are covered under the rules and obligations to prevent ML and FT offences. They include entities that operate games of chance (concessionaries and sub-concessionaries), lotteries, mutual bets and promoters of games of chance in casinos. Other relevant legislation and guidelines includes Law 16/2001 which provides the legal framework on games of chance in casinos; Administrative Regulation No. 26/2001 that regulates the suitability and financial capacity of the concessionaries and sub-concessionaries and significant shareholders in these entities; Administrative Regulation No. 6/2002 on the licensing of junket promoters; the DICJ Instruction on AML/CFT; and the Guideline on Minimum

Internal Control Requirements. In addition, the DICJ requires operators to submit their internal procedures on AML/CFT to the DICJ for authorisation.

676. Regarding the specific preventive measures stipulated under Recommendation 12, in particular CDD, the following obligations apply per Instruction issued in 2006 specifically recording of transactions and patrons involved in those transactions (these regulations exist in addition to those that apply with respect to the admission and the admission control of casinos and gaming rooms):

- Any gaming transactions, acquisitions and redemptions of chips exceeding MOP 500,000.00 (approximately USD 62,500);
- Any individual gaming transaction, acquisition or redemption of chips that may fall under the above threshold but in aggregate over a 24 hour period meets or exceeds MOP 500,000 (approximately USD 62,500);
- Any gaming or wagering credit transactions for the purpose of games of fortune that meets or exceeds the above threshold;
- Any of the above transactions that may fall below the threshold, but by their nature, complexity and value involved shows any unusual signs of ML activity

677. The thresholds referred to above are higher than the specified threshold for casinos in FATF of USD3,000. The authorities consider that the FATF threshold is too low and that the cultural background should be taken into account when assessing the threshold for casinos in Macao, China. However, the Evaluation Team was not provided with a written analysis of the potential effect of the thresholds or of how the cultural background might apply to the thresholds. The authorities also state that the MOP500,000 covers more activities than the FATF requires to be covered. With the exception of the final criterion above, all identification and retention of records for this information is to be kept in accordance with “large amount transaction report” requirements. Should the final criterion be met, such information is to be retained in the “suspicious transaction report” format as provided by the DICJ. The comments on Recommendation 5 and Administrative Regulation No 7/2006 in part 3 of this report apply also to casinos.

678. The specific information required for receipt and retention include: name or names used, permanent residential address(es), date and place of birth, profession or business nature, source of funds, and the signature of the patron. The verification of this information must be obtained by comparing to original documents of identity and those issued by official authorities. Such documents include official identity cards, passports or other such identifier documentation. Where possible, the presence of patrons to gaming centres should be verified by documents bearing photographs. All documents must be preserved for five years. The comments on Recommendation 10 and Administrative Regulations No. 7/2006 in section 3 of this report apply also to casinos.

679. The DICJ instruction also stipulates that specific training be conducted for employees on a regular basis regarding the rules and procedures of identification and recording of all game transactions, chip acquisitions and redemptions, and the process for obtaining and reporting such information. Appendix II to the Instruction provides examples of suspicious transactions.

680. The obligation for gaming operators to conduct ongoing due diligence or monitoring is contained in the Guideline on Internal Control Requirements. The DICJ Instruction does not require a risk-based assessment to be undertaken of customers of gaming operations or of customers partaking of such activity except for PEPs. Macao, China government officials are prohibited from engaging in gaming activities directly or indirectly; their entry and access to concessionaries is also prohibited in Macao, China. The Institution states that the identification of PEPs must be conducted according to the additional due diligence measures. Transactions involving PEPs must be continuously monitored and the source of funds of such transactions verified. There also exists no requirement for enhanced ongoing monitoring of PEPs or other potentially high risk customers as determined through risk assessments. The DICJ advised that a risk based approach is required of operators through its analysis of their AML/CFT procedures of operators.

681. Regarding technological developments, and non-face to face operations, there are no specific regulations or guidance materials provided to address these issues more broadly. There also do not appear to be any explicit policies or procedures in the event non-face to face activity is undertaken or attempted, through front individuals, third parties, junket operators or others operating under the names of absent beneficiaries. Complex, unusual, large transactions, or unusual patterns of transactions that have no apparent or visible economic or lawful purpose are covered in part. Entities subject to the Instruction should record the following transactions and identify the participants involved; gambling or wagering, based on its nature, complexity, the amount involved or in a non-habitual manner indicates any activities of ML or FT; gaming credit, based on its nature, complexity, the amount involved or in a non-habitual manner indicates any activities of ML or FT; games promotion business, based on its complexity, the amount involved or in a non-habitual manner indicates any activities of ML or FT. The examples in Appendix II to the Instruction would include such transactions. Such transactions must also be recorded in a STR and reported to the GIF. Operators must also take note of lists of suspected terrorists named in UN Security Council Resolutions and published in the Official Gazette

682. In addition, Administrative Regulation No. 7/2006 regarding AML/CFT procedures for all DNFBPs requires that all assistance, especially the disclosure of information and the delivery of documents, shall be provided to, as and when requested by, the competent authorities for the prevention of ML and FT. It is unclear between the provisions in this rule and those stipulated by the DICJ, whether it is only in the event of suspicion of ML or FT or after meeting established thresholds that the aforementioned documentation should be made available to the competent authorities. In this event, it is clear that the Financial Intelligence Office, Judiciary Police, and other enforcement may have access to such information in the context of voluntary reporting or per request, but it remains unclear whether in the context of general supervision by the DICJ that such information can be made available in a timely fashion per the FATF recommendations. The DICJ has advised that the GIF will, from June 2007 have access to the reports of large amount transactions which must be made by operators to the DICJ. This will enable GIF to analyse the reports in the context of other information in its possession.

683. The requirement of Article 8 of Administrative Regulation 7/2006 applies to the casino sector. As considered in section 3.10 of this report this power is interpreted to provide power to conduct AML/CFT on-site inspections. Article 33 of Law No 16/2001 provides explicit powers of inspection in relation to applicable laws and regulations.

Article 12 of Administrative Rule No 6/2002 requires junket promoters to cooperate with the DICJ. Hence, the general rules and regulations regarding the operations of casinos in Macao, China stipulate that all concessionaries and sub-concessionaries must allow for the inspection of gaming operations, for the purposes of testing of compliance for AML/CFT measures. While the specific duties and obligations regarding gaming inspection have been undertaken for audit and other purposes (see supervision and monitoring), implementation of the Instruction could not be demonstrated at the time of the assessment as it came into force shortly before the assessment. Regular meetings are to be held with operators. In addition, the DICJ intends to introduce a manual for its on-site and its off-site supervision of AML/CFT.

684. Junket operators and other game promoters also fall under the regulatory and supervisory jurisdiction of the DICJ. Concessionaries themselves, however, have the responsibility to maintain the list of junket operators or promoters through/with whom they operate, and are obligated to submit such names to the DICJ on an annual basis. Macao, China annually determines the maximum number of game promoters authorized to operate with each concessionaire. There do not appear to be regulations addressing the engagement of gaming activity through junkets or those associated with game promotions. The junket promoters are agents between the operators and the patrons attracted by the promoters – these patrons have fringe benefits when compared with other customers of an operator. Junket promoters are not permitted to engage in gaming – this is reserved for the operators. The operation of a junket is a licensed activity under Administrative Regulation 6/2002. The existence of a junket promoter does not absolve the operator from its AML/CFT responsibilities for the patrons introduced by the operator. However, the DICJ Instruction would benefit from covering junkets.

685. With regard to potentially corrupt junket promoters, Macao, China law criminalizes corruption of all public servants. In addition, according to Article 336 of the Penal Code of Macao, holders of management, supervision or other positions and employees of public enterprises, of enterprises of public capital or with a significant public share, or of concessionaires of public utilities or property or of companies running a business in which is a monopoly, as well as staff of credit institutions' are equivalent to public servants. The Macao, China authorities have confirmed that if junket operators are paid to launder money, this is considered to be a ML offence under Law No. 2/2006. In addition, if such activities involve passive corruption of public servants or staff of private sectors mentioned above, the authorities have stated that the junket promoter will be charged with both the offences of active corruption and money laundering.

686. The DICJ has access to all information held by gaming operators except information and documentation that is part of a criminal case under investigation by the law enforcement authorities – this latter information is subject to the secrecy rules of the Criminal Procedure Code. The DICJ has access to information and documentation of the concessionaires and sub-concessionaires on the same basis. The limit between what is or is not under criminal investigation is defined by the criminal case and by the Criminal Procedure Code.

687. The disclosure of the information by the DICJ to the law enforcement agencies is only possible under the rules of the Criminal Procedure Code. The authorities indicate that all the supervisory authorities are empowered to carry out supervision on all the entities concerned and therefore they can have access to all information including the

suspicious transactions reported but only for “supervision purpose”. It is mandatory for DICJ staff, as for all civil servants to give notice to law enforcement of all crimes that they have knowledge on their duties according to the Criminal Procedure Code (cfr.225.). In addition, according to Article no. 2, paragraph no. 3 of Administrative Regulation 7/2006, when supervisory authorities detect suspicious transactions during the course of their supervision work, they should report directly to the Public Prosecutions Office. With the setting up of the GIF, it is intended to establish a feedback system on reported suspicious transactions – this will include feedback to supervisory bodies for their follow-up.

Other DNFBP

Anonymous accounts/fictitious names

688. Articles 3 and 4 of Regulation 7/2006 apply to the other DNFBP. The Regulation contains the basic principle of identifying customers and, therefore, the other DNFBP are not allowed to keep anonymous accounts or accounts in fictitious names.

When CDD is required

689. Articles 3 and 4 of Regulation 7/2006 provide a duty to identify customers where transactions (a) might indicate the commission of the crimes of ML or the FT, due to, inter alia, their nature, complexity, amounts involved, volume or non-habitual occurrence, relative to the activity of the customer; or (b) the operations exceed, either taken together or individually the amount established by the relevant supervisory body. Under article 5 DNFBP must refuse to perform any operation in the absence of the elements necessary for compliance with the duties prescribed in articles 3 and 4.

690. Part III of the TSP/CSP Instructions provides that TSPs and CSPs must identify clients, as well as the relevant operations, when suspicion arises of any facts that might point to a crime of ML or the FT. Part III of the Real Estate Instructions and Part III of the Traders Instructions include an identical provision on suspicion but the duty to identify clients also arises whenever the amount of the transaction equals or is in excess of MOP 500,000 or MOP 100,000 respectively. Part III of the Notaries/Registrars Guidelines applies the same identification requirements regarding suspicion and a threshold of whenever the value of the operations, isolated or jointly, exceeds MOP 500,000. Section 3.1 of the Offshore Preventive Measures also applies the same identification requirements regarding suspicion, and also in respect of individual business activity with cash settlement up to MOP 20,000, or an aggregate amount of business activities with cash settlement up to MOP 250,000, or an aggregate amount of one or more business activities with non-cash settlement of up to MOP 500,000. Article 4 of the Lawyers Instructions has the same identification requirements regarding suspicion, and whenever the combined or individual value of the operations exceeds MOP 1,000,000. Part IV of the Solicitors Guideline states that if there are signs showing that the crime of ML or FT has been committed in the activities covered by the Guideline; or the amount of money exceeds MOP500,000.00, or the equivalent value in foreign currency, at one time or by many times, in respect of buying and selling immoveable property; financing for establishing, operating or managing a company; establishing, operating or managing a corporate body or an entity without a legal personality, or a trading commercial entity; or the amount of money exceeds MOP50,000.00, or the equivalent value in foreign currency, at one time or by many times, in respect of managing a client's money; marketable securities or other assets; managing a bank

account, saving account or marketable securities account, a registration must be recorded appropriately. Paragraph 3 of the Accountants Instructions states that when auditors, accountants and tax consultants, in exercising the functions of their profession, engage or assist in the operations specified in the bullet points below or have knowledge that such operations exist, they should fulfil the identification requirements where the amount involved in a single operation or in a series of operations exceeds the following amounts:

- buying and selling real property – MOP 500,000;
- management of client funds, securities or other assets – MOP 80,000;
- management of bank, savings or securities accounts – MOP 80,000;
- organisation of contributions necessary for the creation, operation or management of companies – MOP 80,000; and
- the creation, operation or management of legal persons or entities without legal personality, and buying and selling of enterprises – MOP 80,000.

691. There is no requirement in the TSP/CSP Instructions other than the trigger of suspicion for undertaking CDD. The authorities suggested that this is because TSP/CSP business involves services rather than goods and that the TSP/CSP has a duty to undertake CDD when they are suspicious. The Evaluation Team remains of the view that CDD for occasional transactions above the applicable designated threshold should be covered in the TSP/CSP Instructions as occasional transactions may take place such as the formation of a company. In the other Instructions, the Preventive Measures and the Guidelines there appears to be no written reasoning as to why the amounts for occasional transactions before CDD is undertaken are over the equivalent of USD/€15,000. The value of real estate in Macao, China was referred to orally as the reason for the MOP 50,000 threshold in the Real Estate Instructions. The Instructions, Preventive Measures or Guidelines do not address undertaking CDD when the DNFBP has doubts about the veracity or adequacy of previously obtained customer identification data.

Required CDD measures

692. Articles 3 and 4 of Regulation 7/2006 provide a legal basis for identifying customers. These articles provide that an identity document shall be demanded when the operation might indicate the commission of the crimes of ML or the FT, or when the amounts involved exceed the thresholds established by the supervisory authorities. The duty to identify extends to representatives of the customer. Written information concerning the operation regarding, inter alia, its nature, object, amount and the methods of payment employed must also be recorded.

693. Lawyers must follow the Instructions when they act with regard to, or intervene, in the following operations in a professional capacity:

- purchase and sale of realty;
- management of funds, securities and other assets belonging to clients;
- management of bank accounts, saving accounts or securities accounts;
- organisation of contributions with a view to the formation, operation or management of companies;

- formation, operation or management of juristic persons or entities without a corporate personality; or
- the transfer of all or part of commercial undertakings.

694. Part III of the Solicitors Guidelines are applicable to the activities and acts involved in:

- buying and selling immovable property;
- managing a client's money, marketable securities or other assets;
- managing a bank account, saving account or marketable securities account;
- financing for establishing, operating or managing a company;
- establishing, operating or managing a corporate body or an entity without a legal personality, or a trading commercial entity.

695. Part III of the TSP/CSP Instructions states that clients must be identified. Identification includes:

- in the case of natural persons, a valid identification document with a photograph; the clients' full name, sex, nationality, permanent address, date and place of birth; the clients' representative or proxy; and the date and place of issue of the identification document;
- in the case of a legal person, the name of the company, head office and registration number of the business in question;
- identification and full details on the operation carried out;
- date of the operation.

696. Part III of the Real Estate Instructions states that identification includes:

- in the case of natural persons, a valid identification document with a photograph; the clients' full name, sex, nationality, permanent address, date and place of birth; the clients' representative or proxy; and the date and place of issue of the identification document;
- in the case of a legal person, the name of the company, head office and registration number of the business in question;
- full identification of the property;
- type of transaction (purchase, sale, transfer);
- total value of the transaction;
- means of payment used (cash, cheque, credit card, loan, etc.);
- date of transaction.

The duty of identification in Part III of the Real Estate Instructions also relates to transactions carried out by representatives or proxies.

697. Part III of the Traders Instructions states that identification includes:

- in the case of natural persons, a valid identification document with a photograph; the clients' full name, sex, nationality, permanent address, date and place of birth; the clients' representative or proxy; and the date and place of issue of the identification document;

- in the case of a legal person, the name of the company, head office and registration number of the business in question;
- detailed description of the goods that were the object of the transaction;
- value of the transaction;
- means of payment used (cash, cheque, credit card, loan, etc.);
- date of transaction.

The duty of identification in the Traders Instructions also relates to transactions carried out by representatives or proxies.

698. Part IV of the Notaries/Registrars Guidelines require registration to include:

- reference of the notary or registration act;
- date of the notary or registration act;
- identification of the contracting parties, their civil or legal representatives (including the name, type and number of the identification document); the identification document of the contracting parties, and their civil and legal representatives, which must contain a photograph and be personally verified;
- identification of the legal transaction subject to the notary or legal act, namely its object (identification of the property or legal person), amount (price, company capital) and methods of payment employed (cheque, bank transfer, bank loan, cash in patacas or in foreign currency, etc.);
- whenever possible, any other elements that allow a better identification of the contracting parties, their civil and legal representatives in the notary or registration act (including nationality, address, date and place of birth, profession, employer or business) and of the legal transaction carried through by them (including the origin of funds).

699. For the purpose of knowing if a legal transaction exceeds, jointly with others, MOP 500,000,000, account should be taken of other notary and registration acts carried out by the same contracting party, or civil or legal representative, even if they have been made through different parties, or with different civil or legal representatives, within the 30 days prior to the date of the notary or registration act. When the identification of the contracting parties is obtained by declaration of witnesses, the witnesses' identification must also be obtained, and the witnesses must provide the relevant identification of the contracting parties. In such cases, as well as in the cases where the identification of the contracting parties, their civil or legal representatives, results from the personal knowledge, it is not mandatory to show the identification document.

700. Paragraph 3.1.3 of the Offshore Preventive Measures states that the client is not confined to the contractor (natural person or corporation) rendering services to commercial offshore services and auxiliary offshore service institutions, but also to the corresponding agent, trustee and beneficiary of the service provider – even with services rendered through intermediaries. Following the assessment, the Macao, China authorities advised the Evaluation Team that the words “beneficiary of the service provider” had been mistranslated and that the words should in fact read “beneficial owner”. Paragraph 3.1.3, together with Paragraph 3.1.1, mean that entities subject to the Offshore Preventive Measures should verify the identity of beneficial owners of legal persons. Paragraph 3.1.6 states that the identification of a natural person is made

through the verification of the identity card or any equivalent identification document, essential personnel particulars including full name; nationality; date and place of birth; details of identification documents such as identification number, date and place of issue; and complete residential address. For corporations, paragraph 3.1.7 affirms that identification is made through the verification of certificates or testimonials of which the name of the company is listed, nature of business, type of company, share capital and names of shareholders and directors. In addition, paragraph 3.1.8 provides that other supplementary measures should be applied in case of doubt. In particular, certification of related documents or presentation of additional documents should be requested. Paragraph 3.2.1 states that written information concerning the operation, regarding inter alia its nature, object, amount and the methods of payment employed must be recorded.

701. Under Part IV of the Solicitors Guidelines, the following information should be included when recording a registration: the basic legal acts of the activities covered by the Guidelines; the dates of the relevant activities; recognition of the identification of the party, his/her representatives and the trustee, including the name, type, number and issued date of the ID document. A photo must be shown on the ID document of the party, the representatives and the trustee, and it should be checked personally; identification of the information of the basic legal acts of the relevant activities, especially the object (identification of the information of the immovable property or the corporate body), amount of money (price and company capital), and the applied ways for payment (cheque, bank transfer, cash – in Macao, China currency or foreign currency); if possible, other identification information of the party, his/her representatives and the trustee in the relevant activities has to be registered for better identification, including the nationality, permanent address, date and place of birth, profession, the employer entity or the business run by himself, telephone and mobile phone number, and other information (including the source of capital) of the legal acts taken by those people.

702. Article 4 of the Lawyers Instructions provides that lawyers shall obtain and retain information regarding the identities of the parties and/or their representatives (including name, identification document type and number and the issue date thereof). The identification documents of the parties, or of their representatives, shall be produced to the lawyer and shall contain a photograph, unless they are personal acquaintances of the lawyer. The lawyer must, wherever possible, also obtain and record any other information which makes it possible to better identify the parties and/or their representatives (ie nationality, domicile, date and place of birth, occupation, employer or business activity) and with regard to the operation effected by them (ie the source of the funds).

703. Paragraph 1 of the Accountants Instructions provides that auditors, accountants and tax consultants shall obtain written identification of clients and their representatives, as well as other contractors if they come across any indications (even if mere indications only) that there is commission of the crime of ML or FT, due to the nature, complexity, amount involved or non-habitual occurrence of those operations.. Auditors, accountants and tax consultants may extract identification from documents related to accounting and auditing work, namely the name, type and number of identification document and the date of issuance, permanent residential address, profession, professional domicile, power of attorney and contact numbers, etc. Paragraph 2 implies that the purpose and intended nature of the business relationship should be understood. For example, it specifies that for the purposes of paragraph 1, the complexity of the operation is understood as an operation that, through its preparatory or subsequent acts, indicates

the intention to conceal the genuine nature of that operation to commit ML and the FT. Paragraph 4 specifies that if auditors, accountants and tax consultants have knowledge or have reasonable grounds to suspect that clients and contractors are not acting for themselves, to fulfil the duty of identification, auditors and accountants shall obtain the identification of the persons of whom these people are acting on behalf. Paragraph 5 states that for the purpose of determining if the amount of an operation, together with that of other operations, cumulatively exceeds the thresholds set by the Finance Services Bureau, the other operations for the same client, representative or agent that took place within 30 days prior to the occurrence of that operation should be taken into account. Paragraph 6 states that in addition to the duty to identify clients, their representatives and contractors, auditors, accountants and tax consultants should also identify the operations and record the information on the operations, namely the nature, object, amount and payment methods.

704. The Evaluation Team was pleased to note that a serious program of activity has been undertaken to bring DNFBP into the AML/CFT framework. The various Instructions, Guidelines and Preventive Measures have been tailored to the individual sectors they cover, however they have abbreviated the FATF requirements. For example, there is no explicit requirement for all DNFBP to verify the legal status of the legal person or legal arrangement or to understand the ownership and control structure of the customer. After the assessment the Macao, China authorities advised that they considered such measures to be more relevant for casinos and other gaming operators, company service providers, auditors and accountants and legal representatives. They have advised that for DNFBP like traders of high value products, the transactions involved are mainly occasional and that it is not practical to set up a strict requirement for obtaining ownership and control structure of the customer before or immediately after the transactions. For real estate agents, it is felt that there are already adequate controls under the guidelines of legal representatives and notaries when execute transactions on purchase and sale of real estate, and therefore, that it is not practical to put additional burdens on small entities like real estate agents with dual control measures. The Evaluation Team has sympathy with a risk-based approach being taken – particularly where there is overlap between different DNFBP involved with the same business relationship or occasional transaction. In the absence of formal documentation on Macao, China's approach at the time of the assessment, the Evaluation Team considers that its comments on legal status and ownership and controls structures must stand.

Ongoing due diligence

705. The TSP/CSP Instructions, the Real Estate Instructions and the Traders Instructions do not cover ongoing due diligence. The Notaries/Registrars Guidelines also do not include such provisions. Paragraph 3.1.5 of the Offshore Preventive Measures states that the procedure for identifying clients must be done not only in the preliminary phase of the contract but also up to and including its completion and that commercial offshore services and auxiliary offshore service institutions must keep up-to-date registers of all clients and review the registers regularly. Paragraph 3.5.1 requires enhanced ongoing monitoring for business relationships regarding business activities with PEPs. Neither the Lawyers Instructions, the Solicitors Guidelines nor the Accountants Instructions include specific references to ongoing due diligence. There is an absence of provisions in generally on ongoing due diligence. The authorities advised

that it is not practical to introduce measures for the ongoing monitoring of real estate agents or traders as the transactions involved are occasional.

Risk

706. The TSP/CSP Instructions, the Real Estate Instructions and the Traders Instructions do not include a risk-based approach – although the latter two Instructions include examples of suspicious transactions - and, therefore, there is no requirement to perform enhanced due diligence for higher risk categories of customer, business relationship or transaction. The authorities raised concerns at the practicalities of enhanced due diligence for higher risk customers, business relationships and transactions. The Notaries/Registrars Guidelines contain a risk based approach to the extent that in paragraph IV 4 enhanced and constant due diligence of all notary and registration acts for PEPs from jurisdictions outside Macao, China is required to determine the source of the wealth, funds and assets. Paragraph 3.2.2 of the Offshore Preventive Measures notes that commercial offshore services and auxiliary offshore service institutions can use related criteria for the evaluation of risk of clients, by considering the client's background country of residence, transactions, the nature of the services rendered and their profession. The Preventive Measures would benefit from the inclusion of information on the implication of the evaluation of risk. Paragraph 3.5 of the Preventive Measures includes enhanced measures for monitoring PEPs from the PRC. The Solicitors guidelines do not contain an explicit risk based approach. Article 4.5 of the Lawyers Instructions also includes provisions for PEPs in any jurisdiction outside Macao, China. Article 4.6 adds that lawyers shall increase their due diligence if they are involved in, or are aware of operations involving large amounts, which are foreign to the routine activity of the client or party, which occur with a frequency of less than 30 days and which, when taken as a whole, exceed MOP 1,000,000; or whenever the amount involved in the operation exceeds MOP100,000 of all the Instructions, Guidelines and Preventive Measures, the Lawyers Instructions are closest to the Methodology's requirements. The Accountants Instructions do not contain a risk based approach. As a whole the Instructions, Guidelines and Preventive Measures require some amendment to meet the FATF standards for enhanced due diligence to be undertaken for higher risk categories of customer, business relationship or transaction, that is higher risk extending beyond PEPs.

Timing of verification

707. Part III of the TSP/CSP Instructions links the duty of identification to suspicion. The Instructions state that the entities covered by the Instructions must identify clients and relevant operations whenever suspicion arises of any facts that might point to a crime of money laundering. This requirement applies when the entities are preparing for or carrying out operations for and on behalf of a client. Part III of the Real Estate Instructions and Part III of the Traders Instructions also apply the same identification requirement where there is a suspicion or when the transaction is of a minimum size. Part IV of the Notaries/Registrar Guidelines has the same approach. Paragraph 3.1.1 of the Offshore Preventive Measures is more specific on timing – it states that while conducting any business activity, verification of the client's document should be applied whenever the operation might indicate the commission of the crimes of ML or FT, or when the business activity is of a specified size. Article 2 of the Lawyers Instruction provides that lawyers must undertake identification when they act with regard to, or intervene, in a professional capacity in the range of activities specified above. Part IV of the Solicitors Guidelines link the timing of verification to suspicion of ML or FT and to

when the relevant monetary thresholds are met. Paragraph 3 covers auditors, accountants and tax consultants in exercising the functions of their profession, engage or assist in the operation specified above.

708. Not all of the Instructions, Guidelines, or Preventive Measures cover the timing of verification or the verification of beneficial owners. The Notaries/Registrars Guidelines do not specify when identification should be undertaken but the Legal Affairs Bureau confirmed to the Evaluation Team that it must be achieved before the notary/registration act. The Trader Instructions also do not specify when verification should be undertaken.

