

# Anti-money laundering and counter-terrorist financing measures

# Tunisia

Mutual Evaluation Report  
May 2016



Tunisia is a member of the Middle East and North Africa Financial Action Task Force for combating Money Laundering and Terrorist Financing (MENAFATF). This evaluation was conducted by the World Bank and the Mutual Evaluation Report was discussed and adopted by the Plenary of the MENAFATF on 27 April 2016.

This report presents a summary of the anti-money laundering (AML) / counter-terrorist financing (CFT) measures in place in Tunisia as at the date of the on-site visit (16-26 February 2015). The report analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of Tunisia's AML/CFT system, and provides recommendations on how the system could be strengthened.



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## **List of Acronyms and Abbreviations**

AAS-T	ANSAR AL-SHARI'A IN TUNISIA
AML/CFT	ANTI-MONEY LAUNDERING / COUNTERING THE FINANCING OF TERRORISM
APTBEF	TUNISIAN PROFESSIONAL ASSOCIATION OF BANKS AND FINANCIAL INSTITUTIONS
AQIM	AL QAEDA IN THE ISLAMIC MAGHREB
CC	COMMERCIAL COURT
CGA	GENERAL INSURANCE COMMITTEE
CMF	FINANCIAL MARKET BOARD
CTAF	TUNISIAN FINANCIAL ANALYSIS COMMISSION
DNFBP	DESIGNATED NONFINANCIAL BUSINESSES AND PROFESSIONS
FATF	FINANCIAL ACTION TASK FORCE
FIU	FINANCIAL INTELLIGENCE UNIT
FSAP	FINANCIAL SECTOR ASSESSMENT PROGRAM
GDP	GROSS DOMESTIC PRODUCT
ISS	INFORMATION-SHARING SYSTEM
MFI	MICROFINANCE INSTITUTION
ML	MONEY LAUNDERING
ML/TF	MONEY LAUNDERING/TERRORIST FINANCING
NGO	NONGOVERNMENTAL ORGANIZATION
NRA	NATIONAL RISK ASSESSMENT
SME	SMALL AND MEDIUM-SIZED ENTERPRISES
PEP	POLITICALLY EXPOSED PERSONS
SA	PUBLIC LIMITED COMPANY
SARL	LIMITED LIABILITY COMPANY
SARLU	SOLE PROPRIETORSHIP
STR	SUSPICIOUS TRANSACTION REPORT
TF	TERRORIST FINANCING
UNECT	NATIONAL COUNTER-TERRORISM UNIT
UNODC	UNITED NATIONS OFFICE ON DRUGS AND CRIME
UNSCR	UNITED NATIONS SECURITY COUNCIL RESOLUTION

## Executive Summary

1. This assessment is based on the 2012 FATF Recommendations and was prepared using the 2013 Methodology. It is based on information provided by the Tunisian authorities and data collected by the assessment team during its stay in Tunisia from February 16 to 26, 2015. The report assesses the degree of compliance with the FATF (Financial Action Task Force) Forty Recommendations and the effectiveness of the AML/CFT measures in Tunisia and issues recommendations to strengthen those measures.

### A. General Finding

2. After the fall of the political regime of former President Ben Ali, Tunisia was witness to a revolution in 2011 and a succession of provisional governments. Until the most recent presidential and legislative elections, held in late 2014, the Tunisian authorities gave priority to establishing new democratic institutions, restoring the rule of law, and preparing the new constitution. During this period the AMF/CFT arrangements, which had until then been fairly ineffective, began to operate more effectively, as shown by the increase in the number of suspicious transaction reports and the number of cases referred to the courts.<sup>1</sup> However, numerous shortcomings remain in the area of technical compliance, and the effectiveness of the AML/CFT system remains low or moderate.

### B. Risks and General Situation

3. The most serious threats (proceeds of corruption, terrorist financing and smuggling, and currency trafficking) have been identified and understood by the Tunisian authorities but the analysis of the weaknesses and vulnerabilities of the AML/CFT system in the context of a National Risk Assessment (NRA) has yet to be finalized.

4. **Currently, the main threat to Tunisia has become terrorism and its financing.** Since 2012, a number of terrorist attacks have been perpetrated on Tunisian soil,<sup>2</sup> including three in 2015 for which the Islamic State took credit. The rising terrorist threat in Tunisia is also related to two radical movements: the group Ansar al-Shari'a in Tunisia (AAS-T) and the group Katiba Okba Ibn Nafaa, which has merged with Al Qaeda in the Islamic Maghreb (AQIM). Tunisia's vulnerability also results from the porousness of its borders, which facilitates trafficking in arms, drugs and contraband in transit from Libya or Algeria. Finally, many jihadist fighters wishing to support or join ISIS are going to Libya, on the southwest border with Tunisia, an extremely sensitive area from a security standpoint.<sup>3</sup> The authorities estimate that between 2011 and 2014 several thousand Tunisians have gone to fight in Iraq, Libya and Syria as part of these terrorist organizations, particularly ISIS and Al Nosra. Several hundred of these fighters have now returned to Tunisia. Money transfer systems are used to finance this travel and, occasionally, the day-to-day expenses of the families of these fighters. As one source of financing for this travel, according to the authorities, is charitable associations financed abroad, they have taken specific measures to prosecute some of these associations and suspend their activities.

5. **Corruption—a legacy of the authoritarian regime—remains a major risk.** The capture of a significant percentage of the Tunisian economy by a clan close to those in power prior to 2011 has been

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<sup>1</sup> See Part 3 – Legal System and Operational Issues.

<sup>2</sup> The attack on the United States Embassy on September 14, 2012, the clashes between the Tunisian army and armed groups at Jebel ech Chambi and the surrounding area in the summer of 2013, the assassination of two political opposition leaders, Chokri Belaid and Mohamed Brahmi, in 2013, and the suicide attack on a tourist area in 2013.

<sup>3</sup> Centre Français de Recherche sur le Renseignement, *Note d'actualité No. 365*, "Al-Qaida au Maghreb islamique à la croisée des chemins" [Al Qaeda in the Islamic Maghreb at a Crossroads], August 17, 2014.

described in a study by the Anti-Corruption Commission established by the new authorities. A World Bank Report, *All in the Family*, established that 20 percent of private sector profits were misused in this way. The change in regime has eliminated systematic capture by a single clan, and the assets of its members in Tunisia have been confiscated and are being managed by the State pending their liquidation or public sale. The many criminal cases launched are also indicative of a commitment to deter and penalize grand corruption. Nonetheless, political connivance, extraction of rents and privileges, regulatory abuse and cross-border smuggling, which reached exceptional heights under the Ben Ali regime, have not disappeared, as shown, for example, by the prosecution of a case of suspected money laundering of the proceeds of the corruption of a politically exposed person who served during the 2011-2014 period. Moreover, sources such as Transparency International and the World Bank have indicated a continued high risk of corruption since 2011. This analysis is corroborated by the team's interviews with the chair of the Anti-Corruption Commission. In this context, efforts must be stepped up to identify the beneficial owners of assets, transactions, companies and legal arrangements.<sup>4</sup>

6. **The financial sector essentially consists of the banking system, considering the limited development of the financial markets and insurance sector.** Moreover, given the lack (until now) of exchange bureaus and nonbank money transfer systems, the banks play a major role in monitoring high-risk operations, such as transfers of funds and cash foreign exchange operations. Moreover, the informal share of the Tunisian economy<sup>5</sup> results in tax losses amounting to D 1.2 billion (US\$600 million) each year, including D 500 million (US\$250 million) in customs duties, and promotes the circulation of foreign banknotes and coins.

### C. Key findings

#### *C.1 Effectiveness of TF prosecutions and preventive measures*

7. **Tunisia must address the growth of the activities of several terrorist organizations (Ansar al-Shari'a, ISIS) on its territory.** Investigations under way have identified typology elements related to the financing of these terrorist activities: offenses involving postal transfers or transfers to the families of persons who have died in combat and the provision of financial support to bring combatants to war zones. For example, in 2014, the National Counter-Terrorism Unit (UNECT) placed ten people in police custody in the context of a case involving an association suspected of dealings with a terrorist organization. Moreover, UNECT has referred several cases to the Office of the Public Prosecutor for the financing of travel expenses for combatants headed to Syria.

8. **However, although criminal prosecutions are under way, the Tunisian authorities have not yet had any convictions for acts described as terrorist financing.** The length of the investigations and judicial procedures, the lack of resources for the law enforcement authorities and the deficiencies in the legal regime in terms of special investigative techniques seem to be obstacles to rapid and efficient prosecutions.

9. **The preventive measures continue to suffer from technical shortcomings and implementation problems continue.** The mechanism currently in effect for the implementation of Resolution 1267 requires entities subject to the AML/CFT provisions to consult lists accessible on the Ministry of Finance website and to freeze the assets of listed persons. However, it does not, as required by the resolution, create a general prohibition applicable to all natural and legal persons on the provision of funds or economic resources to the persons included on list 1267. Moreover, the implementation and consultation of the U.N.