Failure to satisfactorily complete CDD

709. Part III of the CSP/TSP Instructions states that the entities covered by the Instructions must refuse the carrying out of any operation whenever the client, his representative or proxy, if requested to do so, declines to provide all the details necessary for the thorough implementation of the duty of identification. Part III of the Real Estate Instructions and Part III of the Traders Instructions contain identical wording. Part IV of the Notaries/Registrars Guidelines states that the notary or registration act must be refused whenever the contracting parties or their civil or legal representatives refuse to supply the necessary element to comply with the obligation of identification and the identification of the legal transaction subjacent to the notary or registration act except where identification is obtained by the declaration of witnesses. Paragraph 3.3 of the Offshore Preventive Measures provides that institutions failing to obtain customer information and related activities should refuse to undertake any business activities with the prospective customer. Article 4 of the Lawyers Instructions states that lawyer shall decline to accept instructions and act whenever the client, or its representatives, refuse to provide the information necessary in order to comply with the duty to identify both themselves and the operation – the efficacy of this provision is reduced as it does not extend to the obtaining of information which makes it possible to better identify the parties and/or their representatives (ie nationality, domicile, date and place of birth, occupation, employer or business activity) and with regard to the operation effected by them (ie the source of funds). Part IV of the Solicitors Guidelines states that the relevant activities must be rejected when the party, his/her representatives and the trustee refuse to provide the necessary information to comply with the obligation of their identification of the basic legal act of the relevant act except in respect of the “other identification information” such as the nationality and basic address. Part V of the Solicitors Guidelines states that if a person refuses to provide information and there are signs showing that the crime of ML or FT has been committed after considering the abnormal situations in the relevant activities, a suspicious transaction report must be made (i.e. in some circumstances the activity can progress). Article 8 of the Accountants Instructions states that auditors, accountants and tax consultants should refuse the performance of any operation in the event that they are denied access to information necessary to perform their duty and to make a report to GIF.

710. The Lawyers Instructions and Solicitors Guidelines do not meet the obligation to not commence a business relationship or perform a transaction when CDD cannot be completed. In linking the refusal to perform an operation with the reporting of suspicion to GIF the Accountants Instructions are the only guideline that require DNFBPs to consider filing an STR when there is a failure to satisfactorily complete CDD. None of the Instructions, Guidelines or Preventive Measures link the failure of satisfactorily

completing CDD to an existing business relationship, and the termination of the relationship and consideration of making an STR to GIF.

Existing customers

711. None of the Instructions, Guidelines or Preventive Measures applies CDD requirements to existing customers. Although Paragraph 3.1.5 of the offshore Preventive Measures requires service providers to keep up-to-date registers of all clients and review the registers regularly this provision would appear to relate to clients taken on since the guidelines came into force.

Application of Recommendations 6 and 8 to 11 to DNFBP

PEPs

712. The TSP/CSP Instructions, the Real Estate Instructions and the Trader Instructions do not contain reference to PEPs.

713. Part IV of the Notaries/Registrars Guidelines states that when the contracting parties or one of them are individuals, their close family members or associates, or companies clearly related with them, who are or have been entrusted with prominent public functions in a jurisdiction outside Macao, China such as, for example, heads of state or of government; senior politicians; senior government, judicial or military officials; senior executives of state-owned corporations; and important political party officials, there must be enhanced and constant diligence of all the notary and registration acts in order to determine the source of wealth, funds or assets. The Guidelines partially meet the FATF requirement, although the international standard extends beyond contracting parties for institutions to be able to ascertain if beneficial owners are PEPs and that risk management systems should be in place to identify PEPs. Senior management approval is not required in respect of PEP relationships.

714. Paragraph 3.5 of the Offshore Preventive Measures defines PEPs as persons with public functions in a foreign country or other regions in the PRC i.e. Heads of State or of government, senior politicians, judicial or military officials, including their family members and close associates. The definition also extends to former PEPs. In addition to normal monitoring procedures:

- approval should be obtained from senior management for establishing business relationships;
- reasonable measures should be taken to establish the source of wealth and the source of funds;
- enhanced ongoing monitoring of the business relationship should be undertaken.

715. These statements meet much of Recommendation 6 but there is no requirement to put in place procedures to be able to determine whether a person is a PEP; no requirement for senior management to approve the continuance of a relation if a customer or beneficial owner is found to be a PEP once a business relationship has commenced; no requirement to obtain the source of funds and the source of wealth of beneficial owners identified as PEPs.

716. Article 4 of the Lawyers Instructions specifies that when parties involved in the operation are natural persons, their relations or close associates, who hold or have held leading public office in a foreign country or territory, eg heads of state or government, leading politicians, senior civil servants, judicial or military officers, senior executives of public sector corporation and important representatives of political parties, or undertakings clearly related with them, the operation in question shall be subject to special scrutiny as to the existence of any indication of the commission of the crimes envisaged in the Instructions.

717. Part V of the Solicitors guidelines affirms that when a person who plays an important role in public office, his close relatives, the shareholders in his company, the members of his association or his consultants take part in the activities covered by the Guidelines, attention should be given by solicitors as to whether there are any signs of ML or terrorism financing. This sets the foundations for dealing with PEP risk but does not meet Recommendation 6.

718. The Accountants Instructions do not refer to PEPs.

Non-face to face and misuse of technology

719. The Instructions, Guidelines and Preventive Measures do not refer to the misuse of technological developments or CDD procedures for the specific risks of non-face to face customers. From meetings with the supervisory authorities it was clear that, in practice, non-face to face customers would be rare.

Reliance on intermediaries

720. The Instructions, Guidelines and Preventive Measures do not include reference to reliance on intermediaries or other third parties. Recommendation 9 can be regarded as not applicable to DNFBPs in Macao, China.

Record keeping

721. Article 6 of Regulation 7/2006 and Article 49 of the Commercial Code apply to DNFBP.

722. Part 3 of the TSP/CSP Instructions states that identification documents of the client, his representative or proxy, as well as the operation proper, must be kept from the date of the transaction. Such records must be always available to Macao Economic Services. Entities covered by the Instructions must set up a suitable record system. If an entity ceases operations the records kept until such date must be forwarded to Macao Economic Services. The same provisions are contained in Part III of the Real Estate Instructions and Part III of the Traders Instructions.

723. Part IV of the Notaries/Registrars Instructions specifies that the registration must be kept for five years and available for the purposes of supervision by the Legal Affairs Bureau. If an activity ceases or is suspended registration must be sent to the Legal Affairs Bureau.

724. Paragraph 3.4 of the Offshore Preventive Measures states that verifiable identification documents of clients and operations carried out must be kept for five years from the date the contract is concluded or transaction closed. The Macao Trade and Investment Promotion Institute has stated that, according to Paragraph 3.2 of the

Offshore Preventive Measures, verifiable records also comprise written information concerning the operation regarding, inter alia, its nature, object, amount and methods of payment employed, and written information about customers' backgrounds, country of residence, transactions, the nature of services rendered and profession and that retention of this information will be sufficient to form verifiable records for the reconstruction of transactions. Although the latter elements are criteria in the Offshore Preventive Measures for criteria for the evaluation of risk, the Evaluation Team accepts the view of the Macao Trade and Investment Promotion Institute.

725. Article 5 of the Lawyers Instructions provides that the information and records referred to in article 4 shall be retained for at least five years from the day following the date on which the operation is effected and shall be available for the purposes of supervision. In the event of the cancellation or suspension of the law practice's membership of the Lawyer's Association for safekeeping.

726. Part V of the Solicitors guidelines provides that records must be preserved for at least 5 years, counted from the date of the registration, and they must be available for the purpose of surveillance on the fulfilment of the preventive obligation by the Commission for the Exercise of the Disciplinary Power over Solicitors.

727. Paragraph 9 of the Accountants Instructions provides that auditors, accountants and tax consultants should conserve proof of identity documents for five years. The documents should be provided to the Finance Services Bureau by a firm if it suspends operations within the five year period.

728. The basic obligations under Recommendation 10 are not included in law or regulation. In addition, the Instructions, Guidelines and Preventive Measures do not include reference to transaction records being sufficient to permit reconstruction of individual transactions.

Complex, large or unusual transactions

729. The Instructions, Guidelines and Preventive Measures do not include specific reference to complex transactions, large transactions or unusual patterns of transactions.

Overall implementation

730. The recent introduction of the Instructions, Guidelines and Preventive Measures means that it will be some time before the effectiveness of the AML/CFT framework in respect of DNFBP can be tested. The Solicitors Guidelines requires a report to be provided to the Commission for the Exercise of Disciplinary Powers over Solicitors to be provided to the commission each January in compliance with the obligations to prevent ML and FT.

4.1.2 RECOMMENDATIONS AND COMMENTS

731. As foreshadowed in the opening comments to this section, the assessors are particularly mindful of the importance of the casino / gaming sector to Macao, China and its dominance in the DNFBP component of the economy. Accordingly, the assessment

against Recommendation 12 is predominantly influenced by this sector. The Evaluation Team also note that Administrative Regulation 7/2006 applies to all DNFBP and that all of the DNFBP supervisors have issued guidelines on AML/CFT measures covering a very wide range of businesses.

Gaming Sector

732. Macao, China has made significant efforts to bring the gaming sector into the AML/CFT framework. While the legal framework has begun to be addressed with respect to the application of AML/CFT provisions in the casino sector, gaps remain in terms of those provisions meeting the FATF standards. In addition, and as a matter of course, Macao, China authorities, including the DICJ and Judiciary Police should conduct a comprehensive assessment of the risks to illicit finance, including ML and FT in the casino sector, in keeping with the international standards and in an effort to gain a better appreciation for the vulnerabilities inherent in the sector.

- In particular, all AML/CFT procedures, including those specific to CDD appear to be limited to transactions that meet a specific threshold to generate a large currency transaction report or a suspicious transaction report. The CDD threshold – MOP 500,000 (approximately USD 62,500) is too high and needs to be lowered in accordance with FATF standards. The threshold remains overly high given the scope and volume of gaming business in Macao, China casinos. Also, obtaining CDD outside these limits might alert money launderers that the casino has suspicions about their activities.
- CDD obligations need to be specified as a matter of course, not simply in generation of specific reporting. In addition, the asterisked items of the Assessment Methodology should be included in law or regulation.
- Risk-based assessments need to be required for operators, and a process for employing a risk based assessment of clients needs to be instituted for purpose of making more comprehensive CDD procedures.
- Compliance testing of operators' AML/CFT needs to be initiated by the DICJ.
- Clearer guidance, applying risk-based procedures, is needed with respect to CDD procedures involving junket operators/gaming promoters.
- Enhanced ongoing monitoring for high risk customers - in addition to PEPs – needs to be instituted.

Other DNFBPs

733. The Macanese authorities have made great efforts to bring DNFBPs within the AML/CFT framework. Macao, China is to be commended for undertaking such a major exercise. Nevertheless, it is not clear as to why the Instructions, Guidelines and Preventive Measures have covered some but not all of the Criteria of the FATF Recommendations - no written explanations of a risk-based approach were provided. Also, the introduction of the framework prior to the assessment means that implementation could not be assessed, although it was clear that the Macao, China authorities intended to put in place a program of on-site inspections.

734. The Evaluation Team recommends that:

- Consideration should be given as to the thresholds for occasional transactions and why, on a risk-based approach, it may be considered necessary to differ from the thresholds expected by the FATF;
- Consideration should be given as to how to prevent DNFBP from committing the tipping off offence when CDD measures are required other than when a threshold is breached;
- The Instructions, Guidelines and Preventive Measures should be amended so as to require CDD to be undertaken when DNFBP have doubts about the veracity or adequacy of previously obtained customer identification information;
- The remaining asterisked Criteria of Recommendation 5 should be included in law or regulation;
- The Instructions, Guidelines and Preventive Measures should be amended to include requirements in respect of:
 - verification of the legal status of the legal person or legal arrangement;
 - understanding the ownership and control structure of the customer;
 - how to conduct ongoing due diligence - including the scrutiny of transactions and that documents, data or information collected under the CDD process is kept up to date and relevant;
 - the performance of enhanced due diligence for higher risk customers in addition to the existing measures for PEPs;
 - the Lawyers Instructions so that when a firm cannot meet Criteria 5.3 to 5.6 the firm should not be permitted to undertake an activity for the customer;
 - the Instructions, other than the Accountants Instructions, Guidelines and Preventive Measures should consider making a suspicious transaction report when a firm cannot comply with Criteria 5.3 to 5.6;
 - where identification and verification requirements cannot be met by an existing business relationship the Instructions, Guidelines and Preventive Measures should require firms to consider making a suspicious transaction report;
 - CDD for existing customers.
- Most of the Instructions should be amended to refer to PEPs; the references to PEPs in the Notaries/Registrars Guidelines, the Offshore Preventive Measures and the Lawyers Instructions should be enhanced;
- The Instructions, Guidelines and Preventive Measures should be amended to include reference to the misuse of technological developments and CDD procedures for the specific risks of non-face to face business;
- Law or regulation should be revised to meet the asterisked Criteria of Recommendation 10 and the Instructions and Guidelines should be revised to include reference to transaction records being sufficient to permit reconstruction of individual transactions; and
- The Instructions, Guidelines and Preventive Measures should be amended to include reference to complex transactions, unusual large transactions and unusual patterns of transactions that have no apparent or visible economic or lawful purpose.

4.1.3 COMPLIANCE WITH RECOMMENDATION 12

	Rating	Summary of factors relevant to s.4.1 underlying overall rating
R.12	PC	<p><u>Gaming Sector</u></p> <ul style="list-style-type: none"> • While legal obligations for CDD requirements are stipulated, the recent introduction of these provisions means that there was insufficient time before the assessment for implementation to be demonstrated. • Key CDD and record keeping obligations are not included in law or regulation.. • The established threshold for obtaining casino customer data remains too high. • Obligations to obtain customer information only appear to be mandated for the purposes of identifying large currency transaction reports and STRs. • No provisions exist for ongoing verification of customer information. • No provisions exist for ongoing monitoring of customer activity • There are no provisions on high risk customers beyond PEPs. • The guidance should give more clear instructions on the application of CDD provisions on junket operators/game promoters. <p><u>Other DNFBPs</u></p> <ul style="list-style-type: none"> • Key CDD and record keeping obligations are not included in law or regulation; • The thresholds for CDD for occasional transactions differ from those of the FATF; • There is no requirement to understand the ownership and control structure of the customer or to conduct ongoing due diligence; there is no requirement to consider making an STR when required CDD measures cannot be undertaken for existing customers; • The guidelines do not refer to the misuse of technological developments, CDD procedures for the specific risks of non-face to face business or complex, unusual large transactions or unusual patterns of transactions; or maintaining transaction records.

4.2 SUSPICIOUS TRANSACTION REPORTING (R.16)

4.2.1 DESCRIPTION AND ANALYSIS

Compliance with Recommendation 16

Gaming Sector

735. The requirements for reporting suspicious transactions by casinos/gaming operators are stipulated under the same rules and regulations highlighted above – ie Regulation 7/2006 pertaining to all DNFBPs as well as under Instruction 2/2006 enforced

by the DICJ. As described above, the specific obligations regarding the reporting of suspicious transactions are the following:

- For those stipulated under Administrative Regulation 7/2006 for DNFBPs: The operations that might provide indicia of the commission of the crimes of ML or FT, due to, inter alia, their nature, complexity, amounts involved, volume or non-habitual occurrence, relative to the activity of the contractor, client or patron, must be communicated to the GIF within 2 working days following the performance of such operations.
- For those stipulated specifically by the DICJ for the gaming sector: Any gaming transaction, acquisition and redemption of chips, including those falling below the threshold of MOP 500,000 (approximately USD 62,500), which by their nature, complexity and value involved shows any unusual signs of ML activity. Such information is to be retained and reported in accordance through the “suspicious transaction report” format as provided by the DICJ in its Instruction.

736. The Regulations and the instruction describe the conditions under which suspicious transactions would need to be reported. In addition, the DICJ instruction addresses suspicion of FT as well as ML. As noted above, the Instruction provides thresholds for when CDD should be undertaken and when transactions which, by their nature, complexity and value, show any unusual signs of ML activity. This provision on undertaking CDD when transactions show any unusual signs of ML potentially alerts persons asked to provide CDD in such circumstances that they may be suspected of money laundering. This may potentially prejudice any investigation and there was a concern expressed to the Evaluation Team that money launderers would be tipped off.

737. According to the Instructions, STRs must be completed at times when “obvious signs in establishing money laundering in casinos are recognized” and must be completed by that casino staff or game promoter in the course of their duties. In addition, the staff responsible for follow-up and coordination of STRs must initial their STR submissions. Such submissions, according to the Instruction must be submitted to the GIF directly within 2 days of the staff responsible having initiated the reports, and to the DICJ in the same period of time. There do not appear to be any obligations for the DICJ itself to, in the course of its supervision uncovering suspicious transactions, report such transactions to the GIF. However, it is mandatory for the all civil servants to give notice of all crimes that they have knowledge on their duties according to the Criminal Procedure Code (cfr.225.) and, according to Article no. 2, paragraph no. 3 of Administrative Regulation 7/2006, in cases where supervisory authorities detect suspicious transactions during the course of supervision work, they should report directly to the Public Prosecutions Office. In order to have better coordination of work, the GIF intends to sign an agreement with the MP that information on direct reports from supervisory authorities will be provided to the GIF.

738. 83 STRs were submitted by the casinos or any other DNFBPs to the GIF between 12 November 2006 until the end of 2006.

739. Paragraph 10 of the Instruction prohibits “tipping off” by imposing confidentiality obligations on the contents of STRs.

740. With regard to the application of Recommendation 15, the DICJ Instruction provides that: the internal rules and procedures of operators should have, at the least, the following:

- the identification and follow-up of the participants involved in suspicious transactions or large amount transactions;
- the identification of suspicious transactions or large amount transactions;
- report suspicious transactions to GIF;
- nomination and empowerment of the compliance officer(s);
- establish the control measures for the fulfilment of obligations of recording and reporting the suspicious transactions and large amount transactions, to be implemented by accounts department and internal audit department;
- provide training to the employees about the rules and procedures on prevention of crimes and ML and FT;
- the issue, acceptance and discount of cheques from layers or wagers, or from their agents or persons for whom they act;
- the confidentiality of the information received or reported.

741. The internal rules and procedures must be approved, within three (3) months after this Instruction becomes effective, by the addressees of this Instruction and confirmed by DICJ. The period referred to in the previous sentence can be extended by order of the Director of the DICJ, in exceptional and justified circumstances. The internal rules and procedures confirmed by the DICJ must be disclosed and explained to the employees concerned. The DICJ, in exercising its duties, can determine modifications or amendments to the internal rules and procedures.

742. Entities governed by the Instruction should at least designate one employee and other designees as compliance officers, to monitor the compliance of the policies and procedures applicable under the preventive measures against crimes of ML and FT, and to conduct necessary coordination to ensure proper compliance. The DICJ may decide to change the compliance officer(s) if DICJ considers the qualification or the technical knowledge of the compliance officer(s) is inadequate.

743. The above mentioned compliance officer(s) should be responsible for reviewing and evaluating the reports of large transactions and STRs, to follow up and submit the STRs to GIF.

744. The compliance officer should have the independent authority and possess adequate experience necessary to carry out functions stated in the previous clause. The names of the compliance officer(s) should be notified to DICJ promptly.

745. In connection with Recommendation 21, the DICJ can modify operators' internal rules and procedures or issue revised guidance but the recommendation will be satisfied once the Instruction is amended to explicitly refer to the Criteria of the Recommendation.

746. As these requirements have only recently been in force, no implementation has been tested, nor have any statistics been provided regarding the number of STRs reported by the gaming sector. In addition, no training is envisioned on the identification of submission and the submission of STRs was provided/described or envisioned by the DICJ or other authorities in Macao, China for the sector.

Other DNFBP

747. The comments made in section 3.7.1 of this report, which deals with suspicious transaction reporting, are pertinent here. Section 3.7.1 makes it clear that STR requirements apply to DNFBP.

748. Article 7 of Regulation 7/2006 specifies that operations that might provide indications of the crimes of ML or the FT, due to, inter alia, their nature, complexity, amounts involved, volume or non-habitual occurrence, relative to the activity of the contractor, client or patron must be communicated to GIF within two working days following the performance of such operations.

749. Section III of the TSP/CSP Instructions refers to making a notification to GIF within the two day deadline and that the notification must be carried out using the form issued by GIF. Part III of the Real Estate Instructions and Part III of the Traders Instructions contain identical provisions.

750. Part V of the Notaries/Registrars Guidelines specifies that all notary or registration acts whose subjacent legal transactions may provide indication of the commitment of a ML or FT offence, under any form of participation, by the contracting parties and their civil or legal representatives, must be reported to GIF within two working days of the transaction. A refusal to provide identification information, taking into account consideration of the non-habitual occurrence of the notary or registration act, must also be reported if the refusal provides an indication of an offence being committed. The reporting form is attached as an annex to the Guidelines. All documents collected, together with a copy of all documents that entitle the notary or registration act, must be attached with the report of suspicion.

751. Paragraph 3.6 of the Offshore Preventive Measures covers the requirement of article 7 of Administrative Regulation 7/2006. The template for the suspicion report is attached to the Preventive Measures and paragraph 3.6 specifies that it must include all information collected for the identification of the customer, as well as the business activities that are out of the ordinary.

752. Article 6 of the Lawyers Instructions also contain reference to the two working day reporting deadline – operations which indicate the commission of the crimes of ML or the FT should be communicated to the GIF within two working days of the occurrence of an operation. Article 8 of the Lawyers Instructions deals with the legal professional privilege. The duty to report a suspicion to the GIF does not imply the communication or provision of any information obtained by a lawyer in the context of the legal evaluation of a client's circumstances, within the context of the provision of legal advice, the defence or representation of the client in legal proceedings or with regard to legal proceedings, including advice regarding the way in which to commence or avoid proceedings, whether the information is obtained before, during or after the proceedings.

753. Paragraph 7 of the Accountants Instructions specifies that a report should be made to the GIF within two working days from the commencement or discovery of activities pertaining to the ML or financing of crime offences.

754. By virtue of Administrative Regulation 7/2006 and the Lawyers Instructions, reports of suspicion must be made to the GIF.

Application of Recommendations 14, 15 and 21 to DNFBP

Protection and prohibition against ‘tipping off’

755. The comments made in section 3.7.1 of this report, which deals with the protections which must be available to persons reporting a suspicion and the tipping off offence, are pertinent here.

756. Part III of the TSP/CSP Instructions states that it is forbidden to the entities covered by the Instructions, as well as to all those who work for them, either on a permanent, temporary or sporadic basis, to inform their clients, their representatives or proxies, or to any third parties whatsoever, that a particular transaction raised suspicions of a crime of ML or FT and that, as a result, notification to the GIF ensued. Part III of the Real Estate Instructions and Part III of the Traders Instructions contain identical provisions.

757. Part V of the Notaries/Registrars Guidelines indicate that it cannot be disclosed to the contracting parties, their civil or legal representatives and to third parties, that the legal transaction subjacent to the notary or registration act was considered to reveal indications of the commission of the crime of ML or the FT, nor that, in consequence, a report was made to the GIF.

758. Paragraph 3.6.3 of the Offshore Preventive Measures specifies that it is forbidden to inform the customer or third party regarding the known information related to the reporting of a suspicion.

759. Article 6 of the Lawyers Instructions provides that lawyers shall not reveal to the client or party, or their representatives that they consider that a certain operation indicates the commission of the crimes of ML or the FT, or that a communication has been made to the GIF.

760. Part V of the Solicitors Guidelines states that it will not be disclosed to the party, his/her representatives, the trustee and the third party if it is believed that the crimes of ML or FT have been committed. The Guidelines go on to advise that even if GIF has been informed, the incident must not be discovered to these people.

761. Paragraph 11 of the Accountants Instructions states that, if it is suspected that an operation presents traces of ML or the FT, this should not be disclosed to clients, their representatives, agents or third parties. The existence of a report to the GIF should also not be disclosed.

Internal controls

762. The Instructions, Guidelines and Preventive Measures contain provisions on CDD, record retention and the reporting obligation. Records must be always available. Nevertheless, virtually all of the elements of the Essential Criteria relating to Recommendation 15 are not included in the Instructions, Guidelines and Preventive Measures. The authorities have advised that for small DNFBP like estate agents and traders of high value goods it is not practical to impose all of the requirement of Recommendation 15, taking into account the business size and management capacity of such firms. The authorities also advise that further enhancements will be made progressively.

Jurisdictions not/insufficiently applying FATF Recommendations

763. The Instructions, Guidelines or Preventive Measures could be used to advise DNFBP about concerns about weaknesses in the AML/CFT systems of other jurisdictions. Equally, these documents could be used to apply appropriate counter-measures where a country continues not to apply or insufficiently applies the FATF Recommendations. DNFBP are not required to give special attention to business relationships and transactions with persons from or in jurisdictions which do not or insufficiently apply the FATF Recommendations. In addition, DNFBP are not required to examine as far as possible and make written findings available if such transactions have to apparent economic or visible lawful purpose. The authorities have advised that for small DNFBP like estate agents and traders of high value goods it is not practical to impose all of the requirement of Recommendation 21, taking into account the business size and management capacity of such firms. The authorities also advise that further enhancements will be made progressively.

4.2.2 RECOMMENDATIONS AND COMMENTS

764. The Guidelines on the reporting of suspicion are would benefit from clarity on the reporting of attempted transactions and the avoidance of tipping off offences.

765. The following recommendations are suggested:

- Consideration should be given as to how best to avoid the possibility that in certain circumstances, in being asked to provide CDD information, money launderers may become aware that casino staff consider their transactions show unusual signs of money laundering.
- Attempted transactions that are suspicious in nature should explicitly be made a requirement for reporting in the guidelines.
- STR reporting by the DICJ in the course of its oversight and supervision should be considered.
- Training should be provided on the identification of suspicion and the reporting requirements and processes for STRs to the sector
- Whilst Macao, China is to be commended for introducing the Instructions, Guidelines and Preventive Measures for DNFBP, their brevity means that Recommendations 15 and 21 as they apply to DNFBP are mostly not met. In addition, it will take some time for implementation to be demonstrated given the timing of introduction of Regulation 7/2006 and the underlying guidelines.