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<sup>4</sup> <https://www.transparency.org/country/#TUN>

<sup>5</sup> By definition difficult to estimate and amounting to around 38 percent of GDP and 53.5 percent of labor in 2010, according to World Bank estimates that year.

lists seem insufficient in the case of some banks and nonexistent for non-bank financial institutions and DNFBPs. Under Resolution 1373, the freezing of the assets of designated persons or implementation of freezing measures adopted by other countries involves the issuance of an ordinance at the request of the Chief Justice of the Court of First Instance of Tunis in turn at the request of the Prosecutor General, for which a judicial proceeding must be opened. This system does not establish a general prohibition on providing economic resources to designated persons as required by the resolution and does not allow for immediate freezing. Moreover, no provision for the prevention of the financing of the proliferation of weapons of mass destruction has been introduced.

10. **Use of associations for the financing of terrorism is a major concern for the Tunisian authorities** and has led them to take measures to suspend the activities of 157 associations. The law has also introduced transparency measures to identify the persons in charge of the administration and management of associations and to ensure the integrity of incoming and outgoing funds through the publication of their financial statements. However, the weak number of officials in charge of monitoring the sector impedes adequate oversight of the activities of associations.

### *C.2 Use of financial information and role of the Tunisian Financial Analysis Commission (the CTAF)*

11. **Since 2011, the CTAF has been the main entity for implementation of the national AML/CFT system and the recovery of assets stolen by the former regime.** It provides high-quality financial analysis based on suspicious transaction reports (STRs). However, the CTAF's effectiveness is hampered by the insufficient number of analysts and the lack of a comprehensive analysis of the risks, weaknesses and vulnerabilities of the system. An increasing number of suspicious transaction reports sent by the banks are still being reviewed owing to this lack of analysts. Moreover, in a legal context in which there is no list of the professions covered by the AML/CFT law, training initiatives would seem to be necessary to encourage designated nonfinancial businesses and professions (DNFBPs) to report suspicious transactions.

12. **Moreover, CTAF's decision-making body includes representatives of various ministries who continue to perform their primary functions in their original departments.** This situation has not prevented the CTAF from producing high-quality financial analysis, contributing actively to the preparation of risk analyses, and, since 2011, referring all cases recommended for prosecution to the courts. However the situation is not optimal to the extent that the CTAF does not benefit from the diversity of technical competencies of its members on a full-time basis (since they continue to work in their original departments).

### *C.3 Effectiveness of money laundering prosecutions and confiscations*

13. **The Judicial Financial Unit (*Pôle judiciaire financier*) created in 2012 does not yet have the legal means and resources to operate effectively.** This unit includes 10 investigating judges and 5 deputies to the Public Prosecutor, who handle the procedures for the 154 money laundering cases referred to them by the Public Prosecutor and the Chief Justice of the Court of Tunis. However, there is no specific law or regulation covering it or organizing its activities. At the same time, the unit's investigating judges continue to handle regular cases that were referred to them before they were assigned to the Financial Unit. Moreover, they are not supported by assistants specializing in financial matters. To date, 22 money laundering cases have been finalized by the investigating judges, 14 have been sent to the Indictments Chamber of the appeal court, and 8 have resulted in the dismissal of charges. Only one case resulted in a final judgment. As well, 18 terrorist financing cases were referred to the Unit, 2 of which were sent to the Indictments Chamber of the appeal court.

14. **The use of special investigative techniques is developing, but remains limited.** The absence or lack of clarity of legal provisions covering or organizing the use of these techniques, (particularly wiretapping, joint investigations, infiltration or controlled deliveries), or their lack of clarity where they



exist, poses legal problems that a new bill under discussion by Parliament is supposed to eliminate. As a result, the legal basis for the surveillance of communications in the case of smuggling or terrorism offenses is a telecommunications law and general laws giving the investigating judge the authority to order the necessary measures to establish the truth.

15. **Administrative confiscation of ill-gotten gains related to the former regime has led to the recovery of substantial assets in Tunisia,<sup>6</sup> while criminal confiscation remains extremely rare.** The lack of funding, logistical resources and legal provisions governing special investigative techniques and the organization of the Financial Unit have tended to weaken the effectiveness of the investigations and prosecutions. Few money laundering investigations have been initiated on the basis of predicate offenses. Moreover, the length of the procedures has meant that until now there have not been a sufficient number of convictions and thus criminal confiscations.

#### *C.4 Effectiveness of preventive measures*

16. **In the financial sector, the banks met do not fully understand the AML/CFT risks to which they are exposed** (particularly the risks related to cash foreign exchange operations). The other financial institutions (leasing companies, securities brokers and insurance companies), which play a limited role, seem to also have a very poor understanding. This situation, which is in part related to the fact that the NRA has not been completed, is an obstacle to the establishment of internal and sectoral policies proportionate to the risks.

17. **The implementation of customer due diligence (CDD) measures is limited in the banking sector and very inadequate in the case of the DNFBPs.** The legal and regulatory framework in this area does not meet international standards. Some banks have only a limited understanding of the due diligence requirements, particularly the specific requirements for beneficial owners and politically exposed persons (PEPs). The difficulties in the identification of beneficial owners are combined with the deficiencies in the application of targeted financial sanctions specific to terrorist financing. The enhanced due diligence measures in cases deemed to be high risk are insufficiently used. The legislative framework does not specifically designate which DNFBPs are covered by the AML/CFT preventive measures and some professions hesitate to consider themselves covered (particularly accountants). Thus the DNFBPs do not implement or scarcely implement the requirements of the AML/CFT law and their AML/CFT vulnerabilities are poorly understood by the supervisory authorities and self-regulatory bodies.

18. **The banking sector therefore originates most of the suspicious transaction reports (STRs) submitted to the CTAF.** In contrast, very few reports are submitted by real estate agents, lawyers, accountants and notaries. No reports have been submitted by notaries or real estate agents; only one was submitted in 2011 by accountants; and two were submitted in 2014 by lawyers.

#### *C.5 Effectiveness of supervision*

19. **The supervisory authorities in the financial sector, including the banking system, have not fully identified and understood the AML/CFT risks in these sectors.** The lack of an NRA makes it impossible to implement supervision based on national risks. Outside the banking sector, the establishment of AML/CFT supervision has been slow. In 2014, the Central Bank of Tunisia launched consultations with the banking sector in the form of an AML/CFT questionnaire with a view to the scheduling of priority audit

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<sup>6</sup> The legal mechanism establishing administrative confiscation measures was recently voided (subject to appeal) by the Tunisian administrative courts.

missions. This questionnaire is simply an analysis tool and cannot supplement the lack of a comprehensive national approach to risks. The effectiveness of supervision also suffers from a lack of human resources.

20. **No DNFBP is subject to a supervisory arrangement that effectively guarantees its respect of its AML/CFT obligations.** The DNFBP supervisory and self-regulatory authorities have a limited understanding of the AML/CFT risks to which these categories of professionals are exposed. They seem to have little knowledge of the AML/CFT law, and an AML/CFT supervisory mechanism has been developed only for casinos and dealers in precious stones and precious metals. Although the CTAF has organized some awareness-raising activities, only the casinos and dealers in precious stones and precious metals have developed an appreciation for the risks in their respective sectors. Overall the level of understanding of AML/CFT issues seems rudimentary in the nonfinancial sectors.

#### D. Priority measures

21. Based on the findings during the on-site mission, the Tunisian authorities are urged to implement the following recommendations.

- The Tunisian authorities, with the assistance of the supervisory authorities for the financial and nonfinancial sectors, should finalize a comprehensive, coherent analysis of the risks and establish a national strategy that could serve as a basis for increasing the legal, institutional, human and financial resources for combating terrorism and its financing, corruption and smuggling. This NRA should also serve as a basis for the development of a risk-based approach in the financial sector and in the DNFBPs.
- To tackle the financing of terrorism, the Tunisian authorities should (1) establish legal mechanisms generally prohibiting the provision of any economic resources to the persons included on the 1267 lists and ensure that these mechanisms are respected; (2) ensure the immediate freezing of assets held by persons designated by the 1267 lists or under Resolution 1373; (3) increase the legal, administrative, human and financial resources of the police services and judicial authorities handling cases involving terrorism and its financing; and (4) increase the resources of the units responsible for the supervision of associations. Finally, the Tunisian authorities should establish legal and administrative mechanisms for the identification of individuals or entities that Tunisia could propose for addition to the U.N. lists and the designation of persons and entities in Tunisia in application of Resolution 1373.
- The effectiveness of criminal investigations and prosecutions should be improved through the adoption and implementation of the necessary legislation for the operation of the Financial Unit and the development of special investigative techniques. Moreover, the staff with financial expertise assigned to the police, gendarmerie and courts (judges and prosecutors) should be increased. The public prosecution offices should be encouraged to give priority to cases relating to terrorist financing and the laundering of the proceeds of corruption and smuggling. The Ministry of Justice should draft and implement a criminal policy guidance giving the public prosecution offices clear objectives in terms of the effective use of criminal confiscations and requiring the systematic opening of financial investigations based on cases of corruption, smuggling or trafficking of migrants.
- The CATF's human and physical resources should be increased to enable it to handle the growing number of suspicious transaction reports, and the makeup of its decision-making body should be changed to ensure that its members can perform their functions on a full-time basis.

- The effectiveness of the prevention measures should be enhanced by means of legislative or regulatory provisions requiring a risk-based approach for the identification of beneficial owners, the extension of the obligations concerning foreign politically exposed persons (PEPs) to national PEPs, and the enforcement of the customer due diligence requirements of financial institutions other than banks. For the DNFBPs, regulatory measures should be adopted and implemented to fill the gaps in the AML/CFT law, precisely identify the professions concerned, and encourage the vulnerable sectors, including lawyers, notaries, real estate agents and accountants, to implement customer due diligence requirements and submit suspicious transaction reports.
- The supervisory, oversight and regulatory authorities should systematically organize on-site and off-site AML/CFT examinations and inspections in the most vulnerable sectors. In the financial sector, the Central Bank, the Financial Market Board and the General Insurance Committee should use the identification and documented analysis of sectoral risks established in the context of the NRA to develop audit and work procedures, particularly concerning the financing of terrorism, sanctions against designated persons and the identification of beneficial owners and politically exposed persons. The scheduling of on-site inspections should be based on the frequency, perimeter, scope and relevance of the risks and the staff dedicated to AML/CFT supervision should be increased.

## Effectiveness and compliance scores

### Effectiveness

<b>IO.1</b>	<b>IO.2</b>	<b>IO.3</b>	<b>IO.4</b>	<b>IO.5</b>	<b>IO.6</b>	<b>IO.7</b>	<b>IO.8</b>	<b>IO.9</b>	<b>IO.10</b>	<b>IO.11</b>
Mod.	Mod.	Low	Low	Low	Mod.	Mod.	Mod.	Low	Low	Low

### Compliance

<b>R.1</b>	<b>R.2</b>	<b>R.3</b>	<b>R.4</b>	<b>R.5</b>	<b>R.6</b>	<b>R.7</b>	<b>R.8</b>	<b>R.9</b>	<b>R.10</b>
PC	PC	C	LC	C	PC	NC	LC	C	PC

<b>R.11</b>	<b>R.12</b>	<b>R.13</b>	<b>R.14</b>	<b>R.15</b>	<b>R.16</b>	<b>R.17</b>	<b>R.18</b>	<b>R.19</b>	<b>R.20</b>
C	PC	LC	LC	PC	NC	PC	PC	PC	C

<b>R.21</b>	<b>R.22</b>	<b>R.23</b>	<b>R.24</b>	<b>R.25</b>	<b>R.26</b>	<b>R.27</b>	<b>R.28</b>	<b>R.29</b>	<b>R.30</b>
C	PC	PC	PC	NC	NC	LC	PC	LC	C

<b>R.31</b>	<b>R.32</b>	<b>R.33</b>	<b>R.34</b>	<b>R.35</b>	<b>R.36</b>	<b>R.37</b>	<b>R.38</b>	<b>R.39</b>	<b>R.40</b>
PC	LC	PC	NC	LC	PC	C	PC	C	LC

## Tunisia Mutual Evaluation Report

1. This report presents the anti-money laundering and terrorist financing (AML/CFT) measures in effect in Tunisia at the time of the on-site mission. It analyzes the level of compliance with FATF's 40 Recommendations and the effectiveness of Tunisia's AML/CFT system and makes recommendations for strengthening that system.
2. This assessment is based on the FATF Recommendations adopted in 2012 and was conducted in accordance with the 2013 Methodology. It has been prepared on the basis of information provided by the Tunisian authorities and information obtained by the assessment team during its visit to Tunisia from February 16 to 26, 2015.
3. The assessment was conducted by a team consisting of: Jean Pierre Brun (World Bank, Team leader and legal/law enforcement expert), Colonel Ziad Jazzar (criminal investigation expert, Lebanon), Marilyne Goncalves (World Bank, legal expert), Maha El Khayat (FIU and financial/supervision expert, Lebanon), Hicham El Haoudi (Banque Al Maghreb, Deputy Legal Director), Mathilde Lavaud (World Bank, consultant), Sofiane Marouane (MENAFATF, observer) and Laurent Gonnet (World Bank Tunis, financial expert). The report was reviewed by Mr. Chady Adel El Houry and Mr. Arz El Murr (IMF), Francesco Positano (FATF), Gael Raballand (World Bank), Bob Rijkers (World Bank) and Abdenour Hibouche (Chairman of the CTRF). The peer review meeting was conducted at the World Bank on October 2, 2015. The report was adopted at the MENAFATF plenary on April 27, 2016.
4. A FATF mutual evaluation has previously prepared for Tunisia in 2006, on the basis of the 2004 methodology. The 2006 evaluation was published and is available at the following address: [http://www.menafatf.org/images/UploadFiles/MENAFATF.7.07.E.P5R2%20with%20response .pdf](http://www.menafatf.org/images/UploadFiles/MENAFATF.7.07.E.P5R2%20with%20response.pdf). For the sake of brevity, on subjects where there were no significant changes in Tunisia's situation or in the requirements of the FATF recommendations, this assessment does not repeat the analysis of the previous evaluation, but it rather includes a reference to the detailed analysis in that report.
5. The 2006 mutual evaluation had concluded that Tunisia was compliant with 9 recommendations, largely compliant with 13 recommendations, partially compliant with 17 recommendations and noncompliant with 9 recommendations. Tunisia achieved a level of "compliant" or "largely compliant" for 7 of the 16 essential or key recommendations. When the 2006 mutual evaluation report was adopted on April 3, 2007, Tunisia was placed under a regular follow-up process in light of the partially compliant and noncompliant ratings for certain of the essential recommendations.
6. Following the Sixth Follow-Up Report prepared by Tunisia in June 2014, the 19th Plenary of the Middle East and North Africa Financial Action Task Force (MENAFATF) deemed that it had taken adequate measures to address its weaknesses and consequently withdrew Tunisia from the regular follow-up process. Tunisia was deemed largely compliant with all of the essential and key recommendations, with the exception of Recommendation 6 on the freezing and confiscation of terrorist funds. Regarding the latter, a lack of clarity on the implementation of the mechanisms for freezing funds proposed by Resolutions 1267 and 1373 did not allow Tunisia to obtain a rating higher than partially compliant.

## 1. MONEY LAUNDERING AND TERRORIST FINANCING RISKS AND CONTEXT

7. Tunisia is a country in North Africa that measures 162,155 km<sup>2</sup>, with a lengthy 1,300 km coastline on the Mediterranean, and 10,982,754 inhabitants.<sup>7</sup> Its GDP was estimated at US\$46.9 billion in 2013. The Tunisian economy is dominated by the services sector (61 percent of GDP), with the industrial and agricultural sectors representing 30.4 percent and 8.6 percent of GDP, respectively.<sup>8</sup> Tourism, which was severely affected by the 2011 revolts, is an important sector for Tunisia. Tunisia is also an exporting country, with textiles, electronics and chemicals among its export products. The country depends relatively little on its natural resources (petroleum, phosphates, iron ore, lead, zinc and salt).

8. Tunisia borders on Libya, which has suffered from chronic instability since 2011, and Algeria, which itself faces severe terrorist threats. This geographic location seriously affects the security situation in the country and is a very significant risk factor given the importance of regional trafficking in drugs, arms, human beings and contraband. It is also major risk factor for terrorist financing.

9. Politically, following the authoritarian regime headed by former President Ben Ali, which was characterized by a high level of corruption and repression of any opposition, a revolution that began in 2011 led to a succession of provisional governments until the recent presidential and legislative elections held in late 2014. The Tunisian Government and the Assembly elected after the revolution have given priority to creating the conditions needed for the establishment of new democratic institutions, the restoration of the rule of law and the completion of the new constitution. The rapid succession of seven governments did not promote continuity of economic and social policies and many AML/CFT reforms could not be submitted to Parliament. Account must be taken of this legal and political context in evaluating the AML/CFT policies implemented. The significant period to be analyzed is therefore 2011-2014, during which Tunisia developed dynamic policies that contrasted with the inaction, or even obstruction, during the previous period, particularly in terms of detection, investigation, international cooperation and criminal prosecutions.

### *1.1 ML/TF Risks*

10. **Corruption, a legacy of the authoritarian regime, is still perceived as a major risk.** Before 2011, the administrative authorizations required to start up economic activities deemed profitable were systematically granted to individuals or companies associated with the clan in power or required under-the-table payments. The change of regime eliminated this systematic capture for the benefit of a single clan, whose assets in Tunisia, confiscated and now managed by the State, are pending liquidation or public sale. Moreover, systematic criminal prosecutions are indicative of a willingness to deter and penalize grand corruption. Nevertheless, political connivance, the extraction of rents and privileges, regulatory abuse and cross-border smuggling, which reached an exceptional level under the Ben Ali regime, have not completely disappeared as shown, for example, by the referral to the prosecutor of a case involving suspected laundering of the proceeds of corruption by a politically exposed person in office during the 2011-2014 period.<sup>9</sup> Moreover, sources such as Transparency International and the World Bank describe a continued high level of risk of corruption since 2011, although it is difficult to quantify. Thus, in 2014 Tunisia was ranked 79<sup>th</sup> out of 175 countries on the Corruption Perception Index established by Transparency International.<sup>10</sup> Corruption still affects the public and private sectors, and a portion of the Tunisian economic fabric remains organized in the form of groups of private companies and family businesses. The

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<sup>7</sup> 2014 census conducted by the National Statistics Institute.

<sup>8</sup> Source: World Bank.