4.2.3 COMPLIANCE WITH RECOMMENDATION 16

	Rating	Summary of factors relevant to s.4.2 underlying overall rating
R.16	LC	<ul style="list-style-type: none">• Attempted transactions that are suspicious in nature are not explicitly made a requirement for reporting in the DICJ Instruction.• Elements relating to compliance and paying special attention to business relationships and transactions with persons from or in

		<p>jurisdictions insufficiently applying the FATF Recommendation are not included in the Instructions, Guidelines and the Preventive Measures.</p> <ul style="list-style-type: none"> • It is too early to demonstrate effective implementation.
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4.3 REGULATION, SUPERVISION AND MONITORING (R.24-25)

4.3.1 DESCRIPTION AND ANALYSIS

Recommendation 24

Gaming Sector

766. The DICJ is the responsible authority for ensuring compliance with the sector's obligation to AML/CFT requirements. In addition, the Judiciary Police is the responsible authority regarding casino-related crimes more generally. Specifically, while criminal investigations regarding casino-related crimes – including ML and FT is handled by the Judiciary Police, the preventative measures with respect to ML and FT are relegated to the DICJ. Consistent with this responsibility is the need to resource the DICJ to a level sufficient to govern the sector – with adequate training to ensure the sector's compliance with AML/CFT requirements can be properly assessed. The DICJ intend to provide such training and recruit additional staff in 2007.

767. AML/CFT obligations are applicable and enforceable on the concessionaires through Law No. 2/2006, Law No. 3/2006, and Administrative Regulation No. 7 /2006. In addition, Law No. 5/2004, 16/2001, Administrative Regulation No. 26/2001, and Administrative Regulation No. 6/2001, and contain provisions of the regulation regime for gaming.

768. Administrative Regulation 7/2006 governing all DNFBPs lays out the supervisory authorities governing the DNFBP sectors, including casinos, and the administrative infractions associated with non-compliance with the AML/CFT obligations. Administrative fines are stipulated, depending on whether the offender is a natural or legal person, and negligence is punishable. In addition, it is stipulated that when the economic benefit obtained by the offender from the commission of the infraction exceeds half of the maximum limit established, these fines shall be doubled. The Regulation affirms that the procedures for administering enforcement actions for non-compliance with the Regulation is with the competent authority within the respective areas of supervision – in this case, the DICJ for the gaming sector.

769. The gaming activity, according to Article 7 of Law No. 16/2001, is an activity confined to Macao, China and the operations of which are limited to limited liability companies incorporated in the Region and to which a concession has been granted by means of an administrative contract, in accordance with the terms of Law No.16/2001. A public tender precedes the granting of concession for the operations of games of fortune in casinos as per Article 8 of Law No. 16/2001. A concession for the operation of games of fortune are only awarded to bidders considered suitable to obtain such a concession – the process for which is betted in accordance with Article 14 of the Law No. 16/2001. Shareholder qualifications, which include those who directly or indirectly own an interest in the concessionaire equal to or more than 5 % of the company's share capital, the

directors and key employees, are also subject to vetting procedures for suitability per Article 8 of Administrative Regulation No. 26/2001.

770. Tender applications take into account the following criteria:

- The applicant or concession holder's business experience,
- The applicant or concession holder's reputation, which includes an assessment of risk associated with the applicant,
- The nature of business and reputation of other group companies related to the applicant or concession holder, namely its main associates, which also includes an assessment of risk associated with the applicant company or the concession holder; and
- The nature of business and reputation of the applicant or concession holder's direct associates, namely those that are its main associates.

771. Such assessments to determine suitability of the applicant or concession holder's key employees, directors or others positions of importance in the casinos are laid out in accordance with those stipulated by the Secretary for Economy and Finance.

772. The risk assessments referred to above must include information and data regarding the identification of the individual or company and the respective holders of the social bodies, any lawsuits proposed by them or if sued in law, its economical and financial situation including eventual loans or relevant financial operations and the estimation of the value of goods and rights it holds, under the terms required in the Administrative Regulation. Under this obligation, the information that must be disclosed is in Article 10 of Administrative Regulation No. 26/2001. The Macao, China authorities advise that these risk assessments have taken into consideration ML and FT as suitability is a broad concept and includes all criminality. No statistics or studies were provided on these risks, or sample risk assessments regarding the application toward the regulation of casinos more generally.

773. Regarding Recommendation 25, other than the instructions described above, there are no other additional guidelines specific to casinos and gaming regarding the AML/CFT obligations facing the sector. While making reference to the international standards in its Instructions, no specific written guidance to the sector on the practical application of AML/CFT requirements, scope of the FATF 40+9 Recommendations or any additional measures that the sector could take to protect against ML and FT has been issued. Nevertheless, the DICJ has confirmed that it clarifies the preventive measures on AML/CFT during meetings with gaming operators and intends to update the Instruction with more AML/CFT techniques and methods.

774. Macanese authorities have submitted to the APG, in the course of typologies work, possible ML methods and case studies. Gaming typologies are included in a schedule to the DICJ Instruction in order to give guidance to concessionaires on ML/FT risks. Face-to-face or dedicated outreach, education or training initiatives on the scope and application of countermeasures that can be taken, or in the fulfilment of AML/CFT obligations have not been undertaken. Case studies and typologies have been incorporated into any training for casino operators re AML procedures, including for purposes of assessing the effectiveness of measures undertaken by gaming concessionaires in the fulfilment of their duties. The DICJ intends to undertake such

outreach in 2007, including the establishment of a training manual which will include typologies.

Other DNFBP

775. Article 8 of Administrative Regulation 7/2006 specifies that all assistance, especially the disclosure of information and the delivery of documents, shall be provided to, as and when requested by, the competent authorities for the prevention and suppression of the crimes of ML and the FT. This provides a framework for the supervisory authorities to monitor DNFBP and ensure compliance with the AML/CFT requirements of Regulation 7/2006. In light of the introduction of the Instructions, Guidelines and Preventive Measures in November 2006 – just before the assessment – the monitoring mechanisms had yet to be commenced.

776. The Finance Services Bureau considers that Macao, China's tax legislation also enables the Bureau to conduct on-site inspections of the AML/CFT measures undertaken by auditors, accountants and tax advisers. In addition, the Finance Services Bureau has advised that the legislation also enables it to conduct on-site inspections of accounting records of auditors, accountants and tax advisers, and that such inspections could lead to the detection of ML/FT activities.

777. The Macao Economic Services expects to recruit a substantial number of staff in order to undertake monitoring of trust and company service providers, real estate agents and traders in goods of high unit value.

778. The Legal Affairs Bureau intends to recruit additional staff in order to undertake on-site visits to notaries and registrars. In the meantime, the Bureau will monitor the information relating to notary and registration acts on its computer database. The database was demonstrated to the Evaluation Team – it was clear to the Evaluation Team that the database will be a valuable tool.

779. The Macao Trade and Investment Promotion Institute has conducted on-site inspections since 2000 to check, for example, the substantiality of their presence in Macao, China – AML/CFT measures will be added to the scope of these assessments. A checklist is being prepared in order to structure the AML/CFT extension to the on-site program. In addition, entities subject to the Offshore Preventive Measures will be required annually to confirm compliance with the Preventive Measures and the number of reports of suspicion which have been made to the GIF.

780. The Macao Lawyers Association has asked lawyers to provide feedback on the Lawyers Instructions. The Association considers the greatest area of risk to be the use of client accounts – which is covered in article 9 of the Lawyers Instructions. The article requires lawyers, by the end of January each year, to submit a certificate issued by an auditor or accountant confirming that the transactions put through the client accounts are proper. Lawyers are not allowed to permit their clients to use client accounts in order to deposit moneys in respect of which the lawyer is unaware of the source or purpose.

781. There are some 148 registered accountants, 119 registered auditors and 10 registered auditing firms in Macao, China. An on-site inspection program is proposed by the Finance Services Bureau – this will necessitate the allocation of additional staff resources to this area.

782. Some of the supervisory authorities advised the Evaluation Team that they had applied sanctions, albeit not for infractions of AML/CFT standards. The Legal Affairs Bureau has withdrawn the ability of four individuals to practise as notaries. The Macao Lawyers Association has suspended three lawyers and issued lesser penalties such as fines to other lawyers. By virtue of Articles 2, 4 and 62 of Decree Law No. 58/99/M the Macao Trade and Investment Institute have fined entities for the late submission of financial statements. Article 9 of Administrative Regulation 7/2006 specifies penalties for breaches of articles 3 to 8 of the Regulation which include, for example, the requirement for DNFBP to demand an identity document when operations might indicate the commission of the crimes of ML or the FT or when the operations exceed the threshold established by the supervisory authorities for DNFBP, it is not clear to the Evaluation Team what legal basis the supervisory authorities other than the Macao Trade and Investment Institute can ensure compliance with the AML/CFT requirements in the Instructions and Guidelines additional to those in Administrative Regulation and, therefore, many of the AML/CFT measures required by Recommendation 12 and 16.

783. Administrative Regulation 7/2006 designates competent authorities for monitoring and ensuring compliance of DNFBPs with AML/CFT requirements.

Sanctions

784. Article 9 of Administrative Regulation 7/2006 provides that non-compliance by an entity with the Regulation constitutes an administrative offence punishable with a fine of MOP 10,000 to MOP 500,000 for a natural person and a fine of MOP 100,000 to 5,000,000 for a legal person. Negligence is punishable when the economic benefit obtained by the offender from the commission of the infraction exceeds half of the limit specified earlier in this paragraph; the maximum fine is double the benefit. These penalties would be levied by the relevant supervisory authority.

785. Article 68 of Law 58/99/M (Macao Offshore Law) allows the Macao Trade and Investment Promotion Institute to revoke an authorisation for repeated breaches of rules issued by the Institute, such as the Offshore Preventive Measures.

786. As indicated above, other than the ability of the Macao Trade and Investment Promotion Institute, it is not clear precisely what legislation permits the other supervisory authorities to ensure compliance with the AML/CFT requirements in the Instructions and Guidelines, and many of the AML/CFT measures required by Recommendations 12 and 16.

Recommendation 30

The Economic Services Department

787. The Department is divided into five areas, including the Economic Inspection Department which is responsible for overseeing certificates of origin for industrial products; the checking of public health violations, dangerous species, labour violations, gasoline companies and consumer protection; and AML/CFT for traders in goods of high unit value; real estate agents and company and trust service provider activities. The Department estimates its AML/CFT responsibilities cover 3,200 real estate agents, 50 pawn shops, 300 jewellery shops, 40 precious metal dealers, 40 antique shops, 73 shops selling watches, 400 car dealers and company and trust service providers, the majority of whom are estimated to be lawyers and, possibly, accountants. The Department states that an inspector can undertake 5 or 6 inspections each day and that

it intends to recruit another 30 staff. Funding is received from the Government and the Department anticipates this will be sufficient to recruit the additional staff. Information technology and office resources are satisfactory. It also appeared to the Evaluation Team that the Department structuring permitted operational independence and autonomy, and freedom from undue influence or interference.

788. Staff of the Macao Economic Services Department are required to comply with the code of professional ethics and conduct of public servants. Page 10 of the code contains provisions which impose a duty of confidentiality and state that indiscriminate disclosure leads to punishment. To date training has not been provided on combating ML and FT – training will be organised in 2007. In conclusion, Recommendation 30 will be satisfied when additional staff are recruited and existing and new staff are trained in combating ML and FT.

The Legal Affairs Bureau

789. The Legal Affairs Bureau has five staff involved in the supervision of notaries and registrars. It is possible that additional staff may be recruited in the future. Existing manpower will allow occasional on-site inspections to be undertaken but not a systematic program. Funding is received from the Government, which appears to be sufficient. Information technology is of good quality. Office resources are satisfactory. It also appeared to the Evaluation Team that the Bureau had operational independence and autonomy, and freedom from undue influence or interference. Staff of the Bureau are required to comply with the code of professional ethics and conduct of public servants. Page 10 of the code contains provisions which impose a duty of confidentiality and state that indiscriminate disclosure leads to punishment. The Bureau's legal adviser has received AML/CFT training – the Bureau plans to provide the other staff with such training. There is a need for training to be rolled out across the Bureau and sufficient staff to be recruited to undertake the on-site inspection programme which is proposed.

The Macao Trade and Investment Promotion Institute

790. The Macao Trade and Investment Promotion Institute is a department of the Government of Macao, China. Ten staff are involved with the applications for, and monitoring of, offshore entities. It is proposed to recruit at least two additional staff in light of the Institute's new AML/CFT responsibilities. Funding is received from the Government and the Institute anticipates that funding will be sufficient to recruit the additional staff. The Institute is content that information technology and office resources are satisfactory. It also appeared to the Evaluation Team that the Institute had operational independence and autonomy, and freedom from undue influence or interference. Staff of the Institute are required to comply with the code of professional ethics and conduct of public servants. Confidentiality is also required by the 1999 law under which the Institute operates. The senior officer of the section of the Institute responsible for offshore entities has participated in training put on by GIF and has attended meetings of the APG. This officer has passed on the benefit of the training and awareness raising to the section's management team and legal adviser. The Institute intends to work closely with GIF with a view to participating in dedicated training sessions in 2007. In conclusion, there is a need for training and additional staff to be recruited to undertake the proposed on-site inspection programme.

The Macao Lawyers Association

791. The secretariat of the Macao Lawyers Association comprises six full-time staff and two part-time lawyers. The Governing Council of the Association is comprised of four practising lawyers – the Council takes an active role – Council members are akin to executive directors. Funding is received from fees paid by members of the Association. Technical and office resources appeared to be satisfactory – indeed, in addition to the main office each court building contains a room in which members of the Association can meet. In order to seek to ensure independence and autonomy there is an independent disciplinary council comprising six lawyers and three other individuals – a judge, a public prosecutor and a layman. The Code of Practice of the Macao Lawyers Association requires potential conflicts of interest to be handled properly. It also requires lawyers to keep information confidential. To date the secretariat and the staff have not been trained in AML or CFT. It is intended to appoint a compliance officer who will be responsible, inter alia, for training. GIF will be asked to brief members of the Association. AML/CFT training has not yet been commenced.

The Independent Committee of Disciplinary Authority of Legal Office

792. The Independent Commission for the exercise of the Disciplinary Power over Solicitors consists of five members chaired by a judge appointed by the Judge Committee. Apart from the chairperson, the Commission is comprised of a procurator appointed by the Procurator Committee, two representatives from the solicitors under supervision, and a law degree holder appointed by the Procurator Committee, two representatives from the solicitors under supervision, and a law degree holder appointed by the Chief Executive of Macao, China. This law degree holder should not be registered with any legal professional bodies. At present the degree holder is the head of the Government Property Registry.

793. At present, Macao, China has only four solicitors and they are under the supervision of the Committee. Solicitors are not graduates from School of Law but have extensive legal experience from their practice in law firms and Government and, upon getting authorisation from the Court, they are authorised to perform legal practices similar to a practicing lawyer with the exception of certain lawsuit types exclusive to lawyers, such as cases of appeal. The authorisation of solicitors has not been allowed since 1999. In the Macao, China legal system, to be qualified as a lawyer a person must be a law degree holder, undergo internship in private practice and pass a qualifying examination. He or she will then be admitted into the Macao Lawyers' Association and become a practicing lawyer. There is no distinction between solicitors and barristers in Macao, China.

794. The supervision of solicitors by the Commission is achieved in the following ways:

- i. In January of each year, commencing 2007, the solicitors have to file a 'practicing report' to the Commission declaring the business conducted and AML/CFT measures performed during the past year. The report details the transactions performed, and will highlight any suspicious transactions or transactions exceeding the thresholds. The commission will study the report to ensure that the solicitors have properly reported the suspicious transactions identified to the FIU.
- ii. If the Commission identifies any unreported suspicious transaction, it will request the solicitor concerned to submit details of the transaction for further inspection, e.g. property deal details handled by the solicitor can be compared

with the records in the Property registry. If it is confirmed that the unreported transaction is suspicious, the Commission will consider sanctions against this solicitor.

- iii. In addition, the Commission has power to request solicitors to provide analysis of any ML trends observed.

795. With two of the four members of the Commission being members of the Commission, the Commission should consider whether it operates independently and with autonomy. In addition, the Commission should receive training in AML/CFT.

The Finance Services Bureau

796. The Financial Services Bureau has seven staff. The Evaluation Team suggests that in order to monitor and enforce compliance with the Accountants Instructions, the Bureau should recruit additional staff and consider whether its other resources are satisfactory. The Bureau proposes to conduct on-site inspections of accountants, auditors and tax advisers. It appeared to the Evaluation Team that the Bureau had operational independence and autonomy, and freedom from undue influence or interference. Staff of the Bureau are required to comply with the code of professional ethics and conduct of public servants. The Bureau will need to increase its staff resources and receive AML/CFT training.

797. Although the Bureau is the supervisory authority for the purposes of Administrative Regulation 7/2006 it has arranged for an SRO, the Committee for the Registry of Auditors and Accountants to issue the Accountants Instructions. Under the organic law of CRAC, approved by Chief Executive Order No. 2/2005, CRAC operates under the Director of the Finance Services Bureau. The committee members of CRAC are appointed, upon proposals made by the Director of the Finance Services Bureau and by the Chief Executive of Macao, China. Article 44 of the Statute of Auditors (approved by decree Law No. 71/99/M) and Article 25 of the Statue of Accountants (approved by Decree Law No. 72/99/M) stipulate that auditors and accountants must comply with the guidelines issued by CRAC. By the same two statutes, CRAC is authorised to propose disciplinary proceedings and sanctions for any infringements committed by auditors and accountants. Members of CRAC should receive AML/CFT training.

Recommendation 25 (Guidance for DNFBPs other than guidance on STRs)

798. Article 2 of Regulation 7/2006 provides that the duties for DNFBP established in the Regulation fall under the responsibility of the following supervisors:

- the Gaming Inspection and Coordination Bureau for gaming operators and promoters;
- the Macao Trade and Investment Promotion Institute for offshore companies, including certain company service providers under the Law 58/99/M;
- the Finance Services Bureau of the Government of Macao, China for auditors, accountants and tax consultants when;
- buying and selling real property,
- managing client funds, securities or other assets,
- managing bank, savings or securities accounts,
- organising contributions necessary for the creation, operation or management of companies;

- creating, operating or managing legal persons or entities without legal personality, and the buying and selling of enterprises.
- the Macao Lawyers Association for lawyers and the Independent Commission for the Exercise of Disciplinary Power for solicitors.

799. Lawyers are required to comply with the Lawyers Instructions when they act with regard to, or intervene, (which also carries the meaning of ‘prepare for’), in the following operations in a professional capacity:

- purchase and sale of realty;
- management of funds, securities and other assets belonging to clients;
- management of bank accounts, savings accounts or securities accounts;
- organisation of contributions with a view to the formation, operation or management of companies;
- formation, operation or management of juristic persons or entities without a corporate personality;
- the transfer of all or part of commercial undertakings.
- the Legal Affairs Bureau of the Government of Macao, China for notaries and registrars.

800. The Notaries/Registrars Guidelines cover notary and registration acts of the following operations:

- buying and selling of real property;
- formation of legal persons;
- buying and selling of companies.

801. In Macao, China notaries are authorized only to certify transactions of real estates and are not allowed to perform the other areas covered by Recommendation 12.

802. The supervisory bodies specified above are responsible for the establishment of the procedures for compliance by supervised entities with the requirements of the Regulation by the issue of instructions. Instructions must be communicated by a general notice, registered letter, recorded delivery or by hand or by a notice or normative act published in the official gazette of Macao, China. All of the supervisory bodies have issued AML/CFT guidance notes (Instructions, Guidelines and Preventive Measures) – also see the preamble to section 4.2 of this report.

803. Instructions, Guidelines and Preventive Measures have been issued, however, they do not provide guidance on all of the relevant FATF Recommendations and they do not cover ML and FT techniques and methods. No guidance has been issued to trust and company service providers arranging for another person to act as a director or secretary of a company or a person in a similar position, arranging for another person to act as a trustee, or arranging for another person to act as a nominee shareholder.

4.3.2 RECOMMENDATIONS AND COMMENTS

804. Macao, China has considerably strengthened its AML/CFT framework by the appointment of supervisory authorities for all the DNFBP and by the issue of guidelines

in the form of Instructions, Guidelines and Preventive Measures to DNFBP. The Macao Trade and Investment Promotion Institute and the Legal Affairs Bureau are particularly well prepared for its AML/CFT supervisory role.

Casinos and gaming

805. Regarding Recommendation 24, oversight and regulatory responsibilities have been delegated to the DICJ regarding AML/CFT and monitoring more generally. The following recommendations in addressing specific concerns include the following:

- While Administrative Regulation 7/2006 and the Instruction issued by the DICJ have been issued recently, no assessment of implementation can be made at this time;
- No comprehensive risk assessment has been undertaken within the casino sector specifically to assess the risk of ML or FT – thereby informing regulation and ongoing monitoring;
- Additional personnel for the DICJ should be recruited; and
- Training for DICJ personnel in AML/CFT methodology to enable thorough assessment and treatment of risks in the sector needs to be a focus.

806. Regarding Recommendation 25, as the DICJ Instruction governing AML/CFT obligations described above have only recently been enacted, no testing of implementation has been done.

- The Macao, China authorities and the DICJ specifically, should provide additional guidance on the scope of ML and FT procedures and obligations beyond the existing Instruction;
- Money laundering and FT trends and techniques should be assessed on a continual basis and provided to gaming operators in the course of education and outreach activities;
- An outreach and education strategy should be developed and implemented to the sector on AML/CFT obligations and typologies; and
- Training on the application of these obligations and awareness raising on ML/TF techniques should be made a part of outreach to the sector, including measures by which casinos can ensure their AML/CFT practices are being implemented effectively.

Other DNFBP

- all of the DNFBP supervisory authorities should appoint more staff in order to monitor compliance with Regulation 7/2006 and the Instructions, Guidelines and Preventive Measures;
- all of the DNFBP supervisory authorities should establish programs for AML/CFT training;
- with the exception of the Macao Trade and Investment Promotion Institute and CRAL, review how sanctions can be applied for breaches of the Instructions/Guidelines and Preventive Measures which are not breaches of Administrative Regulation 7/2006;
- enhance the Instructions, Guidelines and Preventive Measures so that they include guidance on all of the relevant FATF Recommendations and include a description of ML and FT techniques and methods; and

- issue guidance to trust and company service providers (including any offshore entities) arranging for another person to act as a director or secretary of a company or a person in a similar position, arranging for another person to act as a trustee, or arranging for another person to act as a nominee shareholder.

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	PC	<ul style="list-style-type: none"> • While DNFBP regulations and those additional guidelines/instructions issued by the DICJ have been issued recently, and seem sufficient, no assessment of implementation can be made at this time. • No comprehensive risk assessment has been undertaken to understand the scope of money laundering/FT vulnerabilities in the sector. • Training for DICJ personnel in AML/CFT methodology is lacking. • Regulation 7/2006 provides powers of monitoring but monitoring has not yet commenced and it is not clear how compliance with the guidelines can be achieved in practice. • The supervisory authorities lack staff and training programs have not yet been finalised.
R.25	PC	<ul style="list-style-type: none"> • No specific guidance provided by authorities on the scope of ML and FT procedures and obligations beyond existing Instructions. • No guidance/description of ML and FT trends and techniques provided to gaming operators as part of education and outreach activities to the sector. • No specific outreach or education strategy for the sector on AML/CFT obligations and typologies with a view to testing the effectiveness of measures taken by casinos in fulfilling such obligations. • There appears to be little training on the application of AML/CFT obligations and awareness raising on ML/TF techniques to the gaming sector. • Guidelines to DNFBP beyond other than casinos do not include ML/TF techniques and trends, and some activities undertaken by trusts and company service providers are not covered.

4.4 OTHER NON-FINANCIAL BUSINESSES AND PROFESSIONS - MODERN SECURE TRANSACTION TECHNIQUES (R.20)

4.4.1 DESCRIPTION AND ANALYSIS

807. Macao, China has considered the potential risks of DNFBP other than those specified by the FATF and has extended the AML/CFT framework in Regulation 7/2006 and the Instructions, Guidelines and Preventive Measures to include:

- all business activities carried out by accountants, auditors and tax advisers (not only the areas of activity specified in Recommendations 12 and 16 for accountants);
- registrars involved with buying and selling real property; forming legal persons; and buying and selling companies;
- all traders of goods of high value, not just dealers in precious metals and dealers in precious stones;
- all offshore entities.

808. Macao, China has issued AML/CFT standards for entities involved both with small and large cash transactions.

809. Dealing first of all with small cash transactions, Decree Law No 15/97/M provides for the oversight by the AMCM of companies established for the delivery of small amounts of cash between jurisdictions and territories. The law prohibits such companies from granting loans and advances and from receiving refundable values. Daily maximum remittance limits of MOP 20,000 (USD2,500) per client have been established by the AMCM to minimise ML/FT risk. The companies must make information on exchange rates, commissions and other charges easily seen by the public. All operations must be recorded. In addition, a document must always be issued to acknowledge receipt of cash and the forecasted period of time for the delivery of the equivalent amount to the beneficiary. These companies cannot be incorporated without the prior authorisation of the Chief Executive and the transfer of shares in them requires the prior approval of the AMCM.

810. With regard to large cash transactions, the AMCM has issued the Guideline on Large Cash Transactions. The objective of the Guideline is to provide guidance on the establishment of an ongoing monitoring system for large cash transactions and additional control systems for financial institutions dealing with cash transactions. Cash transactions are defined as:

- transactions where large amount of deposits and withdrawals are made in cash or by cheques in any currencies;
- transactions where a large amount of money is exchanged or remitted in cash or by cheques in any currencies;
- transactions that are made frequently in short periods of time and accompanied by exchange or remittance of large amount of money in cash or by cheques in any currencies;
- transactions where large amounts of small denomination coins or bills in any currencies are exchanged or remitted;
- any other transactions which involve receipt of payment in cash including the encashment of traveller's cheques, money/postal orders, bank drafts or other monetary instruments in any currencies.

811. The Guideline specifies requirements for record keeping and identification of customers, ongoing monitoring of high risk cash transactions and the reporting of suspicious transactions.

812. The AMCM advised the Evaluation Team that it has encouraged the financial sector to develop and use modern and secure techniques for conducting financial

transactions. It has found the financial institutions are applying more advanced technologies in their operations and are offering different automated channels for banking channels, such as automatic teller machines, telephone banking, mobile phone banking and internet banking.

4.4.2 RECOMMENDATIONS AND COMMENTS

813. Macao, China has undertaken the commendable approach of extending its anti-ML framework beyond the entities specified by the FATF to other areas of potential risk and of reviewing its approach to cash transactions and the persons carrying out these transactions. The extension of the framework by the enactment of Decree-Law No. 15/97/M and the issue of the Guideline on Large Cash Transactions was made immediately prior to the assessment and the Evaluation Team suggests that the evaluation of whether this approach means that Macao, China is less vulnerable to ML is a matter for periodic consideration by the Working Group on Anti-Money Laundering.

4.4.3 COMPLIANCE WITH RECOMMENDATION 20

	Rating	Summary of factors relevant to s.4.4 underlying overall rating
R.20	C	<ul style="list-style-type: none"> 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

814. The types of legal person that exist in Macao, China are commercial companies, civil societies, associations and foundations. A notary is always involved in the establishment of such legal bodies. The notary is subject to the Notaries/Registrars Guidelines and his/her role is to seek to ensure that the contracting parties are aware of the contents of the relevant documents and that those contents reflect the wishes of the contracting parties. The notary issues a document of authentication, which includes information as to how identification of the contracting parties has been achieved. With one exception, although a deed is not required, the change in shareholders of a legal person requires a notary to certify the signatures of the seller and the purchaser. The exception is for public companies where changes in the ownership of nominal shares only require endorsement and registration in the share register and bearer shares can be exchanged without such endorsement and registrations. A lawyer is involved in an estimated 90% of formations of legal bodies.

Commercial companies

815. There are four types of commercial companies in Macao, China, namely general partnerships, limited partnerships, private companies and public companies. Commercial companies are formed under the Commercial Code and must apply to register with the Commercial Registry, which is a department of the Legal Affairs Bureau. The Bureau is the AML/CFT supervisor for notaries. The applicant must provide details of the company name, the type of company, the act of incorporation, the registered and principal business office, the administrator, the secretary, share structure and members' shareholdings. Commercial companies must have a registered office in Macao, China. The majority of commercial companies are family-owned companies. Companies may be appointed as directors of commercial companies – in such cases the director must appoint an individual to be its representative. At the time of the assessment there were 20,945 commercial companies, of which 258 were public companies and 20,696 were private companies. With the exception of single partner private companies, at least two shareholders are required to form a company. According to the Bureau, the shareholders of private companies are known to each other. Most of the public companies are financial institutions. The other public companies are involved in activities such as manufacturing, import/export and casino ownership. Capital of at least MOP 1,000,000 is required to form a public company. Shares may be sold by private transfer. No partnerships had been formed at the time of the assessment.

Civil societies

816. Civil societies are legal persons formed by members who contribute assets and services to the society for the common exercise of a particular economic activity in order to share the profits resulting from that activity or to maintain savings. Civil societies are similar to commercial companies. The only difference lies in their objectives. When a civil society's objective is the exercise of a commercial business, it is considered to be a

commercial company. When its objective is not a commercial business, it is considered to be a civil society. A register of civil societies is not maintained.

Associations

817. Associations are organisations of individuals and do not have the aim of making a profit. The constitution of an association must specify the assets or services brought by the associates to the association, the denomination, the purpose and statutory seat of the association, the form of its operation and its duration. The constitution of an association must be made public and be published in the Official Gazette. The management body of the association must register the constitutive document within 90 days after the mentioned publication. A register of associations is maintained by the Identification Department. More detail on associations is contained in section 5.3.1 of this report.

Foundations

818. Foundations are organisations which are vehicles established for charitable, benevolent or social purposes as determined by the founder(s). Foundations may be created by a public document but this is not always the case. For example, the founders may wish to establish a foundation privately. The constitution must indicate the aim of the foundation and specify the destination of the assets. The recognition by a public authority of the act of incorporation and the foundation's assets is mandatory for the foundation's validity. The constitution must be published in the Official Gazette in order to provide third parties with the opportunity of challenging the existence of the foundation. A register of foundations is maintained by the Identification Department. More detail on associations is contained in section 5.3.1 of this report.

Transparency, Bearer shares Etc

819. Information held by the Commercial Registry and the Identification Department is public. This information includes the names of holders of nominal shares (ie shares which are not bearer shares) in commercial companies, with the exception of public companies which have issued nominal shares where the names of the shareholders in the mandatory Book of Shares kept by the company secretary. Only public companies (258 in existence) and partnerships (none in existence) may issue bearer shares. The Legal Affairs Bureau advised the Evaluation Team that no bearer shares are in issue. Under the Commercial Code, all companies registered in Macao, China have to file their incorporation documents with the Commercial Registry. If they have bearer shares this has to be stated in the incorporation document. However, under the existing system, the Commercial Registry does not routinely maintain statistics on the number of companies with bearer shares. The authorities indicate that such statistics will be maintained. The holders of bearer shares can exercise all of the rights incorporated in the shares. In addition, the transfer of the rights incorporated in a bearer share occurs with the transfer of the bearer title or with the acquisition of its ownership. The Commercial Code requires that shares must be nominal if they are not fully paid, if they cannot be transferred by reason of a legal provision, or if the shareholders have a right to pre-emption in their transfer under terms set in the articles of association. The holder of bearer shares would be identified at the formation of a commercial company because they need to sign the articles of association – the Commercial Code requires the nature of the shares (i.e. bearer or nominal) to be specified in the articles of association.

820. There is another mechanism in the Commercial Code for the identification of ownership and control of shareholders with bearer shares. A shareholder who, by any form of subscription or acquisition of bearer shares, reaches a position of dominant shareholder in relation to the company must communicate such fact to the company by means of a letter addressed to the company's board of administration, which in turn shall communicate it to the supervisory board or single supervisor. A dominant shareholder may be an individual or it may be a collective person who, by himself or together with other companies of which he is also the dominant shareholder, or with other shareholders to whom he is connected by agreements outside the company, obtains a majority participation in the company capital, or controls more than half of the votes, or has the power to elect the majority of the members of the board of administration. The identity of the dominant shareholders must be published as part of the company's annual report. Similar provisions apply where the shareholder ceases to be a dominant shareholder.

821. As regards other commercial companies, except for civil societies the identification of each owner by notary is an element of the act of incorporation under the Commercial Code. The transfer of shares is subject to optional commercial registration.

822. In the case of nominal shares, their owners must be recorded in the register of the company register.

Competent Authorities

823. Competent authorities can obtain information on companies and companies' shares from the Commercial Registrar. The information held by the Registrar includes the identification of the shareholders (with the exception of the cases of bearer shares), the members of the board of administration and the members of the board of supervision.

824. Competent authorities also have access to the registration details of associations and foundations held at the Identification Department.

825. Furthermore, information can be obtained from the companies themselves, for example from the register held by a commercial company.

826. It is possible for competent authorities to obtain information on the identity of the owners of bearer shares in some circumstances. For example, information can be obtained from the minute books of general meetings, the paper trail arising from when the shareholder needs to require information from the company and when the shareholder institutes annulment proceedings to challenge a general meeting resolution in Court – this information would be disclosed publicly and would therefore be available to the authorities. As specified above, bearer shareholders who become dominant shareholders can also be identified.

Access to beneficial ownership and control information

827. Articles 3 and 4 of Administrative Regulation 7/2006 provide the main legal basis for identifying customers – the Financial Systems Act also provides a duty for credit institutions of verification of identity. Paragraph 6.1 of the Guideline for Financial Institutions requires institutions to establish systematic procedures for verifying the identity of new customers and beneficial owners, and not to open an account until the

identity of a new customer is satisfactorily established. As required by Paragraph 6.5, institutions should identify beneficial owners and take reasonable measures to verify the identity of those persons before or during the course of establishing business relationships or conducting transactions for occasional customers. Institutions are advised to require a declaration from customers to disclose and confirm the identity of the beneficial owners, if any. The authorities estimate that, at the least, the great majority of legal persons maintain a bank account in Macao, China. Paragraph 7.2.3 states that institutions should understand the structure of companies sufficiently to determine the true identity of the ultimate owners or those beneficial owners or have control.

828. The TSP/CSP Instructions came into effect in November 2006 but they do not require company service providers to obtain, verify and retain records of the beneficial ownership and control of legal persons. The TSP/CSP Instructions also do not contain reference to bearer shares. The Macao Economic Services intends to undertake on-site inspections of company service providers from 2007.

829. Company service providers may also be established as offshore entities and, therefore, the Offshore Preventive Measures may be important in the context of ascertaining the beneficial ownership and control of legal persons. The Offshore Preventive Measures appear to require entities subject to them to verify and retain records of the beneficial ownership of legal persons. Paragraph 3.1.3 of the Offshore Preventive Measures specifies that, to exercise the guidelines, the client is not confined to the contractor rendering services to commercial offshore services and auxiliary offshore service institutions, but also the corresponding agent, trustee, beneficiary of the service provider – even with services rendered through intermediaries. Following the assessment, the authorities advised that the English translation of Paragraph 3.1.3 is not correct – the words “beneficiary of the service provider” should in fact read “beneficial owner”. The Macao Trade and Investment Promotion Institute intends to add AML/CFT measures to its existing on-site inspection program from 2007.

830. The Notaries/Registrars Guidelines are important to consideration of Recommendation 33 because of the involvement of notaries in the formation of legal persons in Macao, China. Part III of the Guidelines states that the Guidelines apply to the formation of legal persons. Whilst Part IV of the Guidelines lays down a framework for the identification of contracting parties, that framework does not appear to extend to the verification of identity of beneficial owners and controllers where the contracting parties are legal persons. Bearing in mind that lawyers are involved with most formations of legal persons, the same point applies to the Lawyers Instructions.

831. The use of Macao, China bank accounts by Macanese legal persons, the requirements of the Guideline for Financial Institutions and the history of on-site inspections by the AMCM, provide some degree of transparency concerning the beneficial ownership and control of legal persons, albeit in practice legal persons may not use Macanese bank accounts. There are also basic provisions for identification of legal persons but not their beneficial owners or controllers contained in Administrative Regulation 7/2006 and the other Instructions, Guidelines and Preventive Measures made under the Regulation. However, these mostly do not cover beneficial owners or controllers of legal persons, and measures by supervisors other than the AMCM to ascertain the degree of implementation of the Instructions, Guidelines and Preventive Measures were nascent at the time of the assessment. The Evaluation Team was also

mindful that legal persons formed outside Macao, China may use the Macanese institutions.

832. The competent authorities can use article 8 of Administrative Regulation 7/2006 to require persons to provide them with such beneficial ownership and control information as is available for the prevention and suppression of the crimes of ML and FT. However, in light of the text above it is not clear that beneficial ownership and control information will always be available.

833. The current ML and FT threat to Macao, China arising from bearer shares is low. No bearer shares are in issue. In addition, while specific provisions do apply to bearer shares in Administrative Regulation 7/2006 or in the underlying Instructions, Guidelines and Preventive Measures the general requirement to verify beneficial owners and to ascertain controllers in paragraphs 6.1 and 7.2.3 of the Guideline for Financial Institutions are of help as these requirements apply whether or not bearer shares are in issue. The Instructions, Guidelines and Preventive Measures do not generally cover beneficial owners and controllers.

5.1.2 RECOMMENDATIONS AND COMMENTS

834. Macao, China has made strong efforts to reduce ML and FT risks by establishing a public company registration system; establishing supervisors and guidelines for company service providers, notaries, lawyers and offshore entities; and introducing revised guidelines for banks and offshore entities which cover beneficial ownership of legal persons.

835. The Evaluation team makes the following recommendations:

- the guidelines for company service providers, notaries, lawyers and other entities should explicitly cover the ongoing beneficial ownership and control of legal persons (including where bearer shares are issued).
- The Macanese authorities may wish to consider how best to avoid duplication of effort where several service providers are acting for the same client in respect of a single transaction such as a company formation.

5.1.3 COMPLIANCE WITH RECOMMENDATIONS 33

	Rating	Summary of factors underlying rating
R.33	PC	<ul style="list-style-type: none">• The requirements to obtain beneficial ownership and control information do not apply to company service providers, notaries and lawyers• Implementation has not been ascertained.

5.2 LEGAL ARRANGEMENTS – ACCESS TO BENEFICIAL OWNERSHIP AND CONTROL INFORMATION (R.34)

5.2.1 DESCRIPTION AND ANALYSIS

836. Macao, China does not allow for the creation of trusts. In addition, no trust service providers have been established in Macao, China.

837. According to article 119 of Financial System Act, entities wishing to conduct financial intermediary activities (in which category the AMCM includes trust activities) have to submit their application through the AMCM together with, inter alia, the following documents:

- the full identification of the applicants, as well as the partners or shareholders, their respective holdings and, in the case of corporate body, a copy of the existing or drafted memorandum and articles of association;
- full identification of the persons in charge of the management of the company (in this case trust) and their respective professional curricula; and
- any other additional information the AMCM may consider necessary to process the application.

838. Under article 30 onwards of the Offshore Sector Law the AMCM would regulate any trust companies established as offshore entities. Under article 38 of the law the AMCM has the ability to require applicants for a licence to provide it with similar information to that required by the Financial Systems Act, including such information as it deems necessary for assessing the application.

839. The AMCM therefore has the ability to verify the customer take-on policies, procedures and controls of trust service providers before they are licensed.

840. Even though Macao, China does not have its own trust law and no trust service providers have been established in Macao, China, financial institutions and DNFBPs may still accept non-Macanese trust as their customers.

841. In relation to customers that are legal arrangements, Paragraph 8.2 of the Guideline for Financial Institutions provides that reasonable measures should be taken to identify the settlors, trustees, beneficiaries and any other persons involved in the structuring of the arrangement. There is no requirement in the Guideline to understand the ownership and control structure of trusts and other legal arrangements.

842. The TSP/CSP Instructions refer to the identification of clients but not explicitly to the beneficial owners and controllers of trusts. This same point applies to all of the other Instructions, Guidelines and Preventive Measures issued under Administrative Regulation 7/2006.

843. In the absence of trust law and trust service providers, and bearing in mind the size of the banking sector in Macao, China relative to the other financial and DNFBP sectors there is a significant degree of transparency concerning the beneficial ownership and control of legal arrangements through the Guideline for Financial Institutions and the AMCM's on-site inspections.

844. The competent authorities can use article 8 of Administrative Regulation 7/2006 to require persons to provide them with such information as is available on the beneficial ownership and control of trusts and other legal arrangements. However, in light of the text above in respect to Recommendation 33, it is not clear that beneficial ownership and control information will always be available.

5.2.2 RECOMMENDATIONS AND COMMENTS

845. Macao, China has a strong basis for ensuring the beneficial ownership, albeit not necessarily the control, of legal arrangements is known to the main local service providers - banks. Although there are no trust service providers, there is a framework for trust service provider regulation in place. In practice, the relative size of the banking sector and the scope of the Guideline for Financial Institutions mean that the beneficial ownership of most foreign trusts using Macao, China's services will be known – the Macanese authorities can obtain access to this information. The Evaluation Team suggests that:

- consideration should be given to how legal arrangements can become clients of the insurance sector and DNFBP.
- The guidelines issued under Administrative Regulation 7/2006 should be amended to refer to beneficial ownership and control accordingly.

5.2.3 COMPLIANCE WITH RECOMMENDATIONS 34

	Rating	Summary of factors underlying rating
R.34	LC	<ul style="list-style-type: none"> • The Guidelines for Financial Institutions will cover most foreign legal arrangements using Macao, China, however, not all legal arrangements are necessarily covered. • The other guidelines, including the TSP/CSP Instructions, do not cover the beneficial ownership and control of legal arrangements.

5.3 NON-PROFIT ORGANISATIONS (SR.VIII)

5.3.1 DESCRIPTION AND ANALYSIS

846. Non-profit organizations (NPOs) can be organized into associations (and in some cases foundations. Any group of persons may form an association as long as its object is neither the promotion of violence, nor the infringement of the criminal law or public order. There is complete freedom of association in the Macao, China. NPOs are associations without any profit aim whose main purpose is to carry out and develop activities of general interest. NPOs play a very active role in Macao, China society and politics. The majority of NPOs in Macao, China are involved with cultural or sporting activities. Of the over 3,000 associations registered with the authorities in Macao, China, there are 27 foundations. Every legal person, no matter what type it belongs to (company, association or foundation), has to follow the procedure for incorporation and be registered with the relevant public department (the Commercial Registry for companies and the Identification Department for associations and foundations). All cases of legal person that do not follow the appropriate incorporation procedures, or

even persons which do not acquire legal personality, are equally liable for prosecution of ML and FT offences under article 5, number 1 of Law No. 2/2006 and article 10, number 1 of Law No. 3/2006. The Civil Code requires legal persons, including NPOs, to publish their constitution, which must include their purpose, objectives and activities in the Official Gazette. All constitutive acts of legal persons are subject to publication in the Official Gazette.

847. There exists no single authority in the Macao, China responsible for the regulatory supervision or monitoring of NPOs, but they are covered under Laws No. 2/2006 and 3/2006, and the supervisors, financial institutions and DNFBPs which have business relationships with NPOs are covered by Administrative Regulation 7/2006. NPOs are indirectly supervised by the Identification Services Bureau (DSI), the Finance Services Bureau, and other supervisors in accordance with the NPO registration legislation and financial institution/DNFBPs guidelines made under Administrative Regulation 7/2006. NPOs which can play a political role are subject to the Macao Electoral Law, whereby they are scrutinised by the court. After the election of a Legislative Assembly, NPOs that have participated in the election have to submit their financial statements to the Court showing their source of fund in running for elections and the details of expenses.

848. The DSI manages the registration process for associations and foundations. In addition to this role, the DSI is responsible for the collection and maintenance of identity and travel documentation for Macao, China residents. It has a staff of approximately 300, and has invested heavily in information technology as part of its data management role regarding personal information. The DSI also maintains the criminal registry for the Macao, China.

849. According to DSI personnel, the process for establishing and registering an NPO within the Macao, China is as follows:

- apply for a name;
- once the name is approved by the DSI, the NPO must be officially notarized;
- registry and accompanying documentation must be published in the Official Gazette;
- the DSI then registers the NPO itself by providing a unique identification number.

850. The DSI controls the licensing process and maintains filing records, which are available to all Macao, China government authorities. The activities and aims of an association that wants to be classified as an NPO are checked according to the requirements of Macao, China legislation (Law 2/99/M and the Civil Code).

851. After three years of effective activity NPOs in the Macao, China that wish to be classified as legal persons of “public interest” are subject to the approval of the Chief Executive, on a case by case basis, after scrutiny and seeking opinions of interested entities (public and private) regarding the nature, activity and purposes of the NPO (Decree Law 11/96/M, “Public Interest Entity”). NPOs of public interest may benefit from tax exemption in accordance with Article 10 of Decree Law 11/96/M. 141 NPOs have filed such an exempt tax registration with the Tax Department of the DSF. The DSF does not routinely maintain statistics on the number of NPOs that are tax-exempted.

852. Article 9 of Complement Tax Regulation also provides a framework for exemptions and includes in its exemptions regime - besides the exemptions applicable on the case by case analysis - an objective exemption applicable to NPOs in the amount of MOP 20,000. This exemption is applicable to almost all the entities that are registered with the DSF as NPOs. Not all associations pursue or achieve tax exempt status. However, for those entities that do, specific requirements are laid on the activities of the associations to maintain such status, and the Macao, China's Finance Services Bureau, which has authority over tax affairs, is responsible for such entities and collects and maintains the tax records.

853. The Evaluation Team identified no specific government process or system to verify the activities of an association once registered by the DSI. Associations and foundations must (i) annually prepare an activity report, annual account, and individual balance sheet for the previous year and an annual plan/budget for the upcoming year for submission to the Audit Board and approval by the General Assembly; (ii) submit the annual account/individual balance sheet to the Finance Services Bureau; and (iii) keep all relevant account records for five years. Tax legislation demands that records are kept for five years of all account documents (article 18 (4) of Law 21/78/M). Fines can be applied for non-compliance.

854. The authorities advised that outside the specific field of tax regulations, and because DSF's competence in the overseeing of NPOs is residual and indirect, there are some other legal rules that demonstrate this indirect control. Article 11 of Law 11/96/M imposes the annual presentation of the accounts of those entities that are considered as having public interest. Article 19 of Law 2/99/M imposes the publication of the accounts of associations that benefit from subsidies from public entities. Executive Ruling No. 54/GM/97 determines the conditions in which public funds may be attributed to private entities, namely in what connection is required between the funding and the specific activities to be pursued by these private entities, as well as the requirement that these subsidies must be made public through publication in the Official Gazette by the public entities that grant these subsidies in a way that demonstrates the transparency of the procedures. The Macao, China authorities also consider that the public foundations that grant these subsidies are themselves subject to a high degree of accountability and transparency.

855. DSI personnel suggested that notaries provide indirect oversight, as notaries are obligated to identify owners of companies. However, there had not been discussion between the DSI and the Legal Affairs Bureau regarding this issue nor any strategy or draft plan for the ongoing supervision of NPO activities. Similarly, the Finance Services Bureau has some oversight given its tax collection responsibilities.

856. The DSI does not undertake specific supervisory or monitoring oversight of NPO activities beyond the initial registration and does not carry out ongoing supervisory activities or related enforcement actions for non-compliance with required obligations. Registered NPOs in Macao, China are required to submit Board meeting minutes to the DSI every three years for review. The DSI provided no description of actions taken with respect to the review of submitted documentation and no enforcement action has been taken for failure to provide such documentation.

857. A preliminary study was carried out in June 2006 and a special working group was formed to follow up the preliminary study. The Macao authorities advise that the

working group was established after the onsite visit in late 2006 by the APG/OGBS. A copy of the study has been provided to the Evaluation Team. Based on the preliminary study, the legal framework for controlling NPOs in Macao, China was considered to have the following characteristics:

- Freedom of association is one of the fundamental principles enshrined in Macao, China Basic Law;
- There are two legal forms of NPO – association and foundations;
- There is a regime for the establishment and registration of NPOs; and
- NPOs are indirectly subject to the AML/CFT measures through guidance issued to financial institutions and DNFBP.
- NPOs having an active role in Macao, China occupy 27.8% of the total registered number of NPOs;
- NPOs with a charity and religion background comprise 10.9% of the total registered NPOs in Macao;
- Only 5.7% of the registered NPOs are active with charity or religion background;
- After promulgation of the new AML/CFT laws and regulations, NPOs are indirectly subject to relevant measures; and
- There was some ability to access and share information in respect of the prevention and repression of ML/FT but improvements were generally needed between the different entities that deal with NPOs to share information.

858. The preliminary review was led by the International Law Office at the instigation of the AML/CFT Working Group. The AMCM and the Finance Services Bureau gave support. During discussions with the DSI and the tax authorities, neither was aware of the review. The Evaluation Team also noted that the preliminary study did not cover historical data or the vulnerability of the NPO sector to FT. The DSI was added to the assessment schedule of meetings after the insistence of the team.

859. The DSI, as the Macao, China manager of the civil and criminal databases concerning legal persons (including NPOs) and Macao, China residents, has the ability to quickly identify all legally registered NPOs in the Macao, China. However, the DSI has limited data concerning the size and other relevant characteristics of the non-profit sector for the purpose of identifying the scope of activities engaged or the types of NPOs operating.

860. There was no outreach program in Macao, China and, at the time of the assessment, one was not envisioned for the near future. Neither the DSI nor the tax authorities has issued any advisories or specific guidance to the NPO sector regarding the threat of FT and the vulnerabilities NPO activities may have to such abuse. Any awareness among NPOs regarding AML/CFT issues more generally would be indirect and as a part of the Macao, China's larger AML/CFT program.

861. There is no direct supervision or monitoring of NPOs in the Macao, China as there is not a single specific competent authority charged with the oversight of the sector. NPO activities with respect to their financial resources or the scope of their international activities are not monitored. Tax authorities are charged with the collection and maintenance of tax filings for those entities registered as tax exempt. Any additional oversight activities of the sector would be indirect, either via notaries (upon formation),

the Finance Services Bureau with respect to tax matters and financial institution and DNFBP supervisors.

862. Guidelines have been issued to the financial institutions and DNFBP operating in Macao, China and those guidelines must be followed by business entities when dealing with NPOs. With reference to section 5.1.1 of this report, notaries are particularly important in this framework as they must notarise the formation of associations and foundations where the value of the transaction/relationship exceeds MOP\$500,000. This activity falls within the scope of the Notaries/Registrars Guidelines. Lawyers – who are also subject to guidance - are involved with the formation of an estimated 90% of legal persons, including associations and foundations.

Gathering Information

863. The DSI maintains records on NPOs specific to their registration procedures. These include the name, address, day of establishment, and a list of directors. This information is required to be updated every 3 years when NPOs must submit Board meeting minutes to the DSI. This information is not made publicly available by the DSI.

864. The Macao, China has not issued any guidance to the NPO sector regarding the collection, retention, or reporting of specific information related to its activities either domestically or internationally. Any guidance to the NPO sector stems from original registration requirements and those associated with proper accounting and tax filing obligations.

865. The DSI database is the best available means to gather information on NPOs, as this is the only repository of data on ownership and status. The Financial Services Bureau also carries tax information for those entities having applied for tax exempt status. However, as the DSI does not conduct any review or monitoring of NPO activities or verify their obligations for submission of Board meeting minutes and updates of their licenses, DSI data can be 2 – 3 years or more out of date.

866. The Prosecutors Office does have the authority to review NPO activities and to administer criminal sanctions when applicable. Statistics/information on investigations of NPOs are not routinely maintained but in response to a request by the Evaluation Team, after the assessment the Macao, China authorities confirmed that there had been no cases of FT in Macao, China during the period from 2004 to 2006.

867. Discussions with various departments in the Macao, China revealed that there was no effective interagency coordination or information sharing among appropriate authorities with respect to the activities of NPOs and their vulnerabilities to FT.

868. Whilst the authorities did not indicate previous investigations of associations or foundations for any reason, there are no known impediments to any prompt investigation of an NPO for criminal purposes. The Macao, China authorities have confirmed that NPOs are criminally liable under Law 3/2006 in respect of FT and are subject to seizure measures.

869. Inquiries regarding FT through NPOs are to be sent directly to the GIF by virtue of Law No. 3/2006. The GIF will report the case to the Public Prosecutions Office when necessary. The authorities consider that information held in Macao, China can be

obtained. The authorities have also advised that training will be needed to improve the investigative capability on FT for both the GIF and the law enforcement agencies.

5.3.2 RECOMMENDATIONS AND COMMENTS

- Review and disseminate among Macao, China authorities FATF and APG materials regarding NPOs relevant to the threat of FT.
- Consult with neighbouring and regional government to better understand how NPOs may be used to support criminal or terrorist activities.
- Engage in the APG directed initiative of domestic sector review to fully understand the size and scope of the sector and the potential vulnerabilities to FT.
- Bearing in mind the FATF standard, Conduct a specific threat assessment of NPOs in Macao, China and produce a formal document stating the risks of FT in Macao, China and the risks of exploitation of NPOs. The assessment should involve indirect supervisory agencies as well as law enforcement and prosecutors. Based on this assessment, implement appropriate oversight of the NPO sector (including the information to be maintained by NPOs, including information on owners and controllers) and effective coordination between all the relevant Macanese authorities.
- Consider enhancing the NPO registration process to include more detailed information regarding directors and activities.
- Enhance the sharing of information and training for investigative purposes with appropriate agencies, including the GIF and Judicial Police.
- Given the strong political activities of NPOs in Macao, consider establishing/assigning a specific competent authority in Macao, China to oversee the activities of NPOs.