<sup>9</sup> Source: CTAF.

<sup>10</sup> <https://www.transparency.org/country/#TUN>.

risks of extractions of rents or privileged access to resources and public contracts remains high owing to the restricted access to the markets and the lack of transparency.

11. **Smuggling, which was already widespread prior to 2011, has increased and is a major source of criminal proceeds.** Smuggling primarily involves regional trade with Algeria and Libya and prohibited or highly taxed products such as arms, cigarettes, hard liquor, raw materials (fuel, construction steel, copper), food products, household appliances and stolen vehicles.<sup>11</sup> Although some of these activities still exist in Tunisia, the difficulties that followed the 2011 Revolution and the war in Libya exacerbated the situation. The authorities have seized arms since 2011, but little information is available on the financial networks related to this trafficking. In parallel to this smuggling, the Tunisian authorities have identified the circulation of foreign currency cash, particularly across the Algerian and Libyan borders. This cash does not always return to the financial system, which represents a clear risk in terms of ML/TF.

12. **Tunisia is seriously threatened by terrorism.** It has been subject to several terrorist attacks on its territory since 2011.<sup>12</sup> The terrorist attack on March 18, 2015 at the Bardo Museum, the attack on a hotel in Sousse on June 26, 2015, and the November 24, 2015 attack targeting a bus carrying the presidential guard were all claimed by the Islamic State. These attacks underscore the resurgence of the risk of terrorism and terrorist financing. This increase in terrorist pressure in Tunisia results primarily from two Tunisian radical movements, Ansar al-Shari'a in Tunisia (AAS-T), a group that arose soon after the 2011 uprisings, and Katiba Okba Ibn Nafaa, which merged with Al Qaeda in the Islamic Maghreb (AQIM), and from the presence of the Islamic State in Libya.

13. Ansar al-Shari'a in Tunisia was founded in 2011 by Seifallah Ben Hassine. It is linked to Al Qaeda in the Islamic Maghreb and implicated in attacks on the Tunisian security forces, the assassination of Tunisian political figures and an attempted bombing of a tourist hotel. In September 2012, Ansar al-Shari'a in Tunisia participated in an attack on the Embassy of the United States and the American Community School in Tunis. In February and July 2013, two Tunisian politicians, Chokri Belaid and Mohamed Brahmi, were assassinated by members of the AAS-T. On October 30, 2013, this same group attempted two suicide attacks against two Tunisian tourist sites, one in Sousse and the other in Monastir. Finally, AAS-T is known by the Tunisian authorities as an organizer or facilitator for the recruitment in Tunisia of young fighters for the Syrian theaters of operation.<sup>13</sup>

14. Tunisia's vulnerability also results from the porousness of its borders. The presence of some of these armed groups has been detected at Tunisia's borders with Algeria and Libya. Tunisia has become a country of transit for jihadist fighters who wish to join the Islamic State, for which training often takes place in Libya. Many of these fighters are established in Libya near Tunisia's southwestern border, an extremely sensitive security zone.

15. **Given its potential consequences, terrorist financing is a major risk for Tunisia.** The risk of terrorist financing is identified by the authorities and particularly involves associations, which have been liberalized since 2011. In 2014, the activities of 157 associations were suspended by administrative order on suspicion of links with terrorism (financing received from abroad to finance activities or the families of

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<sup>11</sup> International Crisis Group, Middle East/North Africa Report No.148, Tunisia's Borders: Jihadism and Contraband, November 28, 2013.

<sup>12</sup> The September 14, 2012 attack on the United States Embassy, the clashes between the Tunisian army and armed groups at Jebel ech Chambi and the surrounding area in the summer of 2013, the assassination of two political opposition leaders, Chokri Belaid and Mohamed Brahmi, in 2013, and the suicide attack in a tourist area in 2013.

<sup>13</sup> State Department, Country Reports on Terrorism 2013: Tunisia <http://tunisia.usembassy.gov/country-reports-on-terrorism-2013-tunisia.html>

foreign fighters, in particular). The financing of terrorism is also facilitated by the porousness of Tunisia's borders, which facilitates trafficking in arms, drugs or, more generally, smuggling to and from Libya or Algeria.

16. Finally, Tunisia is also affected by trafficking of migrants and human beings, for which it is a source, destination and transit country. As well, arms and drug smuggling are two new concerns for the Tunisian authorities given their recent increase.

## *1.2 Materiality*

17. **The Tunisian financial system is dominated by the banking sector.** The banking sector accounts for almost 70.4 percent financial assets, followed by the financial market (13.9 percent), collective investment schemes (5.6 percent) and the insurance sector (3.1 percent). The physiognomy of the financial sector has not been changed by the period of instability that followed the popular uprisings in late 2010 and early 2011. Its most significant impact has been an acute decline in bank liquidity, to which the BCT has responded with an accommodative monetary policy stance. Tunisia has 22 resident banks (including two investment banks and two Islamic banks) and 7 offshore banks.<sup>14</sup> The investment banks are financial establishment and not banks within the meaning of Article 54 of Law 2001-65. Their role is limited to consulting and assistance in asset management, financial management, financial engineering and, in general all services intended to facilitate the creation, development and restructuring of companies. Foreign exchange and money transfers activities have until now been handled by banks. An informal exchange sector has apparently developed alongside the banks.

18. According to the Tunisian Professional Association of Banks and Financial Institutions (APTBEF), there were 12,207,762 accounts (including postal accounts) as of September 30, 2014, or 1.12 accounts per inhabitant. At the same time, 26.8 percent of the population apparently does not have a bank account. The Tunis Stock Exchange, which is under the control of the Financial Market Board, includes only 77 companies and the transaction volumes are low.

19. **There is a microfinance sector but it is not very developed.** This sector, which was established in 1997, focuses essentially on microcredit, which is provided primarily of the Banque Tunisienne de Solidarité and the NGO Enda Interarbe.

20. The activities of designated nonfinancial businesses and professions (DNFBPs) are supervised by professional associations or organizations: the Tunisian Bar Association, the National Association of Tunisian Notaries, the National Association of Real Estate Agencies and the Tunisian Association of Accountants and Auditors. Tunisian casinos, which are reserved exclusively for nonresidents, are supervised by staff of the Ministries of Finance and the Interior. The risks in this area are low according to the Tunisian authorities owing to the limited number of licenses issued (three) and the daily unscheduled inspections to which the casinos are subject. The Ministry of Finance is also responsible for supervising dealers in precious stones and precious metals. A significant risk exists in the real estate sector, with several cases referred by the CTAF to the public prosecution office indicating that the purchase of a property has been a vehicle for the laundering of illicit profits. The real estate sector, which is certainly limited in terms of volume and prices, is developing in a context marked by the almost nonexistence of suspicious transaction reports from the professions involved in the transactions, particularly lawyers, notaries and real

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<sup>14</sup> The off-shore banks are banks established in Tunisia and governed by Tunisian law. The customers of these banks are primarily nonresident exporting companies.

estate agents. The accounting profession, which is involved in the creation and management of companies, also submits very few suspicious transaction reports.

21. **The abusive use of legal persons for ML/FT purposes is a risk according to the authorities.** The most common form of commercial company in Tunisia is the limited liability company (*société à responsabilité limitée—SARL*). All companies established in Tunisia are subject to transparency requirements. The information provided by companies on their operations and shareholders is recorded in the Commercial Register and available on the Internet (see Chapter 7). Other legal persons include nonprofit organizations in the form of associations. Since 2011, there has been freedom to establish associations on the basis of the principle of mandatory declaration, thus eliminating any licensing or prior authorization procedures. The risks of the use of legal persons for criminal purposes involve primarily companies operating in international trade and services, as well as associations that can be used for terrorist financing purposes.

### *1.3 Structural Elements*

22. A number of estimates have been made of the informal sector in the Tunisian economy, which the World Bank estimated at 30 percent of GDP and 53.5 percent of labor in 2010.<sup>15</sup> Whatever its exact size, it creates a systemic vulnerability to the threat of money laundering and terrorist financing. The informal sector mainly involves small and microenterprises. According to World Bank estimates, Tunisia records D 1.2 billion (US\$600 million) in tax losses each year, including D 500 million (US\$250 million) in customs duties, owing to the informal economy, which includes smuggling. The informal economy is concentrated in construction, industry, trade, transportation and agriculture. The authorities believe that the development of the informal sector is related in part to the predominant role of the public sector in the economy and the numerous regulatory obstacles that exist. Institutional procedures for the establishment of companies, the administrative cost of compliance, the red tape and payroll taxes, and the rigidity of labor legislation tend to encourage the creation of companies in a parallel system. To stem the development of the parallel market, Law 2014-54 provides for the possibility for natural persons meeting specific conditions to establish exchange bureaus. As well, Law 2014-59 on the 2015 budget law streamlines cash payment operation by introducing a 1percent duty (tax) on all payment operations exceeding a threshold of D10,000, to be reduced to D5,000 as of January 1, 2016.

23. **In terms of the application of AML/FT laws and regulations,** the Tunisian legal framework for money laundering/terrorist financing and predicate offenses covers the activities at risk. However implementation of the legislation is difficult, as shown by the limited number of prosecutions and, in particular, criminal convictions for money laundering, and the complete lack of convictions for terrorist financing. Before 2011, few suspicious transaction reports were submitted and financial information was scarcely used by the relevant authorities. Since 2011, banks have submitted a larger number of suspicious transaction reports, allowing the CTAF and the investigative authorities to carry out investigations.