5.3.3 COMPLIANCE WITH SPECIAL RECOMMENDATION VIII

	Rating	Summary of factors underlying rating
SR.VIII	PC	<ul style="list-style-type: none"> • A preliminary review has been undertaken, but a full review of the NPO sector and the risk of the sector to FT has not been completed. • There is no formal supervision or monitoring of NPOs accounting for a significant portion of NPOs' financial resources or a substantial share of the sector's international activities. • There has been no outreach to the NPO sector for AML/CFT purposes.

6. NATIONAL AND INTERNATIONAL COOPERATION

6.1 NATIONAL COOPERATION AND COORDINATION (R.31)

6.1.1 DESCRIPTION AND ANALYSIS

870. The main forum for coordination on between the competent authorities is the Working Group on Anti-Money Laundering. The Macanese authorities advise that, in the period prior to the assessment, the Working Group consolidated the efforts of government agencies against ML and the FT. Apart from updating its members about AML/CFT policy initiatives, such as interpretative notes issued by the FATF and the work of other international organisations such as the Asia/Pacific Group on Money Laundering, the Working Group coordinated the implementation of the measures laid down in the AML/CFT legislation promulgated in Macao, China in 2006. One of the aspects coordinated by the Working Group was the preparation of the new and revised AML/CFT Instructions, Guidelines and Preventive Measures referred to elsewhere in this report. The Evaluation Team reviewed the minutes of meetings of the Working Group for the year prior to the assessment.

871. The chief executive of the GIF is the secretary to the Working Group – this person was also the secretary in her previous role at the AMCM. The maintenance of this role with an individual with regulatory and FIU experience should prove to be an important tool in the coordination of Macao, China's AML/CFT framework. The membership of the Working Group comprises representatives of the GIF, the AMCM, the Gaming Inspection and Coordination Bureau (DICJ), the Gaming Commission (CJ), the Macao Economic Services (DSE), the Finance Services Bureau (DSF), the Macao Trade and Investment Promotion Institute (IPIM), the Legal Affairs Bureau (DSAJ), the Commission Against Corruption (CAC), the International Law Office (GADI), the Public Prosecutions Office (MP), the Judiciary Policy (PJ), the Customs of Macao, China (SA), the Unitary Police Service (SPU). The Working Group meets at least quarterly – eight meetings were held in 2006 during the period prior to the assessment. The GIF is conscious of the importance of coordination – for example, the DICJ has agreed to provide it with periodic summary reports of large transaction reports in casinos.

872. The authorities advise that due to the small territorial dimension of the Macao, China, it is easy to ensure cooperation between political decision makers (the principal officials of the Macao, China Government), the entities with responsibilities for the application of the law (through the Public Prosecutions Office and its power to lead inquiries and the command and operational direction from Unitary Police Service) and the supervisory entities. The Macao, China Executive Ruling No. 227/2006 has made it a compulsory for GIF to share information and provide technical support to Macao, China law enforcements. Likewise, the PJ is also given vast powers under the Law of the Judiciary Police No. 5/2006 which allows it to compel other law enforcement bodies, public agencies, public entities, private entities and natural persons to cooperate and provide assistance to PJ. Even though the requirement of cooperation and sharing of information are guaranteed, as provided for in the laws, it is still advisable for the Macao, China to develop clear and detailed standard operating procedures (SOP) on how information and assistance would be transmitted or rendered to each other. This would help the Macao, China various agencies to follow a standard and controlled process in providing cooperation and assistance to each other as well as safeguarding the

information from flowing uncontrollably or being abused. The proposal by GIF to establish a cooperation agreement to facilitate the formal and informal information sharing channels clearly demonstrates the need for some kind of procedures to complement the vast powers provided for in those relevant laws.

873. Article 78 of the Financial System Act provides that persons currently or previously employed by the AMCM and all those who have provided the AMCM with services on a permanent or casual basis are bound by the duty to maintain secrecy concerning information obtained during the course of their employment or the provision of services and shall not reveal or take advantage of information obtained. Article 79 specifies exceptions to article 78, and allows the AMCM to exchange information with other supervisory authorities provided that the information remains subject to secrecy and is not used for any purpose other than supervision. A similar provision on professional secrecy is contained in article 11 of the Insurance Companies Ordinance but there does not appear to be an article covering exceptions to article 11. Specific provisions on cooperation are not included in the Insurance Intermediaries Law. Hence, the Evaluation Team is not clear as to how the AMCM in its capacity as the supervisor of the insurance sector can cooperate at the operational level.

Recommendation 32

874. Sections 2.1, 2.2, 2.3 and 2.4 of this report conclude that comprehensive data on ML cases is not maintained. Comprehensive data on mutual legal assistance is also not maintained. Effectiveness in these areas can therefore not be measured. Section 3.10 refers also to the lack of a periodic review of the supervisory statistics. The Working Group on Money Laundering does not appear to review such statistics as are available and there does not in general appear to be a regular review of Macao, China's AML/CFT framework.

6.1.2 RECOMMENDATIONS AND COMMENTS

875. Given the large number of supervisory authorities and other competent authorities in Macao, China, the existence of the Working Group would be beneficial even if only to learn what developments the members of the group are planning. The impressive developments of Macao, China's AML/CFT framework in 2006 provide an opportunity for the Working Group to add significant value by considering the strengths and weaknesses of the framework now in place. For example, the supervisory authorities can disseminate information to the Working Group on the strengths and weaknesses they ascertain from on-site inspections while GIF and other authorities can periodically share considerations arising from the statistics required by Recommendation 32 and review the strengths and weaknesses pointed to by the statistics and from knowledge of individual sectors.

876. In addition, Macao, China should consider whether they have the right number of supervisory authorities. For example, there are different supervisory authorities for lawyers and solicitors. Both the AMCM and the Macao Economic Services have authority over company and trust service providers. The provision of company and trust services is also closer to financial services than the other areas of AML/CFT activity - whilst the Macao Economic Services is confident it is the appropriate body to be responsible for the AML/CFT measures of company and trust service providers, that does not prevent the task from being a difficult responsibility to fulfil when the other

areas of that AML/CFT responsibilities are real estate agents and dealers in high value goods. The Evaluation Team therefore recommends that:

- the Working Group should use the changes to the AML/CFT framework in 2006 to improve statistical gathering and review the strengths of weaknesses of the framework;
- consideration should be given to streamlining the number of supervisory authorities; and
- the insurance supervisory legislation should be amended to allow operational cooperation as envisaged by the Methodology.

6.1.3 COMPLIANCE WITH RECOMMENDATION 31

	Rating	Summary of factors underlying rating
R.31	LC	<ul style="list-style-type: none"> • In relation to the FIU, despite the requirement of cooperation and sharing of information being guaranteed, as provided for in Executive Ruling No. 227/2006, there are no clear and detailed standard operating procedures (SOP) on how information and assistance would be transmitted or rendered to each other so as to safeguard the information. • In relation to law enforcement, despite the requirement of cooperation and sharing of information being guaranteed, as provided for in the Law of the Judiciary Police No. 5/2006, there are no clear and detailed standard operating procedures (SOP) on how information and assistance would be transmitted or rendered to each other so as to safeguard the information. • Coordination mechanisms are in place through the Working Group on Anti-Money Laundering but it is not clear how operational cooperation will be achieved.
R.32	PC	<ul style="list-style-type: none"> • As there are no comprehensive statistical data on MLA, concerning ML/FT, the Working Group on ML is unable to clearly measure effectiveness and efficiency of the previous and existing MLA system.

6.2 THE CONVENTIONS AND UN SPECIAL RESOLUTIONS (R.35 & SR.I)

6.2.1 DESCRIPTION AND ANALYSIS

Recommendation 35 & Special Recommendation I

877. So that international conventions and treaties become part of Macao, China legal order, they have to be duly ratified or approved by the PRC, or in the appropriate fields by the Chief Executive, and published in the Official Gazette.

878. International law does not need to be incorporated into domestic law in order to effect its application, once both are part of the same general legal order operating simultaneously in regard to the same subject matter, according to the continental Roman-Germanic legal system. In the event of a conflict between international and

domestic law, international agreements applicable in Macao, China take precedence over domestic ordinary law (Article 1 (3) of the Civil Code).

879. As previously mentioned in Sections 2.1 and 2.2. of this report, the following Conventions are applicable to Macao, China:

- Vienna Convention was published in Macao, China Official Gazette 13, Series I, of 29 March 1999, without reservations;
- Palermo Convention was published in Macao, China Official Gazette 36, Series II, of 8 September 2004, with the reservation made by the PRC on paragraph 2 of Article 35 of the Convention;
- International Convention for the Suppression of the Financing of Terrorism was published in Macao, China Official Gazette 26, Series II, of 28 June 2006.

880. Although the above mentioned Conventions are applicable to Macao, China, some provisions on those Conventions were not implemented, as required by this Recommendation.

881. According to Article 5, Paragraph 4 b of the Vienna Convention, following a request, jurisdictions should ensure measures such as identifying, tracing, freezing or seizing of assets. Macao, China did not implement provisional freezing measures to answer to such request. In Article 10 of the same Convention regarding international cooperation, there is reference to the conclusion of bilateral and multilateral agreements to enhance the effectiveness of cooperation. Macao, China has not concluded significant bilateral or multilateral agreements besides some with the PRC, HK SAR and Portugal.

882. Article 12 (confiscation and seizure), and Article 13 (international cooperation for the purpose of confiscation) of the Palermo Convention refer to the ability that each country should have to freeze property in order to confiscate it under domestic cases or answering to foreign requests. Macao, China has not legislated a freezing mechanism. Article 18 (mutual legal assistance), rules that MLA must be provided when requested in several cases, for example, the execution of freezing requests. However, the Team was informed by judiciary authorities, that a request for freezing of money in an account was refused by judicial authority. Article 19 (joint investigations), which is only feasible through agreements or other bilateral or multilateral instruments, is not applicable as there are no significant agreements in place. Article 20 (special investigative techniques) such as undercover operations and controlled deliveries, should be allowed for both domestic investigations and for international cooperation requests. These techniques or others are not allowed under Macao, China legislation on ML or FT, due to there being no relevant legal provisions. Article 24 (witnesses protection) in respect of the ML framework, is not covered in Macao, China by any applicable legislation.

883. Article 8 of the International Convention for the Suppression of the Financing of Terrorism, sets the provisional measures to be covered so to enhance forfeiture of property. One of these is a freezing measure which has not been established under Macao, China legal provisions.

884. Other relevant information regarding the above mentioned Conventions follows:

- in relation to the Palermo Convention the designated Central Authority in Macao, China to receive the requests for legal assistance and to transmit them to the competent authorities of Macao, China for execution is the Secretary for Administration and Justice (Article 18 (13)) and that requests for legal assistance will only be accepted by Macao, China in the Chinese or Portuguese language (Article 18 (14));
- in accordance with Article 2 (1) (a) of the International Convention for the Suppression of the Financing of Terrorism the following three conventions referred to are not applicable to Macao, China: (1) Convention on the Physical Protection of Nuclear Material, adopted at Vienna on 3 March 1980; (2) Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on 10 March 1988; and (3) Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, done at Rome on 10 March 1988, as notified by China, at the moment of the deposit of its instrument of ratification, to the depositary entity.

885. As regards ordinary laws, the following laws also address the implementation of the issues related to the above mentioned conventions: Law 5/91/M establishes the regime to counter the illicit traffic and consumption of narcotic drugs and psychotropic substances; Law 6/97/M establishes the legal framework against organised crime; Law 6/2006 establishes a legal cooperation framework in criminal matters, and Law 2/2006 on the prevention and suppression of ML and Law 3/2006 on the prevention and repression of the crimes of terrorism.

886. Other conventions are applicable in Macao, China, such as the UN Convention against Corruption which was published in Macao, China Official Gazette 7, Series II, on 21 February 2006. This Convention, in force since 2006, is relevant once reinforce the importance already addressed in Article 8, of Palermo Convention, on the criminalisation of corruption.

887. UN Security Council Resolutions S/RES/1267 (1999) and S/RES/1373 (2001) and its successor resolutions were published in the Official Gazette. UNSCR 1267 was published in OG 29, Series II, of 14 November 2001 . and UNSCR 1373 was published in OG 43, Series II, of 24 October 2001. These Resolutions are part of Macao, China legal system and prevail upon ordinary law.

888. According to the above, UNSCR jurisdictions are obliged to freeze terrorist funds or assets, on the first resolution of Al-Qaeda and Taliban individuals funds or assets belonging to those organisations, and on the second resolution to any terrorist funds or assets, who commit or attempt to commit terrorist acts. The obligation to freeze fund or assets is non self-executing, therefore requires domestic provisions so that such obligation may be applicable. In order to comply with certain acts of international law, which were not self-executing (UNSCR included) Law 4/2002 of 15 April was approved. However, as referred previously, and despite this law, Macao, China did not establish legal provisions for freezing measures or mechanisms. But according to this law, guidelines were issued by supervising authorities to financial and non-financial entities to detect listed individuals assets and possible terrorist acts.

889. No data was provided relating to the efficiency of the AML/CFT system since the most important and applicable laws were only recently enacted. In addition, most of the guidelines that covered the areas in these laws were recently issued (November/December 2006).

6.2.2 RECOMMENDATIONS AND COMMENTS

890. Vienna and Palermo Conventions are applicable in Macao, China legal system. However, those Conventions were not fully implemented. Therefore, Macao, China should consider addressing the non implemented articles of those Conventions.

891. The UN Suppression of FT Convention and UN Security Council Resolutions are enforced in Macao, China legal system. Macao, China can seize and forfeit terrorist funds and assets under a national legal framework. However, the freezing mechanism was unaddressed in Macao, China legal provisions. Therefore, Macao, China should consider legally addressing the identified article and measures.

6.2.3 COMPLIANCE WITH RECOMMENDATION 35 AND SPECIAL RECOMMENDATION I

	Rating	Summary of factors underlying rating
R.35	LC	<ul style="list-style-type: none"> Vienna and Palermo conventions are not yet fully implemented
SR.I	LC	<ul style="list-style-type: none"> International Convention for the Suppression of the Financing of Terrorism is not fully implemented, as no freezing mechanism and procedure is in place. UN Security Council Resolutions are not fully implemented, as no freezing mechanism and procedure is in place.

6.3 MUTUAL LEGAL ASSISTANCE (R.36-38, SR.V)

6.3.1 DESCRIPTION AND ANALYSIS

Recommendation 36

892. Legal cooperation in criminal matters in Macao, China shall be carried out, first of all, in accordance with the provisions of the international conventions applicable to Macao, China, according to Article 1(3) of the Civil Code. Whenever such provisions are non-existent or are insufficient, Law 6/2006 of 24 July, as a special legal instrument, shall apply and is supplemented by the provisions of Criminal Procedure Code. Some legal provisions concerning legal judicial cooperation in criminal matters were addressed in Law 3/2002 of 4 March 2002, which set up a notification procedure regime of all MLA requests.

893. Law 6/2006, which came into force on 1 November 2006 establishes the basis for legal cooperation in criminal matters between Macao, China and other jurisdictions or territories. The following forms of international judicial cooperation are set forth:

- surrender of fugitives offenders,
- transfer of criminal proceedings,

- enforcement of criminal sentences,
- transfer of sentenced persons,
- surveillance of sentenced persons or persons on parole, and
- other forms of legal assistance.

894. Due to Macao, China's legal status, extradition agreements are strictly within the sphere of competence of the PRC (Article 13 of the Basic Law). Therefore, Law 6/2006 does not address the issue of extradition. However, the surrender of fugitive offenders regime is very similar to the extradition one. Surrender of a fugitive offender is defined as the transfer on request to the requesting entity of a suspected or sentenced person found in the requested entity.

895. Principles regarding the primacy of international conventions, reciprocity, dual punishment, speciality and non bis in idem are cornerstone principles of the said law.

896. Mutual legal assistance is based on the principle of reciprocity and whenever the circumstances so require, the Chief Executive shall demand an undertaking to the effect that reciprocity shall apply (Article 5 (1) of Law 6/2006). Despite such requirement, the absence of reciprocity shall not preclude the execution of a cooperation request, as long as:

- i) it seems to be advisable taking into account the nature of the fact or the need to combat certain serious forms of criminality;
- ii) it may contribute to the enhancement of the situation of the accused or sentenced person or to his/her social rehabilitation;
- iii) it may serve to clarify the facts of which a Macao, China resident is accused of (Article 5 (2) of Law 6/2006).

897. In relation to cooperation procedures, the following general rules are established under Law 6/2006:

- i) The cooperation requests and the documents that accompany the request shall be made in the official language of the requesting party accompanied by a translation in the official language of the requested party, except that the requested party exempts the need for such translation (Article 21);
- ii) Macao, China Prosecution Office is the entity responsible to receive and transmit any cooperation request covered by this law that are addressed to Macao, China authorities, as well as for all communications relating thereto (Article 22 (1));
- iii) Any cooperation request shall be submitted to the Chief Executive by the General Procurator, accompanied with his/her opinion, in view of making a decision on its admissibility (Article 22 (1))
- iv) Any cooperation request formulated by Macao, China authorities shall be submitted to the Chief Executive, by the General Procurator, with a view to its admissibility being decided upon and shall be transmitted through diplomatic channels (Article 23);
- v) Macao, China competent authorities to formulate or execute a cooperation request addressed to Macao, China shall be determined in

accordance with the provisions of this Law, with relevant provisions of the organic laws of the competent authorities and subsidiary with the provisions of Articles 213 and seq. of the Criminal Procedure Code (Article 26);

vi) The cooperation request shall specify, inter alia: the requesting authority as well as the requested authorities, even if the indication of the latter may be in general terms; the legal qualification of the facts on the grounds of which the request is sought for the purposes of criminal proceedings; the identification of the suspect, accused or sentenced person, of the victim and of the witness or expert whose testimony is sought; a description of the facts, including time and place of the commission of the offence, depending on the importance of the cooperation sought; The text of the legal provisions applicable in the requesting party (Article 24);

vii) The decision of the Chief Executive that declares the inadmissibility of the cooperation request addressed to a Macao, China authority or that declares that such request cannot be formulated, shall be substantiated, being the foreign competent authority notified through Macao, China Procurator-General (Article 25);

viii) The previous decision is not subject to appeal (Article 25(2));

ix) Any final decision of a judiciary authority that refuses the cooperation request, the requesting party shall be notified therewith through the channels mentioned in Article 23 (Article 31).

898. Besides Law 6/2006, the provisions of Articles 214 to 216 of the Criminal Procedure Code apply to the mutual legal assistance requests (Article 136 of Law 6/2006). In fact, Articles 214 and 215 of the Criminal Procedure Code establish the applicable regime related to the reception and execution of rogatory letters and Article 216 enunciates the grounds for refusal in the absence of international conventions or agreements on mutual legal assistance. The rogatory letters shall be handed over to or forwarded by Macao, China Prosecution Office through Macao, China Government.

899. Mutual legal assistance requests on criminal matters may be afforded or requested, even if no bilateral agreement exists with a foreign jurisdiction. However, Mutual legal Assistance Treaties on a regional or international basis improve the efficiency of the MLA system. In fact, Macao, China Government was not engaged actively in international bilateral agreements on mutual legal assistance in criminal matters. The existing exceptions are: an Agreement on the Transfer of Sentenced Persons, with the Portuguese Government, signed on 7 December 1999, an Agreement on Mutual Legal Assistance with the Portuguese Government, signed on 17 January 2001, and an interregional agreement on the Transfer of Sentenced Persons with Hong Kong, China, concluded on 25 May 2005.

900. Legal assistance in criminal matters as provided for in Law 6/2006 comprises: the communication of information; the communication of procedural acts and other public law acts, whenever deemed to be necessary for the purposes of criminal proceedings; as well the necessary acts to enable the seizure or recovery of instrumentalities, objects or proceeds of an offence (Article 131 (1) of Law 6/2006).

901. Such legal assistance ruled in Articles 131 to 146 of Law 6/2006, covers, inter alia, the following acts:

- effecting service of judicial documents; provision of judicial documents and other documents;
- gathering of evidence;
- searches and seizures; examination of objects and sites; experts evaluations;
- effecting service of accused persons, witnesses or experts; taking testimony or statements of accused persons, witnesses or experts;
- transit of persons;
- provision of information related to the criminal record of the suspect, accused or sentenced persons;
- provision of information related to Macao, China law and law of another country or territory.

902. According to Article 141(2) of Law 6/2002, it is possible to hand over objects, valuables, documents or files, which may be seized and forfeited under Macao, China law, upon request of a foreign authority, if they are deemed to be relevant to their criminal proceedings.

903. Article 142 of the same law allows Macao, China authorities to undertake actions in order to trace any proceeds, objects and/or instrumentalities located in Macao, China, from an alleged crime, upon request of a foreign authority. The Macao, China authorities may seize and provide for the forfeiture of those proceeds following foreign courts decision.

904. Due to its legal status, Macao, China has to comply with certain procedures, namely to notify the Central People's Government (CPG) of any request addressed to or to be submitted by Macao, China within the legal cooperation framework. Law 3/2002 sets up such notification procedure regime.

905. Any cooperation request on criminal matters, related, inter alia, to the surrender of fugitives offenders and his/her transit; to the transfer of sentenced persons and his/her transit; to the effecting service of judicial documents, as well as to the gathering of evidence, shall abide by the provisions of this law. So, apart from the local procedures, Macao, China competent authorities, before making a decision to submit or to accept a request by foreign authorities, under the law or any applicable bilateral agreements or international convention applicable to Macao, China, are obliged to follow such procedure.

906. The deadline to receive a written communication from the CPG is of 15 days (Article 5 of Law 3/2002 and Notice 19/2002 of the Chief Executive). The 15 day deadline may be duly postponed or extended in exceptional cases. However, in urgent cases, assistance requested relating to the gathering and keeping of evidentiary material; searches and seizures; or other provisional measures related to criminal proceedings may be duly afforded. The foreign authorities can communicate directly or through Interpol with Macao, China judicial authorities, stating the reasons for urgency and observing the requirements referred in Article 24 (Article 30)

907. In relation to the provision of assistance in a constructive manner, some examples can be found in Law 6/2006, whereby such approach is carried out. For instance:

- Regarding the content of the request, if the information provided by the requesting party is insufficient to entertain the request, additional information may be requested, without prejudice to adopting provisional measures whenever it is not possible to hold for the revised request (Article 24 (3));
- Regarding the applicable law to the assistance requests, at the request of the requesting party, the assistance sought may be given in conformity with the law of that party, as long as is not incompatible with the fundamental principles of law of Macao, China and does not carry out serious damages to the parties involved in the proceedings (Article 142 (2));
- Regarding the prohibition to use the information obtained, upon application of the requesting party, the Chief Executive may, by exception, authorize the use of any information obtained within the framework of criminal proceedings specifically mentioned in the request within the framework of other criminal proceedings (Article 133 (2));
- Regarding confidentiality of the assistance request, upon application of the requesting party, the request for assistance, its purpose, the measures taken upon the request, as well as the documents involved may be kept confidential (Article 134 (1));
- Regarding the contents of assistance request, the request and supporting documents may include any reference to particulars of the criminal proceeding file or to any additional requirements, including deadlines and confidentiality, that the requesting party wishes to be met (Article 135 (3));
- Regarding the handing over of objects, valuables, documents or files, if the authority of the requesting party expressly requests the handed over of originals, the request shall as far as possible be afforded; upon a return condition (Article 141 (4));
- Regarding the law applicable within the framework of a specific criminal proceeding, any information requested by the judiciary authorities of another country or territory related to Macao, China law applicable in the framework of a specific criminal proceedings shall be afforded (Article 143 (1)).
- As regards if cooperation is afforded in a effective manner, at the present it is very difficult to provide such data or to assess effectiveness taking into account Macao, China's lack of experience in this field and the recent enactment of Law 6/2006. As mentioned before, such law will enter into force on 1 November.

908. As also stated, in relation to the mutual legal assistance requests procedure, the provisions of Articles 214 to 216 of the Criminal Procedure Code shall apply (Article 136 of Law 6/2006).

909. Other requests, in particular requests related to criminal records or the verification of the identity of a person or mere requests for information, may be directly transmitted to the competent authorities or entities for execution; once complied with, the results shall be communicated through the same channels use by the requesting party.

910. The principles, requisites and grounds for refusal of legal assistance requests, established in Law 6/2006, abide by the reasonableness, proportionality and restrictiveness criteria of most laws on the matter. According to Article 7, the following are considered general mandatory grounds for refusal of a cooperation request:

- 1) The proceedings do not comply with nor abide by the requirements laid down in the international conventions applicable to Macao, China;
- 2) There are well-founded reasons to believe that cooperation is sought for the purpose of persecuting or punishing a person by virtue of that person's nationality, origin, race, sex, language, religion, political or ideological beliefs, educational level, economic status, social condition or belonging to a given social group;
- 3) There is a risk that the procedural status of the person might be impaired based on any of the factors indicated in the preceding item;
- 4) The cooperation sought might lead to a trial by a court of exceptional jurisdiction or when it concerns the enforcement of a sentence by such a court;
- 5) Any of the facts is punishable with a penalty that may cause irreversible damage to the person's integrity;
- 6) Any of the offences is punishable with a penalty or measure involving deprivation of liberty of a life-long or of indefinite character; or
- 7) Any of the facts is punishable with a death penalty sentence.

911. Even so, the situations mentioned above in items 5) to 7) shall not preclude cooperation: if the requesting party offers assurances that those penalties or security measures shall not be executed or imposed; or if the requesting party accepts the conversion of the said penalties or security measures by a Macao, China court and in accordance with Macao, China law applicable to the crime for which the person was convicted of; or if the request complies with the form of assistance provided for in the referred law, on the grounds that it will presumably be relevant to prevent the application of such penalties or security measures.

912. Law 6/2006 also establishes grounds for refusal based on the nature of the offence, namely; 1) any offence of a political nature or an offence connected with a political offence, according to the concepts of Macao, China law, and 2) any facts that constitute a military offence and do not constitute an offence under ordinary criminal law (Article 8).

913. Genocide, crimes against humanity, war crimes and serious offences under the 1949 Geneva Conventions; or any acts mentioned in the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the United Nations General Assembly on 17 December 1984; or any other offences that ought not to be regarded as political under the terms of an international convention applicable to Macao, China, shall not be regarded as political offences (Article 8 (2) of Law 6/2006).

914. Cooperation requests may also be refused if related to offences which are considered to be minor offences under Macao, China law (Article 11 of Law 6/2006), as for instance imprisonment penalties inferior to 6 months (Article 44 of the Macao Criminal Code).

915. There is also an optional refusal for cooperation in Article 19 of Law 6/2006, whereby cooperation may be refused if the facts that substantiate the request are object of ongoing criminal proceedings, or if the facts are or may also be object of criminal proceedings for which Macao, China judiciary authority has jurisdiction or in view of the circumstances of the case, the acceptance of the request may entail serious

consequences for the person concerned in reason of his/her age, health or other personal nature reasons.

916. Cooperation may also be refused whenever reciprocity is not assured.

917. The refusal of mutual legal assistance on the sole ground that the offence also involves fiscal matters was not found stated in Macao, China law. The grounds for refusal were already mentioned in this report.

918. Given the special status of Macao, China, all regional or international cooperation may take at least 20 to 30 days to process, according Macao, China authorities information. However, it was also noted that that in the case of urgent matters (Article 131 (3) (1) of Law 6/2006) direct exchange of information in criminal matters with authorities of another State or Territory is allowed.

919. Law 6/2006 does not establish any grounds for refusing a MLA request on the basis of secrecy and confidentiality laws. The sole limitation as regards secrecy or confidentiality requirements vis a vis mutual legal assistance requests, concerns its execution. Indeed, Article 12 imposes a confidentiality norm, wherein the provisions of the criminal procedural legislation concerning grounds of refusal to testify, seizure, wiretapping, professional privilege or country secrets, or any other cases in which confidentiality is protected shall apply. In other words, the execution of a cooperation request shall abide by the existing criminal procedural rules on those matters as well as its prescribed limitations. In this regard, as far as professional secrecy is concerned, under the Criminal Procedural Code (CPC), lawyers, physicians, journalists, members of credit institutions, ministers of religion or cult and other persons permitted and imposed by law to professional secrecy are excused of making depositions over facts covered by their vow of secrecy (Article 122 (1) of the CPC articulated with Article 167). But even so, this professional secrecy or confidentiality may cease if the judicial authority consider that breach necessary and legitimate - with the exception of religious secrecy (Article 122 (2) and (3) of the CPC).

920. According to Law 6/2006, several provisions allow competent authorities to use their powers in response to mutual legal assistance requests, such as:

- Article 26 provides that whether or not Macao, China competent authorities can formulate or execute a cooperation request addressed to Macao, China, is to be determined in accordance with the provisions of this Law and with relevant provisions of the organic laws of the competent authorities and Articles 213 and seq. of the Criminal Procedure Code; or
- Article 136(3) stipulates that other requests, in particular requests related to criminal records, the verification of the identity of a person, or mere requests for information may be directly transmitted to the competent authorities or entities for execution; and once complied with, the results shall be communicated through the same channels used by the requesting party.
- Articles 135(2), 141 and 142 of the same law empower Macao, China competent authorities to be available to respond to a mutual legal assistance request.

921. According to Article 8 of Law 5/2006 (Organization of Judiciary Police) the Judiciary Police can request other law enforcement bodies, public agencies, public

entities, private entities and natural persons for cooperation and assistance. Irrespective of this, public agencies and private institutions have special obligation to provide the Judiciary Police with information on the identification of their employees or update of changes to such information, including banking and financial transaction records obtained from banks and financial institutions. Under Article 9, the Judiciary Police is granted power to investigate on civil and criminal identification information, as well as information related to crimes from administrative agencies, independent public entities or authorized persons.

922. Several provisions in Law 6/2006 allow Macao, China authorities, precisely, to waive prosecution on the grounds of determining the best venue for prosecution of defendants in the interests of justice. Article 16 of Law 6/2006 states that whenever there are concurrent requests for the same or for different facts, cooperation shall be afforded to the requesting party that, in view of the circumstances of the case, might better safeguard both the interests of justice and the interests of the social rehabilitation of the suspect, accused or sentenced person.

Recommendation 37 (dual criminality relating to mutual legal assistance)

923. As previously mentioned, legal cooperation in criminal matters in Macao, China shall be carried out, first of all, in accordance with the provisions of international conventions applicable to Macao, being its principles and concepts applicable to Macao, China accordingly, and by taking into account Macao, China legal status.

924. In respect to the principle of dual criminality, Macao, China adopted a similar principle: the principle of dual punishment. According to this principle, the offence object of the cooperation request must be punishable with a criminal act under the legislation of the requested party and under the legislation of the requesting party (Article 6 (1) of Law 6/2006). It does not require that they have to be provided for or punished in exactly the same way, neither that they have to have the same legal nature.

925. The broader scope of the dual punishment principle, enshrined in Law 6/2006, allows legal assistance even between unlawful acts of a different nature, namely cooperation request in relation to administrative acts within the proceedings of an administrative offence and to res judicata sentences involving patrimonial sanctions as a result of the commission of administrative offences.

926. Despite the dual punishment principle, mutual legal assistance may be afforded whenever the cooperation request purpose is to prove the exclusion of an unlawful act or fault of a person against whom criminal proceedings were filed (Article 6 (2) of Law 6/2006).

927. Concerning extradition, and mutual legal assistance the references are in the text of the Recommendations 37, 39 and SR.V.

928. Despite the previous existing Law 3/2002 on judicial assistance, the statistical data reported below and available are unintelligible, meaning no elements referred to what kind of requests from foreign jurisdictions were made, for which crimes, under what legal frame, concerning judicial, police or other form of international cooperation, and what were the reasons for denying cooperation, if applied.

929. Given that Macao, China has only recently concluded MLA agreements, the implementation factor becomes non-assessable.

Recommendation 38

930. As mentioned before, Macao, China legal cooperation law allows mutual legal assistance requests related to the seizure of laundered property, as well as its proceeds deriving from them, instrumentalities used or intend to be used in the commission of any ML/FT. This law establishes the necessary acts to enable the seizure or recovery of instrumentalities, objects or proceeds from an offence (Article 131 (1) of Law 6/2006).

931. However, no legal provision was considered in relation to the possibility of enabling a freezing request of a foreign authority. The Team was informed by the judiciary authority that a foreign MLA on freezing of funds in a bank account was refused by competent authorities in Macao, China. The non-existent freezing mechanism and procedure both under general domestic law and special domestic law on MLA hindered the assistance on freezing to a foreign request. Further information provided by Macao, China indicated that the refusal of requests was due to different reasons than the freezing requests themselves, such as predicate offence and criminal procedure issues.

932. According to Article 29 of the same law, the handing over of objects or valuables derived from the commission of an offence, by request of a country or territory, exclusively or as a complement of other request, unless they are not subject of being declared forfeited of the requesting party or of Macao, China, may be handed over to their rightful owners, whenever they are not essential for evidentiary purposes related to an offence over which Macao, China authorities have jurisdiction.

933. Objects and valuables may be handed over or postponed under a return condition. Rights of bona fide third parties are safeguarded, as well as from Macao, China. The possibility of sharing those objects or valuables is also found in the law. The handing over of objects and valuables, which may be seized under Macao, China law, upon request of a foreign authority, rely upon the relevance to its criminal proceedings. (Article 141 (2) of Law 6/2002)

934. Article 142 of Law 6/2006, allows Macao, China authorities to undertake actions in order to trace any proceeds, objects and/or instrumentalities located in Macao, China, from an allegedly committed crime, upon request of a foreign authority, and to transmit the results thereof. Once assets are located, Macao, China authorities shall undertake the necessary measures to enforce the court decision of the requesting party whereby a forfeiture order of the proceeds of crime, objects and/or instrumentalities is imposed. Furthermore, Macao, China authorities may take any measures permitted under Macao, China law to prevent any transfer or disposal of property, including objects and/or instrumentalities of a crime, which are or may be object of that decision.

935. As regards enforcement of foreign criminal sentences, foreign res judicata criminal sentences may be enforced in Macao, China upon request of the ruling party under the conditions laid down in Articles 89 and 90 of Law 6/2006, and a foreign criminal sentence may be executed for the purposes of confiscation of proceeds, objects or instrumentalities of an offence, according to Article 91 of the same law,

936. Article 102 (4) of Law 6/2006, (fines, confiscation of property and provisional measures) states that confiscated property shall revert to the enforcement party, but

may be handed over to the ruling party, upon request, if the property is of special interest to the ruling party and if reciprocity is ensured.

937. Article 136 of the above law establishes the assistance requests procedure, whenever they take the form of rogatory letters; provisions of Articles 214 to 216 of Criminal Procedure Code shall apply. The provisions of Article 216 of Criminal Procedure Code shall apply *mutatis mutandis* to other requests that do not take the form of a rogatory letter.

938. An urgency provision was addressed under Law 6/2006, such as that related to the gathering and keeping of evidentiary material, searches and seizures, when submitting to or accepting a request of foreign authorities as long as the PRC Government is, without delay, notified accordingly.

939. In respect of MLA in ML/FT, there is no provision for the use of special investigative techniques (surveillance, undercover operations etc) in Law 6/2006, on legal assistance in criminal matters. However, ML/FT crimes that have predicate offences in the areas of drug trafficking and organised crime, can take advantage of some forms of special investigative techniques, such as undercover operations and persons. (Laws 5/91/M and 6/97/M refer).

940. A court order may also be requested to control communications, particularly correspondence, telecommunications, computer database or others whenever there are serious *de facto* indicia of disturbance to internal security as a result of criminal activities (Article 18 of Law 9/2002).

941. As earlier stated, Article 141(2) and 142 (1) of Law 6/2006 allow the acceptance of mutual legal requests related to property of corresponding value.

942. No provisions or arrangements for co-ordinating seizure and confiscation/forfeiture proceedings were adopted within Law 6/2006 or other legislative framework. Assets seized and confiscated are under the responsibility of a judicial authority in a case-by-case basis.

943. Law 6/2006 does not provide for the creation of an asset forfeiture fund, or other co-ordination mechanism for seizure and confiscation of proceedings.

944. Sharing of forfeited assets is clearly possible under Law 6/2006, Article 29 (5) and 102 (5) by agreement, on a case-by-case basis, between Macao, China and the country or territory concerned;

945. Apart from self-executing provisions of several international conventions applicable to Macao, China, Article 148 of Law 6/2006, states that the provisions related to other forms of legal cooperation shall apply *mutatis mutandis* to cooperation in relation to administrative acts within the proceedings of an administrative offence and to *res judicata* sentences involving patrimonial sanctions as a result of the commission of administrative offences.

946. It is not possible to assess effectiveness of the new legal cooperation law on criminal matters, Law 6/2006 because it was just recently enacted and no data was provided to demonstrate if cooperation is being afforded in an effective manner. It should

be noted that the non-existent MLAT or other MLA bi-lateral or multi-lateral instruments will bring difficulties in assistance under the MLA on criminal matters regime.

Special Recommendation V

947. The text concerning the above Recommendations 36, 37 and 38 is applicable to the obligations under SR.V on MLA in criminal, civil and administrative investigations, inquiries and proceedings related to FT, terrorist acts and terrorist organisations, because, inter alia, the Criminal Procedure Code, Law 3/2002 and Law 6/2006 are within the scope of SR.V.

948. At the moment, the GIF is not a member of Egmont Group, thus no formal cooperation established with foreign FIUs on information sharing. Nevertheless, Law No. 2/2006 and paragraph No. 4 (d) of the Executive Ruling No. 227/2006 authorised the GIF to provide to and receive from, entities outside the jurisdiction of Macao, China, information regarding crimes relating to ML/FT in compliance with regional agreements or any other international law instruments.

949. PJ has created a direct communication system and information exchange channel with PRC, Hong Kong, China and other jurisdictions or regions such as Portugal. The exchange of information not only will take place in the routine cooperation on judicial affairs, but also when crime of ML is suspected to be committed.

950. PJ has only one formal agreement with a foreign counterpart, Portugal. There was no other formal agreement or MoU established with foreign jurisdictions. Any request made to PJ for assistance is done through its Interpol division. PJ had made few requests to foreign jurisdictions but the nature of the requests was general.

Recommendation 32

Year	International assistance provided by Macao, China	International requests for cooperation received by Macao, China
2002	3	4
2003	6	8
2004	18	20
2005	10	45
2006 (to June)	21	19

951. The data provided is not of a comprehensive nature, therefore irrelevant to the effectiveness and efficiency of MLA or other international cooperation systems. According to Macao, China authorities, up to the moment, Macao, China has not made or received any requests for extradition related to ML, the predicate offences or FT. Nor was there any data relating to the nature of the requests, time required to respond, or whether requests were granted or refused.

6.3.2 RECOMMENDATIONS AND COMMENTS

952. Law 6/2006, on legal cooperation in criminal matters, only came into force on 1 November 2006. Therefore it is not possible to assess the efficiency of the mutual legal assistance system.

953. Some indicators concerning the efficiency of the mutual legal assistance system are an issue of concern because the general procedures are very involved. The special status of Macao, China obliges the intervention of both the Chief Executive and the PRC Central Government towards regional or international cooperation on MLA, and this adds to the inherent delay of the judicial system. Administrative issues of an authorisation type may take more than one to two months, besides the judicial acts and police actions, to answer MLA requests. Macao, China should consider establishing the definition of time period and shorten the already existing ones, for each entity to authorise and execute MLA requests. Notwithstanding being noted that it is allowed in case of urgent matters (Article 131 (3) (1) of Law 6/2006) direct exchange of information in criminal matters with authorities of another State or Territory; and that the 15 days deadline established in Article 5 of Law 3/2002 may be overcome in urgent cases, whenever assistance is requested in relation to the gathering and keeping of evidentiary material; searches and seizures; or other provisional measures in criminal proceedings, Macao, China should consider establishing the definition of time period and shorten the already existing ones, for each entity to authorise and execute MLA requests.

954. Macao, China has a unilateral MLA Law, No. 6/2006, and very few MLATs (Portugal, Hong Kong, China and PRC). Macao, China should consider more efforts to establish bilateral instruments with jurisdictions with which it has economic ties or potential criminal cases.

955. Macao, China has provisional measures to allow MLA requests, concerning trace, search, seizure and forfeiture related to laundered property, as well as proceeds arising therefrom; instrumentalities used or intended to be used in the commission of any ML/FT. However, no general or specific provision was adopted concerning the freezing mechanism and procedure towards MLA request. Therefore, and because the freezing mechanism is an essential measure to prevent ML and FT, and co-operate under international standards, Macao, China should consider adopting MLA provisions concerning freezing of assets.

956. Macao, China does not have any MLA provisions regarding special investigative techniques such as undercover operations or agents and special surveillance techniques. Macao, China should consider adopting those techniques within domestic ML/FT legislation and MLA legal system to improve the effectiveness of ML/FT domestic and MLA legal systems. However, ML/FT crimes that have predicate offences in the areas of drug trafficking and organised crime can take advantage of some forms of special investigative techniques, such as undercover operations and persons. (Laws 5/91/M and 6/97/M refer).

957. Macao, China does not have in place arrangements for co-ordinating seizure and confiscation proceedings, such as an assets forfeiture fund. Macao, China should consider establishing a co-ordination mechanism and assets forfeiture fund.

958. Macao, China does not have comprehensive statistical data available. Therefore, a comprehensive statistical data system should be considered that captures the above mentioned elements and others deemed suitable. This will allow measurement of the effectiveness and efficiency of the MLA system and cooperation.

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	<ul style="list-style-type: none"> No comprehensive statistical data on MLA, concerning ML/FT, therefore impossible to clearly measure effectiveness and efficiency of the previous and existing MLA system.
R.36	PC	<ul style="list-style-type: none"> Recent adoption of legislation concerning MLA, therefore impossible to measure effectiveness of the system. There is a complex time consuming procedural system for MLA requests. Very small number of bi-lateral agreements on MLA.
R.37	PC	<ul style="list-style-type: none"> Due to non-comprehensive data, it is impossible to confirm dual punishment requisite application towards MLA requests.
R.38	PC	<ul style="list-style-type: none"> No freezing provisions and procedures for MLA. No comprehensive special investigative techniques provisions in place; so MLA on ML requests cannot be totally fulfilled. No freezing and confiscation/forfeiture proceedings co-ordination mechanism.
SR.V	PC	<ul style="list-style-type: none"> No freezing provisions and procedure for MLA. No comprehensive special investigative techniques provisions available for MLA requests. No significant number of MLAT or other international or bi-lateral cooperation instruments in place.

6.4 EXTRADITION (R.37, 39, SR.V)

6.4.1 DESCRIPTION AND ANALYSIS

Recommendation 39

959. According to Article 1 (3) of Macao, China Civil Code, legal cooperation in criminal matters shall be carried out, first of all, in accordance with the provisions of the international conventions applicable to Macao, China, Whenever, such provisions are non-existent or insufficient, Law 6/2006, of 24 July, as a special legal instrument, shall apply and supplemented by the provisions of Criminal Procedure Code. Some legal provisions concerning judicial cooperation in criminal matters were addressed in Law 3/2002, of 4 March 2002.

960. Law 6/2006, which entered into force on 1 November 2006, establishes the basis for legal cooperation in criminal matters between Macao, China and other jurisdictions or territories. The following forms of international judicial cooperation are set forth:

- surrender of fugitives offenders,
- transfer of criminal proceedings,
- enforcement of criminal sentences,
- transfer of sentenced persons,
- surveillance of sentenced persons or persons on parole,
- other forms of legal assistance.

961. Due to Macao, China legal status, extradition agreements are strictly within the sphere of competence of the PRC (Article 13 of the Basic Law).

962. Therefore, the Law 6/2006 does not address the issue of extradition. However, the surrender of fugitive offenders regime prescribed is very similar to (and based on) the extradition one. Surrender of fugitive offender is defined as the transfer on request to the requesting entity of a suspected or sentenced person found in the requested entity.

963. Article 32 of Law 6/2006 on the purposes and grounds for the surrender of fugitive offenders, establishes that the surrender of fugitive offenders may take place only for the purposes either of filing criminal proceedings or enforcing a penalty or measure involving deprivation of liberty for a crime wherein the courts of the requesting party have jurisdiction. As a condition, surrender shall only be possible only in respect of crimes, including attempted crimes that are punishable under both Macao, China law and the law of the requesting party by a penalty or measure involving deprivation of liberty for a maximum period of at least one year.

964. Bearing in mind that ML is a criminal offence under Macao, China law (Law 2/2006) and the principle of dual punishment established in Law 6/2006, ML offence is an offence which fits the criteria for surrender of fugitive offenders.

965. According to Article 33 of Law 6/2006, surrender of a fugitive offenders shall be refused in the cases mentioned in Articles 7 to 9 (general grounds for refusal), as well as in the following cases: 1) the crime was committed in Macao, China; 2) the person claimed is a Chinese national non-resident of Macao, China, or 3) the person claimed is a Macao, China resident, unless the request is formulated by the country of which the person is a national or whenever the obligation to surrender derives from a self-executing norm of an international convention applicable to Macao, China. Whenever surrender of fugitive offenders is refused, criminal proceedings shall be filed for the facts on the grounds of which the request was made and in addition, the judge may impose any provisional measures that deem to be appropriate (Article 33 (2) and (3) of Law 6/2006).

966. The surrender of fugitive offenders request is allowed even if the offences are committed in another jurisdiction other than the requesting party or if the requesting party can prove that the former jurisdiction does not claim the perpetrator for the offence.

967. Article 37 also provides for the temporarily surrendered of a person for the purpose of procedural acts, inter alia, the hearing trial, whenever the requesting party demonstrates that it cannot be postponed without carrying serious prejudice to the criminal proceedings; however, such surrender may not bear any prejudice to the ongoing proceedings in Macao, China. Furthermore, the requesting party must undertake unconditionally to return the person concerned once such procedural acts are terminated.

968. After the acceptance of a surrender of fugitive offenders request, the execution of such request shall comply with the requisites established in Macao, China law and procedures, and in particular to Law 6/2006 and Law 3/2002.

969. The surrender of fugitive offenders' procedure is set forth in Articles 46 to 63 of Law 6/2006.

970. Despite, the non-existing legal terminology of the extradition institute, Macao, China has a very similar legal provision, which may be addressed when foreign jurisdictions may ask for MLA in extraditable crimes.

Recommendation 37 (dual criminality relating to extradition)

971. The text for the above Recommendation 39, also apply to this Recommendation, with the adaptation in what concerns dual criminality, which in Macao, China legal cooperation in criminal matters concerns the dual punishment criterion to provide MLA, and is related to the surrender of fugitive offender.

Special Recommendation V

972. The text for the Recommendation 39 applies to SR.V with the adaptation to Financing of Terrorism, as being an offence related with the punishment criterion to provide MLA, and with the surrender of fugitive offender legal provisions.

6.4.2 RECOMMENDATIONS AND COMMENTS

973. Given that Macao, China has the provision of surrender of fugitive offender as a very similar legal definition of the extradition required under international MLA, Macao, China, as far as legally possible, may consider providing assistance under such existing provision.

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 is a composite rating and is considered at other sections of the report
R.37	PC	This is a composite rating and is considered at other sections of the report
R.39	PC	This is a composite rating and is considered at other sections of the report
SR.V	PC	This is a composite rating and is considered at other sections of the report

6.5 OTHER FORMS OF INTERNATIONAL COOPERATION (R.40 & SR.V)

6.5.1 DESCRIPTION AND ANALYSIS

Recommendation 40

974. The AMCM exchanges information with neighbouring jurisdictions authorities and organisations performing equivalent duties, namely People's Bank of China (PBoC), China Banking Regulatory Commission (CBRC), China Insurance Regulatory Commission (CIRC), Hong Kong, China Monetary Authority (HKMA), Hong Kong, China Securities and Futures Commission (HKSF), and the Insurance Authority of Hong Kong, China (IAHK).

975. Besides this cooperation, the AMCM also has cooperated with Central Bank of Portugal, Instituto de Seguros de Portugal (Supervisory Authority for Insurance Industry in Portugal) and Banco de Cabo Verde. The regular cooperation covers exchange of information, consolidated supervision, staff training, etc.

976. Concerning other international legal instruments beside the ones already referred to, Macao, China has in place bi-lateral agreements both with Switzerland and European Community concerning readmission of unauthorised residents; known as the 'Agreement Between the Macao Special Administrative Region of the PRC and the European Community on the readmission of persons residing without authorization' entered into at Luxemburg, on 13th October 2003. The same agreement (dated 28th October 2005) exists with the Suisse Federation.

977. Concerning multilateral treaties, Macao, China has in force among others the United Nations Convention against Corruption adopted on 10th October 2003.

978. Due to the fact that Law 6/2006 came into force only recently (24 July 2006), establishing the basis for legal cooperation in criminal matters between Macao, China and other jurisdictions and territories, the effectiveness of such legal framework on international cooperation is therefore impossible to be assessed at this time.

Special Recommendation V:

979. Please refer to the preceding analysis.

Recommendation 32:

980. Requests for international cooperation related to crimes made by Judiciary Police:

Year	Requests sent for cooperation	Requests received	Requests refused
2002	1323 requests, most of which regarding internal cooperation with PRC.	40	0
2003	1122 requests, most of which regarding internal cooperation with PRC.	49	0
2004	1487 requests, most of which regarding internal cooperation	16	0

	with PRC.		
2005	987 requests, most of which regarding internal cooperation with PRC.	33	0
2006 Jan to June	480 requests, most of which regarding internal cooperation with PRC.	17	0

981. Data on assistance requests from other jurisdictions and assistance provided to them on ML and FT:

Year	International cooperation on AML (requests from other jurisdictions or regions)	International cooperation on ML (provided to other jurisdictions or regions)	International cooperation on FT (requests from other jurisdictions or regions)	International cooperation on FT (provided to other jurisdictions or regions)
2002	4	3	---	---
2003	8	6	---	---

982. No statistical data was provided by AMCM concerning international cooperation with other Supervisory Authorities.

6.5.2 RECOMMENDATIONS AND COMMENTS

983. AMCM and other Supervisory Authorities should consider establishing further bilateral instruments with other neighbouring jurisdictions and those with which it has common economic ties and a need for cooperation.

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	<ul style="list-style-type: none"> No specific and comprehensive statistical data on International Cooperation from entities fighting ML/FT crimes, therefore it is impossible to clearly measure effectiveness and efficiency of the existing system.
R.40	PC	<ul style="list-style-type: none"> GIF does not have any formal cooperation established with foreign FIUs on information sharing. PJ has only one formal agreement with foreign counterpart, Portugal. Other form of cooperation on informal basis mostly with PRC and Hong Kong, China. Recent adoption of MLA legislation, and therefore impossible to assess international cooperation.
SR.V	PC	<ul style="list-style-type: none"> No significant number of international instruments in place.

7. OTHER ISSUES

7.1 RESOURCES AND STATISTICS

N.B. There is a single rating for each of these Recommendations, even though the Recommendations are addressed in several sections.

	Rating	Summary of factors relevant to Recommendations 30 and 32 and underlying overall rating
R.30	PC	<ul style="list-style-type: none"> The Banking Supervision and Insurance Supervision Departments of the AMCM need additional staff resources. The supervisors for DNFBP require more staff and training. Section 3.10 refers The GIF should be housed in separate premises and be resourced sufficiently with IT, staff, and an appropriate training regime. Section 2.5 refers.
R.32	PC	<ul style="list-style-type: none"> No comprehensive statistical data on ML cases, MLA (concerning ML/FT) and other forms of international cooperation and it is therefore impossible to clearly measure effectiveness and efficiency of the previous and existing ML system. Sections 2.1, 6.1 and 6.3 refer. Routine maintenance and implementation (eg periodic review) needs to take place in respect of supervisory AML/CFT statistics. Section 3.10 refers. No comprehensive statistical data on MLA, concerning ML/FT, therefore impossible to clearly measure effectiveness and efficiency of the previous and existing MLA system. Routine maintenance and implementation (eg periodic review) needs to take place in respect of supervisory AML/CFT statistics. Statistics from the GIF are not comprehensive and detailed <ul style="list-style-type: none"> Lack of statistical data to conclusively analyse and identify trends of ML/FT Statistics are not comprehensively compiled and maintained by law enforcement. <ul style="list-style-type: none"> There was no breakdown on underlying predicate offences, type of properties seized or results of case prosecuted. There was no comprehensive analysis on ML/FT trends and typologies done. There seem to be lack of review on effectiveness of ML/FT investigations. No statistical data on judiciary orders issued in relation to ML/FT investigations.