24. In 2011, few judges had the necessary training and experience for conducting the numerous procedures relating to the corruption and money laundering by the former regime. Given the length of time involved, the complexity and the international ramifications, these cases have involved and continue to involve the most experienced judges. The effectiveness of the work of the financial magistrates is, moreover, limited by their incomplete specialization, as they have had to continue to handle their regular cases along with the new financial cases. Finally, these judges do not have full-time financial experts or

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<sup>15</sup> World Bank, Middle East and North Africa Region Public Sector and Governance Unit, “Estimating Informal Trade across Tunisia’s Land Borders,” December 2013.



assistants at their disposal and their legal means are limited, particularly in terms of special investigating techniques (wiretapping, searches, controlled deliveries, etc.).

25. The definition of the offense of money laundering complies with the standard, but in practice it requires evidence of a link between the predicate offense and the laundered assets, without specifying that this evidence may be circumstantial based, in particular, on the behavior of the defendants. This possibility is generally provided for in the Tunisian criminal code, as the evidence in criminal matters may include any means likely to persuade the court. However, as the case law of the Appeals Court has not formally indicated how this principle is to be applied in the area of money laundering, the investigating judges and prosecutors hesitate to pursue this qualification in the absence of clear evidence of a link between an offense and the financial transactions. A law on the financing of terrorism, which also contains provisions applicable to money laundering (special investigative techniques, wiretapping, etc.), was under discussion at the time of writing of this report and was adopted by Parliament in July 2015. A bill was also being prepared to specify that the accused is responsible for proving the lawful origin of the laundered assets when circumstances (complexity of financial arrangements, lack of economic justification consistent with the transactions, etc.) lead to a presumption of the existence of the illegal operations.

26. **The Tunisian authorities have not finalized a risk-based approach** in the establishment of their AML/CFT system. A National Risk Assessment is currently underway. However, the lack of a complete national analysis and a general lack of statistics on these issues hampers the allocation of resources to priority sectors. Pending a comprehensive analysis, the BCT is endeavoring to lay the foundations for a risk-based approach in the banking sector (Guidance 2013-15), which represents more than 90 percent of the financing of the economy.

27. The BCT thus identifies ML/FT risks using an approach focusing on the proportionality of the customer due diligence measures:

- General ongoing customer due diligence is mandatory throughout the business relationship. This due diligence is simplified for some entities subject to an audit authority or those in which the Government has a stake of at least 50 percent;
- Enhanced due diligence for some business relationships (e.g., political parties, association, etc.) and some transactions, particularly unusual transactions;
- Close due diligence for business relationships with foreign PEPs requiring the authorization of the board of directors or management or any individual responsible for pursuing such a business relationship with such a person;
- Due diligence calibrated on the basis of the risk profile, based on the discretionary authority of the credit institutions, in the context of an analysis based on detection limits (profiling, filtering).

#### *1.4 Background and Other Contextual Factors*

28. **The implementation of the AML/CFT mechanism is relatively recent:** the Tunisian Financial Analysis Commission (CTAF) was created in 2003. Given the political circumstances, the CTAF was not fully operational until 2011. Over the past three years, it has endeavored to implement and promote the AML/CFT mechanism with its institutional partners. Nonetheless, implementation is incomplete owing to insufficient awareness of all those covered by the AML/CFT provisions, limited mobilization of the supervisory authorities, and judicial specialization that is too recent to as yet have had results. Among those

subject to the AML/CFT provisions, only banks regularly submit suspicious transaction reports to the CTAF.

29. Finally, the law enforcement authorities do not have the human and physical resources and necessary experience to exercise their ML/FT functions, which is deterring the opening of financial components of current investigation into predicate expenses.

### *1.5 Scoping of Higher-Risk Issues*

30. Prior to the on-site mission, the assessors identified the highest risks in Tunisia. These risks were discussed in depth during the visit.

31. The emphasis was thus placed on three predicate offenses that generate significant illicit proceeds in Tunisia:

- **Financing of terrorism** – This was identified as the main risk by the assessors and the Tunisian authorities. The activity of terrorist groups in Libya, both on the borders with Tunisia and on Tunisian soil, constitutes a major risk. The problem of fighters abroad and the financing of their travel as well as the day-to-day expenses of their families in Tunisia (including via money transfer services, smuggling of foreign currency, trafficking in arms or stolen goods, etc.) is a major concern.
- **Corruption** – Existing at the highest levels of government, it had resulted in substantial illicit profits laundered in Tunisia and abroad. The regulatory environment in a highly administered economy can make it difficult to effectively combat corruption. The problems with the implementation of investigation procedures and, more generally, the anti-corruption legislative framework, were therefore analyzed by the assessors.
- **Smuggling of subsidized and taxed products** – This smuggling was analyzed as a significant source of financing for terrorist networks active in the area. The porousness of Tunisia's borders with Algeria and Libya particularly promote this kind of parallel trade. The assessors therefore sought to better understand how the authorities coordinated their efforts to combat this problem in cooperation with the border countries (Algeria and Libya).

32. Moreover, in the context of the assessment, particular attention was paid to the following areas.

### **Threats**

- **The circulation of cash and the risks related to the informal economy** – Very large amounts of cash, often introduced by currency smugglers and via transfers or resulting from trafficking in arms or other goods, are likely to facilitate the commission of terrorist financing offenses.
- Abusive use of associations for the financing of terrorism.

## Vulnerabilities

- **The implementation of AML/CFT measures by financial institutions and DNFBPs** – The small number, or in some instances total lack, of suspicious transaction reports from DNFBPs since 2011 stands in contrast to the flow of reports from banks. Although the mission does not have specific data to estimate the overall importance of the role of the professions in money laundering operations, the functions performed by real estate agents, lawyers, accountants and notaries in real estate or commercial transactions make this a vulnerable sector.
- **The implementation of AML/CFT measures by the law enforcement authorities** – AML/CFT tools are used by the Tunisian authorities to combat corruption but are still insufficiently used to counteract the more current threats (terrorism and its financing, smuggling). Few freezing and seizure decisions are made, which is detrimental to the effectiveness of the mechanism.

## 2. NATIONAL AML/CFT POLICIES AND COORDINATION

### *Key Findings*

- The analysis of the risks of corruption, smuggling and terrorism has led to sectoral measures showing an understanding of the main threats but has to be finalized to better take into account vulnerabilities in the DNFBPs and financial sectors.
- The risk-based approach is well advanced but not fully operational. National policies are not yet based on an overall, consistent assessment of the risks and a well-defined strategy.
- Operational cooperation among those concerned with combating money laundering is often informal and ad hoc.
- The lack of formalized procedures and implementation measures is an obstacle to the effectiveness of the cooperation.

### *2.1 Background*

#### (a) Presentation of the AML/CFT strategy

33. Law 2003-75 of December 10, 2003 on the international efforts to combat terrorism and money laundering (AML/CFT law) made the Tunisian Financial Analysis Commission (CTAF) the main organization responsible for cooperation and coordination at the national level to define the general approach of the AML mechanism. Numerous gaps in the Tunisian legislation and in the implementation of the AML/CFT mechanism were identified in the 2006 mutual evaluation report and Tunisia has endeavored to remedy those deficiencies since that time.

34. Tunisia has thus made an effort to take account of the recommendations issued following the 2006 mutual evaluation. Law 2003-75 of December 10, 2003 on the international efforts to combat terrorism and money laundering (AML/CFT law) was amended and supplemented by Law 2009-65 of August 12, 2009. As the 2006 evaluation specifically revealed issues concerning the autonomy of the Tunisian Financial Analysis Commission (CTAF), the new Article 79 of the AML/CFT law provides that its members perform their functions in complete independence of their original departments. In the same line of thinking, the Tunisian Government amended Decree 2004-1865 of August 11, 2004 on the organization and operating conditions for the CTAF and Decree 2011-162 of February 3, 2011, which established the principle of a two-thirds majority for decisions to refer cases to the courts, while eliminating the priority previously given to the vote of the Chairman, Governor of the Central Bank. Article 80 of the law also provides that the CTAF is responsible for establishing general guidelines applicable to persons subject to the AML/CFT provisions for the detection and reporting of suspicious operations and transactions. It must also ensure representation of the various departments and organizations concerned at the national and international level and communications between them. The same article states that the CTAF “is responsible for collaborating in the study of programs to be implemented to combat illicit financial channels and the financing of terrorism and money laundering, ensuring representation of the various departments and organizations concerned at the national and international level and facilitating communications between them.”

35. More broadly, the amendment of the AML/CFT law clarified the customer due diligence requirements for financial institutions and the measures for the freezing of the assets of individuals or

organizations in connection with terrorist crimes, as established by the United Nations. Nevertheless, the 2009 additions and amendments are not sufficient to speak of a complete and effective AML/CFT strategy. A new bill is currently under discussion in Parliament.