8. TABLES

Table 1:	Ratings of Compliance with FATF Recommendations
Table 2:	Recommended Action Plan to improve the AML/CFT system
Table 3:	Authorities' Response to the Evaluation (if necessary)

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. 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 rating ¹
Legal systems		
1. ML offence	LC	<ul style="list-style-type: none"> • “Active Corruption” crime is not a ML predicate offence. • Predicate offences for ML do not extend to those offences committed outside Macao, China where the conduct is not an offence in the foreign country. • Low number of convictions, considering STRs recorded and no comprehensive statistics existent under previous applicable ML legislation, provides same doubts on the effectiveness of previous regime. • No cases opened, no comprehensive statistical system in place under the new ML criminalisation regime, therefore it is impossible to assess the effectiveness of the current legislation and other regulations.

¹ These factors are only required to be set out when the rating is less than Compliant.

2. ML offence – mental element and corporate liability	LC	<ul style="list-style-type: none"> Given the new ML law has not yet applied in investigations, prosecutions or sentences, it is too early to assess the effectiveness of the ML system concerning liability of both natural and legal persons.
3. Confiscation and provisional measures	PC	<ul style="list-style-type: none"> No freezing provisions, mechanisms and procedures in place as provisional measures of the AML regime. No possibility of providing MLA to foreign requests on freezing orders issued by or demanded by foreign authorities on ML. No statistics under the new ML criminalisation regime, therefore it is impossible to assess the effectiveness of the existing legislation on provisional measures.
Preventive measures		
4. Secrecy laws consistent with the Recommendations	C	<ul style="list-style-type: none"> This recommendation is fully observed
5. Customer due diligence	PC	<ul style="list-style-type: none"> While Guidelines on CDD, have been issued to financial institutions and the insurance sector, time will be needed for implementation to be demonstrated. The majority of key CDD obligations are not included in law or regulation; The Insurance Guidelines do not cover verification of the legal status of legal persons and legal arrangements; the requirement to understand the ownership and control of legal arrangements; the scrutiny of transactions in order to have a reasonable understanding of account activity; enhanced due diligence for higher risk transactions/relationships; and are incomplete regarding delayed verification.
6. Politically exposed persons	LC	<ul style="list-style-type: none"> The Guidelines cover PEPs, however there was insufficient time between the issue of the Insurance Guidelines and the assessment for full implementation to be demonstrated.
7. Correspondent banking	C	<ul style="list-style-type: none"> This recommendation is fully observed
8. New technologies & non-face-to-face business	PC	<ul style="list-style-type: none"> None of the Guidelines contains requirements to address the specific risks associated with the misuse of technological developments; The Insurance Guidelines refer to non-face to face business, but do not completely cover the requirements for ongoing monitoring of such business and the need to have specific and effective procedures.
9. Third parties and introducers	LC	<ul style="list-style-type: none"> In light of the introduction of new Guidelines shortly before the assessment, time will be needed to judge implementation. The insurance sector should be monitored to verify reliance

		<p>is not being placed on third parties.</p> <ul style="list-style-type: none"> • The Guideline for Financial Institutions does not clarify the reference to relevant documentation and the jurisdictions which adequately apply the FATF Recommendations.
10. Record keeping	LC	<ul style="list-style-type: none"> • Time will be needed to demonstrate implementation of record keeping requirements.
11. Unusual transactions	PC	<ul style="list-style-type: none"> • The Insurance Guidelines do not cover the essential criteria for complex, unusual, large transactions, or unusual patterns of transactions. • The Guidelines do not refer to setting forth examination findings in writing and maintaining these findings.
12. DNFBP – R.5, 6, 8-11	PC	<p><u>Gaming Sector</u></p> <ul style="list-style-type: none"> • While legal obligations for CDD requirements are stipulated the recent introduction of these provisions means that there was insufficient time before the assessment for implementation to be demonstrated. • Key CDD and record keeping obligations are not included in law or regulation. • The established threshold for obtaining casino customer data remains too high, and above the recommended threshold stipulated by FATF. • Obligations to obtain customer information only appear to be mandated for the purposes of identifying large currency transaction reports and STRs. • No provisions exist for ongoing verification of customer information. • No provisions exist for ongoing monitoring of customer activity • There are no provisions on high risk customers beyond PEPs.. • There is a lack of clarity on the application of CDD provisions on junket operators/game promoters. <p><u>Other DNFBP</u></p> <ul style="list-style-type: none"> • Key CDD and record keeping obligations are not included in law or regulation; • the thresholds for CDD for occasional transactions differ from those of the FATF; • There is no requirement to understand the ownership and control structure of the customer; to conduct ongoing due diligence; or to consider making an STR when required CDD measures cannot be undertaken for existing customers; • The guidelines do not refer to the misuse of technological developments, CDD procedures for the specific risks of non-face to face business; complex, unusual large transactions or unusual patterns of transactions; or maintaining

		transaction records.
13. Suspicious transaction reporting	LC	<ul style="list-style-type: none"> Reporting requirements are embodied in law and regulation, however, there are concerns with effectiveness of implementation and particular weaknesses in the insurance sector.
14. Protection & no tipping-off	C	<ul style="list-style-type: none"> This Recommendation is fully observed
15. Internal controls, compliance & audit	LC	<ul style="list-style-type: none"> The Insurance Guidelines do not specify the management status of the AML/CFT Compliance Officer or his/her time access to information. AML/CFT training in the three Guidelines is covered but does not specify ML/TF techniques, methods and trends. There are no screening standards in the Guideline for Financial Institutions.
16. DNFBP – R.13-15 & 21	LC	<ul style="list-style-type: none"> Current procedures for CDD may, in certain circumstances, potentially alert money launderers that their transactions are thought to be suspicious. Attempted transactions that are suspicious in nature are not explicitly made a requirement for reporting in the DICJ Instruction. Elements relating to compliance and paying special attention to business relationships and transactions with persons from or in jurisdictions insufficiently applying the FATF Recommendation are not included in the Instructions, Guidelines and the Preventive Measures. It is too early to demonstrate effective implementation.
17. Sanctions	LC	<ul style="list-style-type: none"> The lack of sanctions in respect of the insurance sector means effectiveness cannot be demonstrated.
18. Shell banks	C	<ul style="list-style-type: none"> This Recommendation is fully observed
19. Other forms of reporting	C	<ul style="list-style-type: none"> This Recommendation is fully observed
20. Other DNFBP & secure transaction techniques	C	<ul style="list-style-type: none"> This Recommendation is fully observed
21. Special attention for higher risk jurisdictions	PC	<ul style="list-style-type: none"> The Guideline for Financial Institutions does not compel institutions to give special attention to relationships and transactions with jurisdictions insufficiently applying the FATF Recommendations generally. While the Guideline for Financial Institutions requires institutions to detect unusual activity, there is no explicit requirement to examine the background and purpose of transactions with no economic or visible lawful purpose
22. Foreign branches & subsidiaries	PC	<ul style="list-style-type: none"> Outside of the reference to credit institutions, the other elements in the Recommendation are not included in the Guidelines.

23. Regulation, supervision and monitoring	LC	<ul style="list-style-type: none"> The on-site inspection program to the insurance sector has not yet commenced.
24. DNFBP - regulation, supervision and monitoring	PC	<ul style="list-style-type: none"> DNFBP regulations and guidelines/instructions have been issued recently, but no assessment of implementation can be made at this time. No comprehensive risk assessment has been undertaken to understand the scope of money laundering/FT vulnerabilities in the DNFBP sector. Training for DICJ personnel in AML/CFT is lacking. DNFBP monitoring has not yet commenced and it is not clear how compliance with the guidelines can be achieved in practice. The supervisory authorities lack staff and training programs have not yet been finalised.
25. Guidelines & Feedback	PC	<ul style="list-style-type: none"> Guidance (including typologies) issued to financial institutions and the insurance sector does not cover all of the issues in the relevant FATF Recommendations Guidelines issued to the DNFBP do not include ML/TF techniques and trends, and some elements of activity undertaken by trusts and company service providers are not covered by guidelines. Comprehensive feedback was provided by the AMCM in 2006. However, this cannot replace the systematic feedback expected of an FIU. There appears to be no specific guidance provided by Macao, China authorities to the casino sector including the DICJ on the scope of ML and FT procedures and obligations beyond existing Instructions. There appears to be no guidance/description of ML and FT trends and techniques incorporated into education and outreach activities to the gaming sector. There appears to be no specific outreach or education strategy for the sector on AML/CFT obligations and typologies with a view to testing the effectiveness of measures taken by casinos in fulfilling such obligations. <p>There appears to be little training on the application of AML/CFT obligations and awareness raising on ML/TF techniques to the gaming sector</p>
Institutional and other measures		
26. The FIU	LC	<ul style="list-style-type: none"> The GIF is an entirely a new entity and only started operating on 12 November 2006 with 6 officers and its effectiveness is yet to be proven.
27. Law enforcement authorities	PC	<ul style="list-style-type: none"> Enforcement of ML/FT laws is limited only to PJ and not extended to other law enforcement agencies especially SA

		<p>and CAC.</p> <ul style="list-style-type: none"> • The number of officers dedicated to ML/FT detection and investigation is not adequate. • The Money Laundering Division of PJ is a newly set-up unit and its effectiveness is yet to be determined. Past cases investigated only resulted in 6 brought for prosecution during the period 2002-2006. • Officers do not have adequate and focused training on ML/FT investigations.
28. Powers of competent authorities	LC	<ul style="list-style-type: none"> • Law enforcement agencies lack powers to freeze or seize assets without having to obtain judiciary orders especially for cases that require immediate action.
29. Supervisors	C	<ul style="list-style-type: none"> • This Recommendation is fully observed
30. Resources, integrity and training	PC	<ul style="list-style-type: none"> • The Banking Supervision and Insurance Supervision Departments of the AMCM need additional staff resources. The supervisors for DNFBP require more staff and training. • The GIF should be housed in separate premises and be resourced sufficiently with IT, staff, and an appropriate training regime.
31. National cooperation	LC	<ul style="list-style-type: none"> • In relation to the FIU, despite the requirement of cooperation and sharing of information be guaranteed, as provided for in Executive Ruling No. 227/2006, there are no clear and detailed standard operating procedures (SOP) on how information and assistance would be transmitted or rendered to each other so as to safeguard the information. • In relation to law enforcement, despite the requirement of cooperation and sharing of information be guaranteed as provided for in the Law of the Judiciary Police No. 5/2006, there are no clear and detailed standard operating procedures (SOP) on how information and assistance would be transmitted or rendered to each other so as to safeguard the information • Coordination mechanisms are in place through the Working Group on Anti-Money Laundering but it is not clear how operational cooperation is achieved.
32. Statistics	PC	<ul style="list-style-type: none"> • As there are no comprehensive statistical data on MLA, concerning ML/FT, the Working Group on ML is unable to clearly measure effectiveness and efficiency of the previous and existing MLA system. • Routine maintenance and implementation (eg periodic review) needs to take place in respect of supervisory AML/CFT statistics. • Statistics from the GIF are not comprehensive and detailed <ul style="list-style-type: none"> • Lack of statistical data to conclusively analyse and identify trends of ML/FT • Statistics are not comprehensively compiled and maintained by law enforcement.

		<ul style="list-style-type: none"> • There was no breakdown on underlying predicate offences, type of properties seized or results of case prosecuted. • There was no comprehensive analysis on ML/FT trends and typologies done. • There seem to be lack of review on effectiveness of ML/FT investigations. • No statistical data on judiciary orders issued in relation to ML/FT investigations.
33. Legal persons – beneficial owners	PC	<ul style="list-style-type: none"> • The requirements to obtain beneficial ownership and control information, do not apply to company service providers, notaries and lawyers • Implementation has not been ascertained.
34. Legal arrangements – beneficial owners	LC	<ul style="list-style-type: none"> • The Guidelines for Financial Institutions will cover most foreign legal arrangements using Macao, China, however, not all legal arrangements are necessarily covered • Other guidelines, including the TSP/CSP Instructions, do not cover the beneficial ownership and control of legal arrangements.
International Cooperation		
35. Conventions	LC	<ul style="list-style-type: none"> • Vienna and Palermo conventions are not yet fully implemented
36. Mutual legal assistance (MLA)	PC	<ul style="list-style-type: none"> • Recent adoption of legislation concerning MLA, therefore impossible to assess effectiveness of the system. • There is a complex time consuming procedural system for MLA requests. • Very small number of bi-lateral agreements on MLA.
37. Dual criminality	PC	<ul style="list-style-type: none"> • Due to non-comprehensive data, it is impossible to confirm dual punishment requisite application towards MLA requests.
38. MLA on confiscation and freezing	PC	<ul style="list-style-type: none"> • No freezing provisions and procedures for MLA. • No comprehensive special investigative techniques provisions in place, so MLA on ML requests cannot be fully complied with. • No freezing and confiscation/forfeiture proceedings co-ordination mechanism.
39. Extradition	PC	<ul style="list-style-type: none"> • The existence of the fugitive offender legislation enables Macao, China to consider providing assistance for extradition
40. Other forms of cooperation	PC	<ul style="list-style-type: none"> • GIF does not have any formal cooperation established with foreign FIUs on information sharing. • PJ has only one formal agreement with foreign counterpart, Portugal. Other form of cooperation on informal basis

		<p>mostly with PRC and Hong Kong, China.</p> <ul style="list-style-type: none"> Recent adoption of MLA legislation, and therefore impossible to assess international cooperation.
Nine Special Recommendations		
SR.I Implement UN instruments	LC	<ul style="list-style-type: none"> International Convention for the Suppression of the Financing of Terrorism is not fully implemented, as no freezing mechanism and procedure is in place. UN Security Council Resolutions are not comprehensively implemented, as no freezing mechanism and procedure is in place.
SR.II Criminalise FT	LC	<ul style="list-style-type: none"> It is too early to assess effectiveness on implementation of FT offence provisions, due to very recent adoption of such provisions.
SR.III Freeze and confiscate terrorist assets	PC	<ul style="list-style-type: none"> Macao, China does not have freezing and unfreezing measures and procedures both under general or special laws to implement fully UNSCRs 1267 and 1373 in relation to FT funds or assets.
SR.IV Suspicious transaction reporting	LC	<ul style="list-style-type: none"> Reporting requirements are embodied in law and regulation, however, there are concerns with effectiveness of implementation and particular weaknesses in the insurance sector.
SR.V International cooperation	PC	<ul style="list-style-type: none"> No freezing provisions and procedure for MLA on FT. No comprehensive special investigative techniques provisions available towards MLA requests. No significant number of MLAT or other international or bi-lateral cooperation instruments in place.
SR.VI AML requirements for money/value transfer services	LC	<ul style="list-style-type: none"> Implementation of the November 2006 AML/CFT framework cannot be judged given the short period of time since its implementation. The Guidelines lack focused examples of suspicion in the context of remitters.
SR.VII Wire transfer rules	PC	<ul style="list-style-type: none"> The Guidelines do not address requirements for all of the originator information ; for intermediary and beneficiary institutions to ensure all originator information accompanies the transfer; or for identifying and handling transfers not accompanied by complete originator information. It is too early since the introduction of the Guideline to assess effective implementation There are no requirements in respect of domestic wire transfers.
SR.VIII Non-profit organisations	PC	<ul style="list-style-type: none"> A preliminary review has been undertaken, but a full review of the NPO sector and the risk of the sector to FT has not been completed. There is no formal supervision or monitoring of NPOs accounting for a significant portion of NPOs' financial

		<p>resources or a substantial share of the sector's international activities.</p> <ul style="list-style-type: none"> • There has been no outreach to the NPO sector for AML/CFT purposes.
SR. IX Cash couriers	NC	<ul style="list-style-type: none"> • Macao, China does not enforce a disclosure or declaration system. • The SA does not have formalized domestic and international cooperation and does not maintain appropriate statistics of the same. • The SA is significantly under-equipped and staffed based on travellers into and out of Macao, China. • Training in AML / CFT for Customs Officers is lacking. • Statistics concerning large cash cross-border movements are incomplete or non-existent.. • There is no use of targeted enforcement techniques. • Integration between competent authorities is lacking as is the sharing of necessary information with the GIF.

TABLE 2: RECOMMENDED ACTION PLAN TO IMPROVE THE AML/CFT SYSTEM

AML/CFT System	Recommended Action (listed in order of priority)
2. Legal System and Related Institutional Measures	
Criminalisation of Money Laundering (R.1 & 2)	<ul style="list-style-type: none"> • Seek to enlarge the scope of predicate offences, namely including “Active Corruption” crime as predicate offence. • Seek to enlarge territorial and legal scope of ML’s predicate offences, for all acts committed outside Macao, China, which would be a ML predicate offence domestically. • Ensure comprehensive statistical system on ML investigations, prosecutions and convictions are kept. • Provide courses and awareness training for all the entities involved in the prevention and repression of ML (Supervising and supervised entities, GIF, Law enforcement officers, Public Prosecutors and Judges).
Criminalisation of Terrorist Financing (SR.II)	<ul style="list-style-type: none"> • Adopt a comprehensive statistical system for FT reports, investigations, prosecutions and convictions. • Provide courses and awareness training for all the entities involved in the prevention and repression of FT (Supervising and supervised entities, GIF, Law enforcement officers, Public Prosecutors and Judges).
Confiscation, freezing and seizing of proceeds of crime (R.3)	<ul style="list-style-type: none"> • Consider the provision of freezing measures, mechanisms and procedures, in order to consolidate and improve the existing regime for dealing and managing the proceeds of ML. • Ensure that MLA may be provided to foreign jurisdictions concerning requests issued or demanded on freezing orders. • Ensure comprehensive statistical system on ML freezing, seizure and forfeiture of assets.
Freezing of funds used for FT (SR.III)	<ul style="list-style-type: none"> • Establish assets freezing mechanisms and procedures to fully implement UN Security Council Resolutions 1267 and 1373 and to provide an effective measure to fight against FT. • Adopt procedures, which also include a mechanism to give effect to foreign jurisdictions freezing orders or requests on MLA framework. • Ensure comprehensive statistical system on FT freezing, seizure and forfeiture of assets. • Establish a monitoring system for compliance with the FT law and regulations and freezing of terrorist funds.
The Financial Intelligence Unit and its functions (R.26, 30 & 32)	<ul style="list-style-type: none"> • Filling up the post of GIF officers including support staff should be done and completed as early as possible. • The proposed training programs should be focused on gathering and processing information, methodologies for financial analysis and intelligence analysis. • A detailed and clear work procedures and internal guidelines should be drawn to ensure compliance with high professional standards, and

	<p>information is securely protected and disseminated to authorised persons or agencies.</p> <ul style="list-style-type: none"> • Compile and maintain comprehensive statistics on STRs and related information. Statistics compiled should at the minimum be used to provide a basic trends and typologies analysis on ML/FT. • Develop IT system for on-line STR reporting by reporting institutions and feedback. The system should also integrate with STR database. • All domestic law enforcement agencies not authorized to investigate ML/FT should also be allowed to request and receive information generated from STR to facilitate investigations on predicate offences. • A suitable mechanism such as guidelines and designated officers to facilitate the exchange of information could be established. • The roles of Anti-Money Laundering Working Group should be re-focused to be as a regular platform for effective coordination and liaison among agencies task with AML/CFT measures. • PJ need to hand over all the STR and related information to GIF. It is suggested that PJ also hand over any IT system, work procedures and database that it had in relation to STR to GIF.
Law enforcement, prosecution and other competent authorities (R.27, 28, 30 & 32)	<ul style="list-style-type: none"> • The laws pertaining to ML/FT should be extended to other relevant law enforcement agencies especially CAC and SA. • The number of officers allotted to Money Laundering Division should be increased to sufficiently to detect and gather intelligence information as well as to investigate ML/FT crimes • PJ should send its officers, especially the Money Laundering Division, to attend training related to ML/FT. Some of the training suggested includes financial investigations, forensic accounting, net worth analysis and asset tracing. • PJ also need to establish a clear and effective work procedure to coordinate ML/FT investigations that involve other relevant law enforcement agencies. • Information sharing between law enforcement agencies is encouraged to be shared more freely and more often including information received from GIF. • PJ should extend its cooperation either in the form of formal agreement or MOU with other foreign counterparts to effectively seek and render assistance in ML/FT related matters. • Other law enforcement agencies such as SA and CAC are recommended to have access to GIF information with regard to their predicate offences.
Cross-border declaration or disclosure (SR.IX)	<ul style="list-style-type: none"> • Conduct a threat assessment of cross-border cash movements and known methods for moving cash into and out of Macao, China including for illicit purposes; • Develop and enforce a declaration policy with a threshold appropriate for Macao, China's economy (based on the threat assessment), and in keeping with international standards • Criminalize untruthful or false declarations;

	<ul style="list-style-type: none"> • Consider integrating the Immigration and Customs Services in order to effectively control all border crossings and substantially increasing the number of inspectors available. • Consider improving the quality and quantity of x-ray and other inspection equipment. • Consider using a “constant random” methodology for inspecting passengers in addition to targeted searches based on suspicion or intelligence information. • Develop and implement a working-level group between the Customs Service and the Judicial Police to coordinate practices and procedures. • The Judicial Police should provide the Customs Service with information from investigations that can be incorporated in the threat assessment; • Incorporate targeted based enforcement, based on law enforcement and intelligence information; • The Customs Service should maintain detailed computerized reports concerning detected large cash cross-border movements. • This information should be used to follow-up with the Judicial Police in order to improve procedures and improve targeting of suspected cash couriers. Additionally, this information should be regularly shared with/reported to the FIU; • Maintain detailed statistics concerning seizures in order to gauge the effectiveness of inspection techniques. This information should be shared with other law enforcement agencies and the FIU for diagnostic purposes; • Maintain detailed statistics concerning domestic and international cooperation to reflect requests made and received. This information should be used for follow-up with liaison contacts for diagnostic purposes; • Train Customs Officers in AML/CFT requirements and the provisions laid out in SR IX and its best practices paper; • Customs should develop an outreach program to train the employees of land, sea and air carriers regarding the identification of suspicious behaviour.
3. Preventive Measures – Financial Institutions	
Customer due diligence, including enhanced or reduced measures (R.5 to 8)	<ul style="list-style-type: none"> • Remove from the Insurance Guidelines the concept of “obviously” fictitious names, the concept of “reasonable” efforts to determine the true identity of customers and the concept of only “significant” business transactions not being conducted if evidence of identity is not provided; • Place in law or regulation the following requirements: <ul style="list-style-type: none"> • to undertake CDD when there is a suspicion of ML or FT and when the institution has doubts about the veracity or adequacy of previously obtained customer identification data; • to verify identity and that reliable, independent source documents, data or information should be used; • to verify a person’s authorisation to act on behalf of a customer; • to verify the identity of persons on whose behalf the customer is

	<p>acting;</p> <ul style="list-style-type: none"> • to take reasonable measures to verify the identity of beneficial owners and include explicit guidance in the Insurance Guidelines; • to determine the natural person exercising ultimate effective control over a legal arrangement and add guidance to the Insurance Guidelines; • to conduct ongoing due diligence, <ul style="list-style-type: none"> • Enhance the reference to the establishment of systems in the Guideline for Financial Institutions and include guidance on ongoing due diligence in the Insurance Guidelines; • Place in the Insurance Guidelines the following requirement to verify the legal status of legal persons and legal arrangements and in the Guideline for Financial Institutions a requirement to verify the legal status of legal arrangements; • Reword the Insurance Guidelines so that there is a requirement to verify the identity of new customers in addition to the existing requirement to have in place effective procedures; • Add to the Insurance Guidelines a requirement to understand the ownership and control structure of legal arrangements; • Add a requirement in the Insurance Guidelines to understand the purpose and nature of the business relationship; • Enhance the Insurance Guidelines by adding a requirement to scrutinise transactions in order to have a reasonable understanding of account activity so as to identify transactions falling outside the regular pattern of the account's activity; • Include in the Insurance Guidelines requirements to undertake review of existing records to ensure that documents, data or information collected under the due diligence process is kept up to date and relevant; to undertake enhanced due diligence for higher risk categories of customers, business relationship or transaction; to specify that the simplified approach to postal business cannot be undertaken whenever there is suspicion of ML or FT; and to verify the identity of beneficial owners and of non-significant customers before a transaction takes place. • Amend the Insurance Guidelines to require identification of the customer and beneficial owner prior to the establishment of the relationship and completion of verification (i) provided that this occurs as soon as possible, (ii) provided this is essential and (iii) provided that the ML risks are effectively managed and include elements (ii) and (iii) in the Guidelines for Financial Institutions; • Revise the Guidelines to include a requirement for risk management procedures where a customer may use the business relationship prior to verification; • Amend the Guidelines to state that institutions should consider making a suspicious transaction report where they have been unable to complete CDD, whether or not the relationship has commenced; • Add CDD requirements for existing customers to the Insurance
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	<p>Guidelines and, in respect of the Guidelines for Financial Institutions, to review any historic anonymous accounts, accounts in fictitious names and numbered accounts;</p> <ul style="list-style-type: none"> • Amend the Guidelines to require institutions to put in place measures to prevent the misuse of technological developments; • Enhance the Insurance Guidelines to require institutions to put in place specific and effective CDD measures to address the specific risks of non-face to face business and the ongoing monitoring of such business.
Third parties and introduced business (R.9)	<ul style="list-style-type: none"> • Include provisions on introduced business in the Insurance Guidelines; • Clarify the reference in the Guideline for Financial Institutions as to the relevant information provided by introducers; • Add reference to which jurisdictions the AMCM consider adequately applies the FATF Recommendation.
Financial institution secrecy or confidentiality (R.4)	
Record keeping and wire transfer rules (R.10 & SR.VII)	<ul style="list-style-type: none"> • Amend Regulation 7/2006 to refer to the maintenance of all necessary records on transactions, which should be kept for longer than five years at the request of a competent authority; • Amend the Insurance Guidelines so that language such as when documentary evidence is “usually” retained is made more explicit. Also, amend the Insurance Guidelines to maintain all records on transactions rather than providing examples; • Amend Regulation 7/2006 so that records on identification data, account files and business correspondence are kept for at least five years after the end of the business relationship; • Amend the Guideline on Large Cash Transaction to include requirements for domestic wire transfers; for transfers handled by intermediary institutions; for procedures where technical limitations prevent full originator information from accompanying a transfer; and for procedures for identifying and handling wire transfers that are not accompanied by the required information or for considering whether the lack of information is a factor in assessing whether a transfer is suspicious
Monitoring of transactions and relationships (R.11 & 21)	<ul style="list-style-type: none"> • Amend the Insurance Guidelines to require institutions to pay special attention to all complex, unusual, large transactions, or unusual patterns of transactions, that have no apparent or visible economic or lawful purpose and amend the Guideline for Financial Institutions to cover complex, large transactions and unusual patterns of complex, large transactions; • Amend the Guidelines to require institutions to examine complex, large transactions and unusual patterns of transactions, which have no apparent or visible economical or lawful purpose, to set forth their findings in writing and to keep such findings available for five years. Also amend the Insurance Guidelines to require examination of unusual, large transactions; • Amend the Guidelines to require institutions to give special attention to

	<p>business relationships and transactions with persons from jurisdictions insufficiently applying the FATF Recommendations;</p> <ul style="list-style-type: none"> • Amend the Guidelines to require institutions to examine the background and purpose of transactions with no economic or visible lawful purpose, and to keep any findings available.
Suspicious transaction reports and other reporting (R.13-14, 19, 25 & SR.IV)	<ul style="list-style-type: none"> • Take steps to ensure effectiveness of implementation and particularly weaknesses in the insurance sector • GIF should introduce a program of feedback.
Internal controls, compliance, audit and foreign branches (R.15 & 22)	<ul style="list-style-type: none"> • Amend the reference in the Insurance Guidelines to insurance companies being “expected” to have in place a clear statement of AML/CFT principles; • Amend the Insurance Guidelines to state that the AML/CFT Compliance Officer should be at least management level and that the Compliance Officer should have timely access to CDD and other relevant information; • Include a reference to sample testing in the Guidelines and to adequate resourcing of the internal audit function; • Add to the Guidelines that training should cover ML and FT techniques, methods and trends and add to the Guideline for Financial Institutions that training should cover AML/CFT laws; • Include in the Guideline for Financial Institutions a requirement about screening procedures when hiring new staff and add a requirement about ensuring high standards when hiring new employees; • Consider whether the Guidelines should emphasise the importance of Macanese institutions remaining responsible for compliance even if there is assistance from head office in another jurisdiction; • Require the overseas operations of non-credit institutions and the insurance sector to be consistent with Macanese AML/CFT measures to the extent host country laws and regulations permit; • Require all institutions to pay particular attention where host jurisdictions do not or insufficiently apply the FATF Recommendations and, if home and host requirements differ, to apply Macanese standards; • Require all institutions to advise the AMCM when a foreign branch or subsidiary cannot observe appropriate AML/CFT measures because this is prohibited.
Shell banks (R.18)	
The supervisory and oversight system - competent authorities and SROs Role, functions, duties and powers (including sanctions)	<ul style="list-style-type: none"> • the Insurance Supervision Department of the AMCM should commence an on-site inspection program for the insurance sector; and • the Banking Supervision and Insurance Supervision Departments of the AMCM should recruit additional staff, • Supervisory statistics should be maintained routinely and reviewed; • The Guidelines issued by the Banking Supervision and Insurance Supervision Departments should be extended to cover all of the issues under the relevant FATF Recommendations.

(R. 23, 30, 29, 17, 32, & 25).	
Money value transfer services (SR.VI)	<ul style="list-style-type: none"> • The authorities should consider criminalizing informal banking/informal MVTs so that the Judiciary Police can investigate and recommend prosecution and the appropriate regulatory authorities can enforce against non-compliance with AML/CFT obligations • The AMCM should provide focussed examples of ML/FT risk to remittance houses (including electronic transfer providers) and carry out the awareness raising campaign to remittance houses planned for 2007 to seek to ensure that MVT personnel can identify suspicious transactions. • The AMCM should continue to work with the Judiciary Police to develop a strategy to identify and take enforcement action against unregistered MVTs.
4. Preventive Measures – Non-Financial Businesses and Professions	
Customer due diligence and record-keeping (R.12)	<p>Casinos</p> <ul style="list-style-type: none"> • Macao, China authorities, including the DICJ and Judiciary Police should conduct a comprehensive assessment of the risks to illicit finance, including ML and FT in the casino sector, in keeping with the international standards and in an effort to gain a better appreciation for the vulnerabilities inherent in the sector. • CDD obligations need to be specified as a matter of course, not simply in generation of specific reporting. • The threshold for CDD – MOP 500,000 (approximately USD 62,500) is too high and needs to be lowered in accordance with FATF standards. • Risk based assessments need to be required, and a process for employing a risk based assessment of clients needs to be instituted for comprehensive CDD procedures. • Compliance testing needs to be initiated by the DICJ • Clearer guidance is needed with respect to CDD procedures in junket operators/gaming promoters, and such procedures must also apply risk-based procedures and a proper threshold for initiating such requests. • Ongoing monitoring and enhanced ongoing monitoring for high risk customers and PEPs needs to be instituted. <p>Other DNFBP</p> <ul style="list-style-type: none"> • Consideration should be given as to the thresholds for occasional transactions and why, on a risk-based approach, it may be considered necessary to differ from the thresholds expected by the FATF; • Consideration should be given as to how to prevent DNFBP from committing the tipping off offence when CDD measures are required other than when a threshold is breached; • The Instructions, Guidelines and Preventive Measures should be amended so as to require CDD to be undertaken when DNFBP have doubts about the veracity or adequacy of previously obtained customer identification information;

	<ul style="list-style-type: none"> • The remaining asterisked Criteria of Recommendation 5 should be included in law or regulation; • The Instructions, Guidelines and Preventive Measures should be amended to include requirements in respect of: <ul style="list-style-type: none"> • verification of the legal status of the legal person or legal arrangement; • understanding the ownership and control structure of the customer; • how to conduct ongoing due diligence - including the scrutiny of transactions and that documents, data or information collected under the CDD process is kept up to date and relevant; • the performance of enhanced due diligence for higher risk customers in addition to the existing measures for PEPs; • the Lawyers Instructions so that when a firm cannot meet Criteria 5.3 to 5.6 the firm should not be permitted to undertake an activity for the customer; • the Instructions, other than the Accountants Instructions, Guidelines and Preventive Measures should consider making a suspicious transaction report when a firm cannot comply with Criteria 5.3 to 5.6; • where Criteria 5.3 to 5.6 cannot be met by an existing business relationship the Instructions, Guidelines and Preventive Measures should require firms to consider making a suspicious transaction report; <p>CDD for existing customers.</p> <ul style="list-style-type: none"> • Most of the Instructions should be amended to refer to PEPs; the references to PEPs in the Notaries/Registrars Guidelines, the Offshore Preventive Measures and the Lawyers Instructions should be enhanced; • The Instructions, Guidelines and Preventive Measures should be amended to include reference to the misuse of technological developments and CDD procedures for the specific risks of non-face to face business; • Law or regulation should be revised to meet the asterisked Criteria of Recommendation 10 and the Instructions and Guidelines should be revised to include reference to transaction records being sufficient to permit reconstruction of individual transactions; • The Instructions, Guidelines and Preventive Measures should be amended to include reference to complex transactions, unusual large transactions and unusual patterns of transactions that have no apparent or visible economic or lawful purpose.
Suspicious transaction reporting (R.16) (applying R.13-15, 17 & 21)	<ul style="list-style-type: none"> • The same obligations for reporting of STRs to the GIF should be made explicit in the Instructions by the DICJ for gaming operations specifically. • The agency to which STRs must be reported should be consistent under all Instructions for DNFBPs and casinos specifically. • Tipping off should be made an offence specifically for STR reporting to the GIF for all DNFBPs to alleviate confusion and make consistent obligations for all DNFBPs (including casinos). • STR reporting for FT should be made explicit in the Instructions for the

	<p>gaming sector specifically to be consistent with those for all DNFBPs</p> <ul style="list-style-type: none"> • Safe harbour should be provided for all casinos for any potential legal challenge brought against gaming operators for filing STRs. • Consideration should be given as to how best to avoid the possibility that in certain circumstances, in being asked to provide CDD information, money launderers may become aware that casino staff consider their transactions show unusual signs of money laundering. • Attempted transactions that are suspicious in nature should explicitly be made a requirement for reporting in the guidelines. • STR reporting by the DICJ in the course of its oversight and supervision should be considered. • Training should be provided on the identification of suspicion and the reporting requirements and processes for STRs to the sector
Regulation, supervision and monitoring (R. 24-25)	<ul style="list-style-type: none"> • Additional personnel for the DICJ should be recruited. • Training for DICJ personnel in AML/CFT methodology to enable thorough assessment and treatment of risks in the sector needs to be a focus. • The Macao, China authorities and the DICJ specifically, should provide additional guidance on the scope of ML and FT procedures and obligations beyond the existing Instruction. • ML and FT trends and techniques should be assessed on a continual basis and provided to gaming operators in the course of education and outreach activities. • An outreach and education strategy should be developed and implemented to the sector on AML/CFT obligations and typologies. • Training on the application of these obligations and awareness raising on ML/TF techniques should be made a part of outreach to the sector, including measures by which casinos can ensure their AML/CFT practices are being implemented effectively. • All of the DNFBP supervisory authorities should appoint more staff in order to monitor compliance with Regulation 7/2006 and the Instructions, Guidelines and Preventive Measures; • All of the DNFBP supervisory authorities should establish programs for AML/CFT training • with the exception of the Macao Trade and Investment Promotion Institute and CRAL, review how sanctions can be applied for breaches of the Instructions/Guidelines and Preventive Measures which are not breaches of Administrative Regulation 7/2006; • Enhance the Instructions, Guidelines and Preventive Measures so that they include guidance on all of the relevant FATF Recommendations and include a description of ML and FT techniques and methods; • Issue guidance to trust and company service providers (including any offshore entities) arranging for another person to act as a director or secretary of a company or a person in a similar position, arranging for another person to act as a trustee, or arranging for another person to act as a nominee shareholder;

Other Non-Financial Businesses & Professions – Modern Secure Transaction Techniques (R.20)	<ul style="list-style-type: none"> The evaluation of whether this approach means that Macao, China is less vulnerable to ML is a matter for periodic consideration by the Working Group on Anti-Money Laundering.
5. Legal Persons and Arrangements & Non-Profit Organisations	
Legal Persons – Access to beneficial ownership and control information (R.33)	<ul style="list-style-type: none"> The guidelines for company service providers, notaries, lawyers and offshore entities and other entities should explicitly cover the ongoing beneficial ownership and control of legal persons (including where bearer shares are issued). The authorities may wish to consider how best to avoid duplication of effort where several service providers are acting for the same client in respect of a single transaction such as a company formation.
Legal Arrangements – Access to beneficial ownership and control information (R.34)	<ul style="list-style-type: none"> Consideration should be given to how legal arrangements can become clients of the insurance sector and DNFBP. The guidelines issued under Regulation 7/2006 should be amended to refer to beneficial ownership and control accordingly.
Non-profit organisations (SR.VIII)	<ul style="list-style-type: none"> Review and disseminate among Macao, China authorities FATF and APG materials regarding NPOs relevant to the threat of FT. Consult with neighbouring and regional government to better understand how NPOs may be used to support criminal or terrorist activities. Engage in the APG directed initiative of domestic sector review to fully understand the size and scope of the sector and the potential vulnerabilities to FT. Conduct a specific threat assessment of NPOs in Macao, China and produce a formal document stating the risks of FT in Macao, China and the risks of exploitation of NPOs. The assessment should involve indirect supervisory agencies as well as law enforcement and prosecutors. Based on the above assessment, implement appropriate oversight of the NPO sector (including the information to be maintained by NPOs, including information on owners and controllers) and effective coordination between all the relevant authorities. Consider enhancing the NPO registration process to include more detailed information regarding directors and activities. Enhance the sharing of information and training for investigative purposes with appropriate agencies, including the GIF and Judicial Police. Given the strong political activities of NPOs in Macao, China consider establishing/assigning a specific competent authority in Macao, China to oversee the activities of NPOs.
6. National and International Cooperation	

National cooperation and coordination (R.31)	<ul style="list-style-type: none"> • All domestic law enforcement agencies not authorized to investigate ML/FT should also be allowed to request and receive information generated from STR to facilitate investigations on predicate offences. • A suitable mechanism such as guidelines and designated officers to facilitate the exchange of information could be established. • Establish a clear and effective work procedure for information sharing among law enforcement agencies and to coordinate multi agencies ML/FT investigations. • The roles of Anti-Money Laundering Working Group should be re-focused to be as a regular platform for effective coordination and liaison among agencies task with AML/CFT measures.
The Conventions and UN Special Resolutions (R.35 & SR.I)	<ul style="list-style-type: none"> • Implement fully both the Vienna and Palermo Conventions, namely adopting freezing and adopt comprehensive special investigative technique provisions, to enable comprehensive MLA with foreign jurisdictions.
Mutual Legal Assistance (R.32, 36-38, SR.V)	<ul style="list-style-type: none"> • Establish a statistical comprehensive system to record MLA, inter alia, the annual number of requests, their nature, requesting entities, answering time, executing entity, whether and why requests were refused. • Define and/or shorten time period towards authorisations needed to provide MLA. • Enlarge the scope of MLA to allow for less intrusive and non-compulsory matters. • Set up provisions and adopt procedure for MLA on freezing of assets. • Establish a freezing and confiscation/forfeiture proceedings co-ordination mechanism. Confiscation follows the rules set up in the Criminal Code. • Consider establishing an assets forfeiture fund or other measure as a freezing and confiscation co-ordination mechanism.
Extradition (R.32, 37 & 39, & SR.V)	<ul style="list-style-type: none"> • No recommended action.
Other Forms of Cooperation (R.32 & 40, & SR.V)	<ul style="list-style-type: none"> • Establish cooperation, formal or informal with other foreign law enforcement bodies. • The GIF Should consider applying for membership of the Egmont Group at an appropriate time.

TABLE 3: AUTHORITIES' RESPONSE TO THE EVALUATION

The following statement was made by Macao, China authorities during presentation of the draft Mutual Evaluation Report to the APG Plenary on 24 July 2007.

Co-Chairs, Members of the Assessment Team, Fellow Members of the APG , Executive Secretary and Members of the Secretariat, Ladies and Gentlemen.

Firstly, Macao, China would like to express its gratitude to the assessment team for their effort in preparing this informative report, as well as their straightforward and constructive comments and recommendations given. Macao, China will carry out a thorough and prudent review on the existing system and place high priority to follow up with related Government agencies with the implementation of the recommendations contained in this report.

We appreciate the great effort of the ME team who indeed had offered significant contribution to the MER, in spite of the unexpected difficulties they happened to encounter during the exercise. In our point of view, difficulties primarily fell into three areas:

Firstly, the evaluation exercise would be a lot more effective if it took place after the fundamental and recent amendments to our AML/CFT had been in place.

Secondly, difficulties rose from the fact that Macao, China is one of the very few jurisdictions in the APG belonging to the continental law family (which created further challenge to the assessment team to a certain extent).

Last but not least, personal difficulties faced by the members of the assessment team had imposed additional pressure on themselves, on the APG Secretariat and Macau, China as the assessed jurisdiction. This is reflected in the tight deadlines within the adopted methodology, in particular the feedback process that demanded an extra-combined effort of the Macau, China agencies.

Nevertheless, we are pleased with the recognition for the latest development of Macao, China in the AML/CFT areas by the members of the assessment team and this is encouraging to us for our future work to fight against money laundering and terrorist financing.

We will keep adopting a consistent policy that complies with international standards such as the FATF 40+9 Recommendations, the Basel Principles and others relevant standards in order to implement AML/CFT measures in different areas.

Notwithstanding that we are pleased with the outcome of this assessment exercise, we are equally aware as well of the challenges that we are facing ahead but we are strongly committed to overcoming them.

Since the new legislation on AML/CFT covers a wide range of business activities and requires more sophisticated customer due diligence standards and reporting obligations, it is expected that the various business sectors, especially the DNFBP' s, will take some time to fully implement the control measures and allocate the necessary resources. Therefore, educational and public awareness programs will be one of the main priorities.

On the other hand, the MSAR Government is to allocate adequate resources, including human resources, IT support and training for all the supervisory authorities and law enforcement agencies in order to cope with the new requirements.

In the medium to long term, and taking into consideration the actual situation of Macao, China, the MSAR Government will make it a first priority in our AML/CFT regime to work progressively on the recommendations of this report, which laid down the areas identified as our major shortcomings.

An initial follow-up of the recommendations includes the following:

- the enactment of the Legal Cooperation on Criminal Matters Law set out the basis to enhance international cooperation, in particular to promote international cooperation agreements with other countries and territories which we will actively pursue ;
- a cross border declaration or disclosure system is under study by the MSAR Government taking into consideration the competence of law enforcement agencies, and this study will lead to the adoption of a proper measure that meets our needs;
- a further review is to be carried out on the risks associated with NPO' s in Macao, China, and the required actions to implement the corresponding AML/CFT measures will also be studied;

In the meantime, this exercise has greatly improved the fine-tuning of cooperation of all our domestic agencies involved. Continuous effort is necessary to review the effectiveness of the existing legal system and the implementation measures through the AML/CFT Working Group, and proposals will be elaborated to the MSAR Government for revising the AML/CFT policies and procedures when needed.

Simultaneously, each of the agencies involved will carry out individual assessment on its respective needs so as to enact the corrective measures adequate to overcome its shortcomings. Furthermore, they will continue to seek opportunities whereby they can put the plans in practice in their respective sector for strengthening the overall AML/CFT system.

We are fully aware that indeed, an effective AML/CFT system is only as strong as the strength of its weakest link.

That's why, for the moment, although we are pleased with the outcome of the present report, we do know that there is always room for improvement as the report says.

We believe that the path for improvement is just at its beginning in search of an effective AML/CFT system. It is our duty and challenge to keep straddling it in the best of our abilities.

Thank you.

9. ANNEXES

ANNEX 1: LIST OF ABBREVIATIONS

<u>Abbrev.</u>	<u>Name in English</u>	<u>Name in Portuguese</u>
AMCM	Monetary Authority of Macao	Autoridade Monetária de Macau
AR	Administrative Regulation	Regulamento Administrativo
CAC	Commission Against Corruption	Commissariado Contra a Corrupção
CIEPDSS	Independent Commission for the Exercise of the Disciplinary Power over Solicitors	Comissão Independente para o Exercício do Poder Disciplinar Sobre os Solicitadores
CPC	Criminal Procedure Code	Código de Processo Penal
CPG	Central People's Government	NA
CRAC	Committee for Registry of Auditors and Accountants	Comissão de Registo de Auditores e Contabilistas
DICJ	Gaming Inspection and Coordination Bureau	Direcção de Inspecção e Coordenação de Jogos
DSAJ	Legal Affairs Bureau	Direcção de Serviços de Assuntos de Justiça
DSE	Macao Economic Services	Direcção dos Serviços de Economia
DSF	Finance Services Bureau	Direcção dos Serviços de Finanças
FSA	Financial System Act	Regime Jurídico de Sistema Financeiro
GIF	Financial Intelligence Office	Gabinete de Informação Financeira
MSAR	Macao Special Administrative Region	Região Administrativa Especial de Macau
IPIM	Macao Investment and Trade Promotion Institute	Instituto de Promoção do Comércio e do Investimento de Macau
PJ	Judiciary Police	Polícia Judiciária
STR	Suspicious Transaction Report	NA
UPS	Unitary Police Service	Serviços de Polícia Unitários

**ANNEX 2: DETAILS OF ALL BODIES MET ON THE ON-SITE MISSION -
MINISTRIES, OTHER GOVERNMENT AUTHORITIES OR BODIES, PRIVATE
SECTOR REPRESENTATIVES AND OTHERS.**

Financial Intelligence Office (GIF)
Monetary Authority of Macao (AMCM)
Commission Against Corruption (CAC)
Independent Committee of Disciplinary Authority of Legal Office (CIEPDSS)
Gaming Commission (CJ)
Gaming Inspection and Coordination Bureau (DICJ)
Legal Affairs Bureau (DSAJ)
Macao Economic Services (DSE)
Macao Lawyers' Association
Finance Services Bureau (DSF)
International Law Office (GADI)
Macao Trade and Investment Promotion Institute (IPIM)
Public Prosecutions Office (MP)
Judiciary Police (PJ)
Customs of Macao SAR (SA)
Unitary Police Service (SPU)
Gold Trade Association
Chamber of Commerce for Real Estate
China Insurance
AIA
PCI Express (cash remittance company)
Sociedade de Jogos de Macao
Sands Venetian
Union of Associations of Professional Accountants of Macao
Soi Cheong Moneychanger
Bank of China, Macao Branch
Banco Nacional Ultramarino, S.A.
Seng Heng Bank
Taifook Securities Company
BPI

ANNEX 3: LIST OF ALL LAWS, REGULATIONS AND OTHER MATERIAL RECEIVED
List of Laws in force and related to anti-ML and counter FT

<u>Law</u>	<u>Title and relevant Articles</u>
DL 39/99/M	Civil Code, Art. 1, 140-142, 144, 154-157, 173-175, 177-178, 184-187 and 273
DL 58/95/M	Criminal Code, Art. 8, 13, 14, 21-22, 25-26, 67, 101-104, 128-129, 138-140, 152, 154, 155, 163,164, 170, 198, 204, 215, 227, 245, 246, 252, 262, 268, 269, 275, 288 and 337
DL 48/96/M	Criminal Procedure Code, Art. 37-45,112-114, 122, 156-171, 212 and 232
DL 56/99/M	Commercial Registration Code, Art. 1, 2, 5, 6, 8, 9, 14, 15, 69
DL 15/83/M	Finance Companies
DL 38/89/M	Insurance Agents and Brokers Ordinance
DL 5/91/M	Law to counter the illicit traffic and consumption of narcotic drugs and psychotropic substance, Art. 9-10, 15 and 22
DL 32/93/M	Financial System Act
DL 51/93/M	Financial Leasing Companies
DL 54/95/M	Venture Capital
DL 15/97/M	Cash Remittance Companies
DL 27/97/M	Macau Insurance Ordinance
DL 38/97/M	Moneychangers
DL 24/98/M	Preventive Measure on Conversion, Transfer and Concealing of assets
DL 6/99/M	Legal Framework for Private Pension Funds
DL 25/99/M	Portfolio Management Companies
DL 52/99/M	Legal framework of administrative infringements and the respective proceedings, Art.8
DL 57/99/M	Administrative Procedure Code
DL 58/99/M	Offshore Regime of Macao
DL 30/99/M	Financial Services Bureau
DL 71/99/M	Statute of Auditors of Accounts
DL 72/99/M	Statute of Accountants Registration
DL 83/99/M	Investment Funds
Law 9/1999	Legal Framework of the Judiciary Organization, Chapter III, Art. 55-66
Law 10/1999	Statutes of Magistrates, Chapter I, Section III and Chapter XI
Law 11/2001	Organization of Macao Customs Services, Art. 2 & 3
Law 16/2001	Legal Framework for Operating Games of Fortune in Casinos
Law 3/2002	The notification procedure of requests within the mutual legal assistance framework

Law 4/2002	Law on the Compliance with certain acts of international law
Law 9/2002	Declaration of Wealth, Art. 28
Law 7/2003	Statute of Justice Staff
Law 11/2003	Declaration of Wealth, Art. 28
Law 7/2004	Statute of Justice Staff
Law 8/2005	Personal Information Protection Law, Art. 2-4, 6-9, 14-20, 28-30, 32-46
Law 2/2006	Prevention and suppression of the crime of ML
Law 3/2006	Prevention and suppression of the crimes of terrorism
Law 5/2006	(Organization of) Judiciary Police
Law 6/2006	Legal Cooperation in criminal matters
Law 6/97/M	Legal framework against Organised Crime

*Only Portuguese version available with the exception of Law No. 6/2006

Useful websites for reference of laws and regulations:

1. Macao, China Government Portal Homepage (in English): www.gov.mo
2. Macao Laws Homepage (in Portuguese): <http://www.Macaolaw.gov.mo/pt/index2.asp>
3. Government Printing Service: <http://www.imprensa.Macao, China.gov.mo>
4. Macao Commercial Code (full text in English) <http://www.imprensa.Macao, China.gov.mo/bo/i/99/31/codcomen/>

List of Administrative Regulations and Executive Rulings in force and related to AML and CFT

AR/ER No.	Agency	Title and relevant Articles
7/2006	All	Preventative measures for the crimes of ML and FT
26/2001	DICJ	Governing the Conditions for the public tender to concessions for the Operation of Games of Fortune in Casinos, the Concession Contract and the Appropriate Qualifications and Financial Capacity of the Bidders and Concessionaires.
6/2002	DICJ	Governing the Conditions for the Access and the Activity of Games of Fortune in Casinos
34/2003	DICJ	Gaming Inspection and Coordination Bureau (DICJ) Organization Structure
15/2003	DSE	Organisation and Operation of the Macao Economic Services, Art. 1, 2(14), 3(4), 11(1) & (2)
36/2004	DSF	Approval of the 'Code of Conduct for Auditors and Accountants'*
ER 2/2005	DSF	Code of 'Commission of Registration for Auditors and Accountants' (CRAC)*
ER 227/2006	GIF	Establishment of the Office of Financial Intelligence
9/2006	PJ	Establishment of the Organization Structure and Operation of Judiciary Police

*Only Portuguese version available.

List of Guidelines Issued in relation to anti-ML and counter FT

<u>Guideline Ref.</u>	<u>Government Agencies</u>	<u>Title</u>
072/B/2002-DSB/AMCM	AMCM	Anti-Money Laundering Guideline for Authorized Credit Institutions
073/B/2002-DSB/AMCM	AMCM	Anti-Money Laundering Guidance for Cash Transactions of Large Amount
Notice No. 011/2006-AMCM	AMCM	Anti-Money Laundering (AML) and Combating Financing of Terrorism (CFT) Guideline for Financial Institutions
Notice No. 011/2006-AMCM	AMCM	Anti-Money Laundering (AML) and Combating Financing of Terrorism (CFT) Guideline on Large Cash Transactions
Notice 009/2006-AMCM of 18th August, and Notice 12/2006-AMCM of 11th October 2006.	AMCM	Guidelines on Prevention and Combating Money Laundering and Financing of Terrorism in Insurance
Na	CAC	Guideline to fill in the 'Declaration of Income and Properties'
Instruction No. 2/2006	DICJ	Guideline on Preventive Measures on Money Laundering and Financing of Terrorist Acts (Draft)
-	DSAJ	Guideline on Money Laundering and Financing of Terrorism
Notice No. 1/2006	DSE	Instructions in respect of general procedures to be adopted with a view to prevent ML crimes and FT for realtors
Notice No. 1/2006	DSE	Instructions in respect of general procedures to be adopted with a view to prevent ML crimes and FT for pawn shops
Notice No. 1/2006	DSE	Instructions in respect of general procedures to be adopted with a view to prevent ML crimes and FT for providers of services
Notice dated 9 November 2006	DSF	Instructions for prevention and suppression of ML and FT for auditors and accountants registered in Macao, China
Circular No. 01/DSO/IPIM/2006	IPIM	Anti-Money Laundering and Combating Financing of Terrorism Guideline
-	CIEPDSS	Anti-Money Laundering and Combating Financing of Terrorism Guideline*

*Only Chinese version available.

All guidelines have been in force since 12 November 2006.