(b) Institutional framework

36. The institutions involved in AML/CFT activities in Tunisia are:

- a. **The CTAF** is the pillar of the AML/CFT system in Tunisia. It is responsible for receiving and analyzing suspicious transaction reports from persons subject to the AML/CFT provisions and other reports and for referring the results of its analyses to the Public Prosecution Office. The CTAF can order the provisional freezing of the funds covered by the suspicious transaction report.
- b. **The Ministry of Justice** prepares the draft criminal laws submitted to Parliament; it is responsible for developing criminal policy in the AML/CFT area.
- c. **The Public Prosecutor** and his deputies are responsible for prosecutions and the application of penalties, as well as for responding to requests for mutual legal assistance and extraditions. Although full specialization has not yet been achieved, economic and financial matters are centralized in the Public Prosecutor's Office.
- d. **The Tunisian National Police** investigates crimes and misdemeanors. It includes an Economic and Financial Investigations Directorate, which handles financial, economic and smuggling cases.
- e. **The General Directorate of Customs** is responsible for controlling cross-border flows of cash and all other traffic. Some of its officials are criminal investigation officers.
- f. **The Ministry of Foreign Affairs** handles communications regarding mutual legal assistance and extraditions and the dissemination of the United Nations TF lists.
- g. **The Ministry of Finance** is primarily responsible for monitoring and applying Security Council Resolution 1267.
- h. **The National Anti-Corruption Agency (INLCC)** is authorized to investigate corruption offenses committed by natural or legal persons for purposes of referring the cases to the judicial authorities.
- i. **The Judicial Financial Pole** is responsible for prosecuting money laundering and terrorist financing offenses.
- j. **The role of the Anti-Terrorism and Organized Crime Unit**, created in December 2014, is exclusively to provide information on and assess the threat. Once it is fully operational, it will be involved in the development of the national anti-terrorism strategy.
- k. **The Judicial Anti-Terrorism Unit**, created in December 2014, is not yet operational but will be responsible for investigating terrorism cases.
- l. **The Confiscation Commission**, which was created in 2011 and which was dissolved in late 2015, was responsible for implementing confiscation procedures for all assets and real and personal property belonging to former president Ben Ali, his spouse and persons connected to them.
- m. **The National Committee for the Recovery of Ill-Gotten Gains Held Abroad** was created by a decree-law in 2011 to coordinate and manage procedures for the recovery of goods illegally transferred, purchased, held or controlled abroad by Ben Ali and his family and persons connected to them that had damaged or could damage the financial interests of the Government.
- n. The National Commission for the Management of Assets and Funds Subject to Confiscation or Recovery, created in 2011, manages the confiscated assets and real and personal property.

- o. **The National Counter-Terrorism Unit (UNECT)**, created in June 2014, is responsible for conducting investigations of terrorist crimes and ensuring liaison with the judicial system by referring cases to the Public Prosecutor.

(c) Coordination and cooperation provisions

37. A Steering Committee created by a meeting of the ministerial council on June 18, 2014, which includes the Ministries of Justice and the Interior and the CTAF, is responsible for identifying national money laundering and terrorist financing risks and implementing the policy and strategy adapted to these risks. An overall study of these risks is under way using a questionnaire that has been finalized and sent to the departments and individuals concerned. The members of this committee have participated in training on the FATF's new 40 Recommendations and Methodology organized by MENAFATF on January 26-30, 2014 in Jordan and on the National Risk Assessment, organized by MENAFATF on September 22-23, 2014 in Lebanon. The creation of this Steering Committee responds to the new FATF requirements, specifically Recommendations 1 and 2.

38. In addition, the CATF Steering Committee, which is chaired by the Governor of the Central Bank of Tunisia or his deputy, brings together a judge and experts from the Ministries of the Interior, Justice and Finance, the Financial Market Board, the General Insurance Committee, the National Post Office, Customs and an expert in combating financial offenses. The responsibilities of this committee include studying programs to combat illicit financial channels and deal with terrorist financing and money laundering and preparing general guidelines on the detection and reporting of suspicious operations and transactions applicable to persons subject to the AML/CFT provisions. The Committee is also responsible for studying programs to combat illicit financial channels and the financing of terrorism. There is no representative of the DNFBPs on the Steering Committee.

39. An Anti-Terrorism and Organized Crime Pole was created in late 2014 to analyze information on terrorist acts and the financing of terrorism, assess the threats, conduct studies and develop the necessary strategies to combat terrorism. This unit includes representatives and officials of the Ministries of Foreign Affairs, Finance, the Interior, Defense and Justice. It does not participate on the CTAF Steering Committee or the Steering Committee responsible for identifying national risks.

40. At the same time, in practice there is also informal cooperation among the various regulators, i.e., the Central Bank of Tunisia, the Financial Market Board and the General Insurance Committee (BCT/CMF/CGA). The Financial Market Board is represented on the decision-making bodies of the other regulators (BCT/CGA).

41. A national commission was created to combat smuggling and parallel trade and to develop a national anti-smuggling strategy. It includes representatives of the Ministries of the Interior, Justice, Finance, Trade and Industry, and Defense.

42. Finally, in accordance with Article 81 of the AML/CFT law, the CTAF may in carrying out its missions call for assistance from law enforcement authorities. This article constitutes the legal basis for the sharing of information between the CTAF and the law enforcement authorities.

(d) Country risk assessment

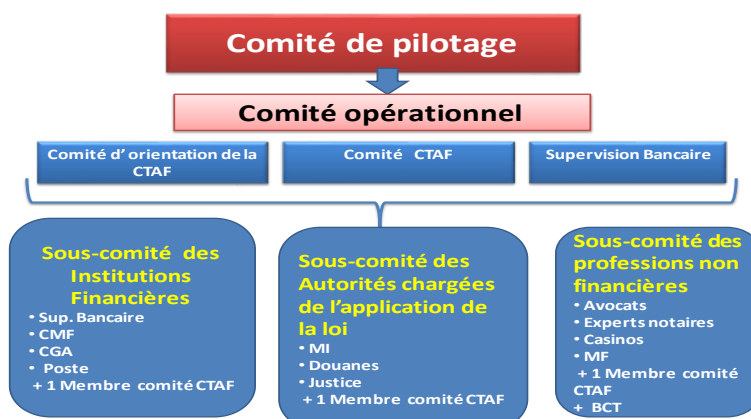
43. The National Risk Assessment (NRA) is currently under way. The green light was given on June 18, 2014, when the interministerial council decided that a study should be conducted at the national level to identify and assess AML/CFT risks. To this end it appointed a Steering Committee made up of

representatives of the Ministry of Justice, the Ministry of the Interior and the Tunisian Financial Analysis Commission (CTAF) for coordination and implementation of the study.

44. In inventorying the threats and vulnerabilities, the Steering Committee created an operating committee<sup>16</sup> responsible for preparing questionnaires on the AML/CFT risks, disseminating them to all the stakeholders, collecting the responses and centralizing the responses in the National Risk Assessment database.

45. The following organization chart summarizes the organization of the ML/FT National Risk Assessment:

**Fig.1: Organization of the ML/TF National Risk Assessment**



46. After several meetings of the Steering Committee (specifically on December 25, 2014, March 5, 2015 and April 14, 2015) it was decided that the NRA would take a three-pronged approach: an “interrogative” approach as regards the prevailing situation, an empirical approach and an academic approach, the latter consisting of targeted sectoral studies.

1- “Interrogative” approach as regards the prevailing situation by means of:

- ✓ A study conducted by the Steering Committee identifying the threats and vulnerabilities on the basis of the predicate offenses: the committee finalized this study on predicate offenses using Customs and Ministry of Interior data. It was able to identify an increase in the number of cases

<sup>16</sup> This Operating Committee consists of: (1) the CTAF Steering Committee, itself made up of representatives of all of the agencies concerned (Justice, Interior, Finance, Customs, CMF, CGA, Post Office); (2) a representative of the BCT’s General Directorate of Banking Supervision; and (3) the CTAF staff (financial analysts and computer technician).

The committee is subdivided into three subcommittees: (a) Financial Institutions Subcommittee (made up of representatives of the BCT, CMF, CGA, Post Office and the CTAF); (b) Nonfinancial Professions Subcommittee (made up of representatives of the Ministry of Finance and the CTAF); and (c) Law Enforcement Authorities Subcommittee (made up of representatives of the Ministries of the Interior and Justice, Customs and the CTAF).

involving smuggling,<sup>17</sup> corruption,<sup>18</sup> trafficking in human beings<sup>19</sup> and arms trafficking.<sup>20</sup> Nonetheless, these results have not yet been consolidated in the form of an inventory of threats and vulnerabilities among private sector participants.

- ✓ The inventory of threats and vulnerabilities using specific questionnaires<sup>21</sup> prepared by the subcommittees.
- ✓ The strategic analysis of the STRs handled by the CTAF and referred to the Public Prosecutor from 2010 to 2015. This analysis of the 80 cases referred (concerning 260 STRs) made it possible to identify the predicate offenses and instruments used in the various phases of money laundering, and provided geographic statistics. It appeared that the most important predicate offenses were corruption (concerning 22 cases out of 80, or 27.5 percent), terrorism (16 cases out of 80 or 20 percent), fraud (14 cases out of 80 or 17 percent) and smuggling (10 cases out of 80 or 12.5 percent)<sup>22</sup>.
- ✓ Targeted sectoral studies were conducted on the basis of terms of reference. The sectoral studies allow the Steering Committee to identify three risk sectors: international trade, services and associations.

47. The tabulating and processing phase has now begun. The information and data collected and centralized in the study database will be processed by a project-specific software that will generate results on the risks for each sector by compiling threats, vulnerabilities and consequences. The risks thus identified will be adjusted accordingly. The process directly involves the stakeholders subject to a risk analysis. Several questionnaires have been prepared that are adapted to the parties in question, i.e., banks, securities brokers, insurers, nonfinancial professions (jewelers, lawyers, real estate agents and accountants), the CTAF; supervisors (BCT, CMF and CGA) and the law enforcement authorities (Ministry of the Interior, Ministry of Justice, Customs). The tabulation of the responses is under way.

## 2- “Empirical approach”: the risks involved in the cross-border transport of foreign currency cash

48. This vast national survey on the transport of foreign currency cash, baptized Operation Hannibal, was conducted from June 20, 2014 to August 20, 2014 by the CTAF and involved the Ministry of the Interior, Customs and the local banks in Tunis. The objective of this operation was to detect trends in the import and smuggling of foreign currency, the methods used and the final destination of this cash.

49. For two months, this enhanced surveillance of the physical transport of foreign currency across the Tunisian territory was conducted on the basis of foreign currency import declarations at the borders and

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<sup>17</sup> Smuggling: 2,992 cases handled by the Ministry of the Interior in 2014 as against 1,653 in 2013, 1,049 in 2012 and 567 in 2011.

<sup>18</sup> Corruption: 266 cases handled by the Ministry of the Interior in 2014 as against 159 in 2013, 99 in 2012, and 42 in 2011.

<sup>19</sup> Trafficking in human beings: 55 cases handled by the Ministry of the Interior in 2014 as against 50 in 2013, 84 in 2012 and 58 in 2011.

<sup>20</sup> Arms trafficking: 84 cases handled by the Ministry of the Interior in 2014 as against 65 in 2013, 21 in 2012 and 35 in 2011.

<sup>21</sup> Several questionnaires were prepared that were adapted to the parties in question, i.e., banks, securities brokers, insurers, nonfinancial professions (jewelers, lawyers, real estate agents and accountants), the CTAF, supervisors (BCT, CMF and CGA), and the law enforcement authorities (Ministry of the Interior, Ministry of Justice, Customs).

<sup>22</sup> Bearing in mind that one case can include more than one STR.



their reconciliation with deposits or surrenders to the banking system (requiring presentation of the second copy of the declaration). This system made it possible to estimate the total value of the foreign currency that was imported but not regularized in accordance with the exchange regulations in effect, i.e., approximately half of the imports. More specifically, 42 percent of the total amount imported (D 325 million) seems to have been used for unknown purposes (parallel exchange market or financing of smuggling and criminal activities).<sup>23</sup> The summary of the conclusions of the study were being prepared during the on-site visit. The purpose of Operation Hannibal was to identify the origin of the funds in question and the identities of the titular submitters of the customs declarations. An investigation is under way in this regard.

50. In terms of the identification of vulnerabilities and threats in connection with the physical transportation of funds, the study came to the following conclusions:

- The overall risk related to the transportation of cash is high. Moreover, Operation Hannibal examined the inherent risks in the geopolitical environment of the countries concerned. The source and destination countries for the funds are: Libya, Algeria, Germany, France, Saudi Arabia, the United Arab Emirates, Qatar, Turkey and China.
- To reduce the overall risk from high to average, the Operation Hannibal report recommends that the authorities concerned implement a strategy based on:
  - 1) a permanent mechanism that includes the data-sharing tool devised in Operation Hannibal to enhance the effectiveness of cooperation between the law enforcement authorities, on the one hand, and the banks and the Central Bank of Tunisia, on the other;
  - 2) development of the analysis capacities of the participants by increasing training and reviewing the programs of the justice, police, customs and banking profession training colleges;
  - 3) the introduction of more dissuasive sanctions for offenses related to the physical transportation of funds;
  - 4) revision of the customs declaration forms to allow for a refinement of the analysis;
  - 5) taxation of one-way financial flows not related to economic or financial transactions in Tunisia and the obligation to use money transfer companies or consignment in exchange bureaus or banks.

51. In response to Operation Hannibal, an order of the Ministry of Finance of October 17, 2014 published in Official Gazette No. 86 of October 24, 2014 lowered the threshold for customs declarations from D25,000 to D10,000. The BCT foreign exchange department also made the surrender of foreign exchange obtained in the form of a travel allowance subject to the submission of a customs declaration. As

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<sup>23</sup> Over the two months, Operation Hannibal determined that:

- the equivalent of D776 million entered Tunisia;
- 14,983 customs declarations were made at 15 border posts;
- D375 million, or 48 percent of the funds introduced, simply transited Tunisia for re-export to other countries;
- D66 million, or 9 percent of the total, was deposited into bank accounts; a significant proportion of this amount was transferred to other destinations;
- only 1 percent of the total or around D8 million was involved in cash foreign exchange operations.

well, Law 2014-59 on the 2015 budget law authorized the creation of exchange bureaus by natural persons meeting specific conditions and introduced a 1 percent duty (tax) on cash payment operations exceeding the threshold of D10,000. This threshold will be reduced to D5,000 as of January 1, 2016. Despite these initial measures, the NRA is still at the data collection stage; there has as yet been no consolidation or prioritized risk analysis. The conclusions are therefore only partial and provisional.

### 3- “Academic” approach:

52. The academic approach adopted involved the use of an academic documentary database containing research and field studies conducted by national and international bodies, including nongovernmental organizations and civil society, on issues relating to the areas concerned by the risks covered in the national study. This database includes the following studies:

- Report on the trafficking of persons in Tunisia, 2013;
- Report on petty corruption prepared by the Tunisian Association of Public Auditors, 2015;
- Study on associations in Tunisia conducted by the ILEF Observatory, 2013;
- Study on informal trade in Tunisia by the World Bank, 2013.

53. Apart from Operation Hannibal, little quantified data were provided by the authorities on the level of illicit profits resulting, particularly since 2011, from illegal activities identified as major risks (corruption, smuggling, etc.).

### *2.3 Effectiveness: Immediate Outcome 1 (Risk, policy and coordination)*

54. The Steering Committee has not yet finalized the National Risk Assessment, but, failing a national assessment based on a full multisectoral analysis that includes the DNFBPs, the work under way has provided a better understanding of the most significant risks (corruption, financing of terrorism linked to smuggling, informal economy). These risks have been identified by the Tunisian authorities. However, they do not appear to have been fully understood from an ML/FT standpoint. Pending the finalization of the work begun by the Steering Committee for the NRA, the national policies have been adjusted to take account of the most significant risks, but without the benefit of a comprehensive analysis.

## **Corruption risk**

55. A report identifying the procedures used by the clan in power prior to 2011 to organize its illicit enrichment was drafted by the Anti-Corruption Commission established by the Tunisian authorities in 2011. On this basis, a World Bank study<sup>24</sup> confirmed that a veritable “capture” of the Tunisian economy by those close to Ben Ali and his wife had been systematically organized for a number of years, to the point that the businesses controlled by this clan represented approximately 21 percent of the profits of the entire Tunisian private sector. In particular, on the basis specifically of cases identified in the report of the Anti-Corruption Commission, it appeared that the systematic use of legislative and regulatory powers and individual administrative decisions had restricted competition to allow the clan to control the most profitable businesses. The illegal operations often involved the construction and abuse of the legal and administrative

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<sup>24</sup> “All in the Family, State Capture in Tunisia.”

framework governing economic activity rather than formal violations of the law. The recovery of a significant portion of the illicit profits through traditional criminal investigations into money laundering, while not impossible, is greatly complicated as a result.

56. The Tunisian authorities, who quickly conducted the same strategic analysis in 2011, launched a policy for the recovery of ill-gotten gains using administrative confiscations (Decree-Law 13-2011 of March 14, 2011) and the creation of a Confiscation Commission. This commission has thus far confiscated 536 buildings, 674 companies and 42,739 items of personal property belonging to 114 persons in the Ben Ali clan (identified in a list). They were also able to recover several hundred millions dollars in assets (around US\$600 million in 2012, equivalent to 5 to 6 percent of the government budget, and US\$225 million in 2013) through the sale of the confiscated assets by a second commission responsible for managing the confiscated assets.

57. Concurrently, Tunisia created a national commission to investigate corruption and misappropriations of funds, which subsequently became the National Anti-Corruption Commission, responsible in particular for examining and analyzing complaints or denunciations and referring them to the courts.

58. At the same time, in March 2011, a National Committee for the Recovery of Ill-Gotten Gains Held Abroad, chaired by the Governor of the Central Bank and made up of the Minister of Justice (or his representative), the Minister of Finance, a representative of the Ministry of Foreign Affairs and the General Counsel of the Government, was created. A Judicial Financial Unit was subsequently created to manage cases of corruption and serious financial crimes.

59. In this context, the CTAF encouraged the banks to closely monitor suspicious operations or situations. Moreover, in terms of the supervision of the financial sector, the BCT guidance of November 7, 2014 required banks to implement customer due diligence measures for the opening of accounts and to monitor the transactions of politically exposed persons, whether domestic or foreign, clients residing in countries considered by FATF to be non-cooperative countries, as well as operations conducted using new technologies.

60. This is resulted not only in numerous suspicious transaction reports for transactions prior to 2011, but also STRs for transactions conducted by politically exposed persons after the revolution. One of these reports relates to the laundering of the proceeds of corruption by a politically exposed person with the help of foreign companies. Thus the risk of money laundering related to corruption is now better taken into account by the financial system and the competent authorities, although this is not yet sufficiently widespread. In particular, the necessity to pay more attention to the identification of beneficial owners should be more systematically emphasized by authorities to ensure improved implementation by financial institutions and designated professions.

## **Financing of terrorism**

61. The risk related to terrorism and its financing is considered the most significant risk, both by the Tunisian authorities and by the authorities of Tunisia's partner countries. Since 2011, Tunisia has suffered several attacks involving the assassination of police or military officers and political figures. Benefiting in particular from the support of Ansar al-Shari'a in Tunisia, several thousand young Tunisians have left for Syria or Iraq to fight with terrorist organizations (3,000 according to estimates by the authorities in 2014)

and several hundred have since returned to Tunisia.<sup>25</sup> According to the Tunisian authorities, 681 persons were arrested between 2011 and 2014 in the context of departures for Syria.

62. To take account of this major risk, the criminal investigation units concerned have been grouped into the National Counter-Terrorism Unit (UNECT), the General Directorate of Special Services has been mobilized, and an anti-terrorism unit has been created. This unit is to bring together several dozen officials (from the Ministries of Foreign Affairs, Defense and the Interior) responsible for researching, cross-referencing and analyzing information on groups and individuals involved in terrorist activities.

63. The inclusion of Ansar-al Shari'a in Tunisia and its leader on the list of 1267 sanctions in late 2014 is the first step – albeit insufficient – in the identification of the persons involved and the application of sanctions. However, the United Nations lists are not disseminated to financial and nonfinancial institutions.

64. The Tunisian authorities have also taken account of the danger – identified in the supervision of associations – of the use of these organization for illicit purposes, including the financing of the activities of foreign combatants. The proliferation of associations following the entry into effect of the decree-law of September 24, 2011, which replaced the authorization requirement established in the law of November 7, 1959 with a declaration regime, is not unusual, but it has changed the parameters for the supervision of the sector. Following this liberalization, 8,250 associations were created between 2011 and 2014, bringing their number to 17,000. Consideration of the risks related to this situation is enhanced by three series of measures:

- the creation within the General Secretariat of the Government of a General Directorate of Associations (Decree 2013-4573 of November 8, 2013) to monitor nonprofit legal persons;
- the decision to suspend the activities of 157 suspected associations based on information collected by the Ministry of the Interior and to launch investigations into those suspected of facilitating the departure of young Tunisians wishing to fight in Syria or Iraq for extremist and terrorist organizations;
- the central bank guidance of November 7, 2013, requiring nonresident credit institutions and banks to implement enhanced customer due diligence measures for the opening of accounts on behalf of associations and monitor their operations.

### **Smuggling and the informal economy**

65. The economy and the financial sector are affected by the existence of a high proportion of informal transactions (in cash and in foreign currency) identified by the Tunisian authorities, notably in the context of Operation Hannibal (see above).

66. This informal economy is particularly connected with trade between Tunisia and Libya and Algeria. The goods involved in this informal trade are extremely diverse: oil products, food products, electronics, textiles, arms, etc. A World Bank study<sup>26</sup> using data provided by the Tunisian authorities showed that particularly in the border city of Ben Gardane wholesale and semi-wholesale importers order goods from China or Turkey to be delivered to Libya and then shipped to Tunisia via the Ras Ajdir border post or via

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<sup>25</sup> Press conference of the Tunisian Minister of the Interior, Lotfi Ben Jeddou, on June 24, 2014; report available at: <https://www.hrw.org/news/2014/06/25/tunisians-implicated-iraq-war-crimes>.

<sup>26</sup> World Bank Working Paper: “Estimating Informal Trade Across Tunisia’s Land Borders.”

unmonitored routes. In the opposite direction, some food products are smuggled into Libya. The loss of tax and customs revenues related to the informal economy with Algeria and Libya has been assessed by the World Bank at approximately D 1.2 billion (including around D 500 million in customs duty losses alone, or a sixth of Tunisia's total customs revenues).

67. The Tunisian authorities have taken note of these findings. A plan to combat this was announced in July 2013 and a National Anti-Smuggling Commission was created. Some initial measures have been taken in this context by the Tunisian authorities: the threshold for mandatory customs declarations was reduced from D25,000 to D10,000 and the surrender of foreign exchange obtained for travel is subject to presentation of the customs declaration. These measures show that the Tunisian authorities are aware of the risk represented by this massive flow of liquidity and foreign currency apparently linked in part to the activities of several hundred thousand nationals from Libya (i.e., from a country in a state of civil war).

68. Enhanced monitoring, increased physical resources for Customs, and military patrols in the border region with Libya seem to have reduced smuggling in this region, with smuggled petroleum products now arriving more from Algeria than from Libya.<sup>27</sup> Custom seizures, which are also increasing, nonetheless seem to cover only a small proportion of trafficked goods (D48 million in 2012, or less than 5 percent of the estimated informal trade).

69. The mobilization of the Tunisian authorities and their coordination efforts can also be seen in the processing and referral to the courts of a case that served as the basis for the creation of a typology on the use of nonresident companies.<sup>28</sup> The typology established by the CTAF relates in particular to the creation of a nonresident exporting company (telecommunications, call center) that opened accounts in euros and convertible dinars in Tunisia. The company then received funds from the personal account of the manager and the accounts of legal persons in Europe.

70. The funds were then transferred by way of "zakat" (religious tax) or gifts to the accounts of an association established in Europe and to persons established in Africa. After verification with the foreign authorities, it appeared that the association receiving the funds in Europe was subject to a freezing decision for links to natural persons considered to be terrorists and its manager had been previously convicted of commercial fraud. The Tunisian financial space had thus been used for money laundering and terrorist financing purposes detected by comparing financial flows and their origin and destination with the purpose of the company.

71. The major risks (corruption, terrorism, smuggling) and their interaction with money laundering have thus been identified, and priority measures have been taken to enhance the prevention and combating of these offenses and the laundering of their proceeds: systematic opening of investigations into suspicions of corruption (relating to pre- and post-2011 activities), studies by Customs and the CTAF to quantify movements of foreign currency, which resulted in the raising of the declaration threshold, and, finally, measures to suspend the activities of associations suspected of assisting terrorism. These measures are indicative of increased awareness and the implementation of preventive measures.

72. Conversely, simplified identification measures are planned for customers subject to strict regulations governing their establishment and activity (licensing, publication of information on the structure of their capital and operations, auditing). Article 5 of the BCT guidance of November 7, 2013 provides

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<sup>27</sup> World Bank Working Paper: "Estimating Informal Trade Across Tunisia's Land Borders."

<sup>28</sup> Source: CTAF.

that “the customer due diligence measures set out in the guidance are simplified when the customer is one of the entities listed in Annex 2.”

73. These entities are: (1) companies listed on the Tunis Securities Exchange; (2) credit institutions; (3) insurance and reinsurance companies; (4) collective investment schemes; (5) securities brokers and portfolio management companies; (6) wholly government-owned companies; (7) companies owned by the Government, local governments, public establishments; (8) companies of which 50 percent of the capital or more is wholly owned by the Government, individually or jointly;<sup>29</sup> (9) non-administrative public establishments, the list of which is established by Decree 2006-2579 of October 2, 2006; and (10) microfinance companies licensed under Decree-Law 2011-117.

74. Finally, the Steering Committee analyzed three risk sectors: international trade, associations and services. The private sector has not yet been able to contribute to the work of the committee since the questionnaires are still being finalized. The completion of the sectoral studies should provide additional clarifications for the conclusions of the NRA. In particular, the high proportion of unoccupied housing in the Tunis area raises the question as to whether this risk is sufficiently analyzed and taken into account, in a context in which real estate transactions in cash remain possible and/or almost no suspicious transaction reports are submitted by lawyers, notaries and real estate agents.

75. Nonetheless, a comprehensive overall strategy coordinated among the various national stakeholders had not yet been finalized as of the date of the assessment team’s visit.

### National cooperation

76. National cooperation has been enhanced significantly since the ministerial working session devoted to the assessment of the national AML/CFT system. Chaired by the Minister to the Head of Government for coordination and monitoring of economic affairs, the June 18, 2014 ministerial working session was devoted to assessing the national AML/CFT system. The session recommended the establishment of a working group under the coordination of the CTAF to follow up on this assessment. The cooperation mechanisms described below are supplemented by measures that structure coordination at the operational level, particularly agreements between the CTAF and other government departments or the judicial authorities specifying the terms and conditions for information-sharing. All the authorities represented on the CTAF may thus cooperate to share information. The following table, which is based on CTAF statistics, presents the volume of information-sharing recorded in 2013.

National Organizations	Requests received	Request sent
Confiscation Commission	1	-
General Directorate of Public Accounting and Recoveries	-	2
General Directorate of Customs	1	2
BCT	3	-
Ministry of Foreign Affairs	1	-
Criminal Investigation Department	4	13
Ministry of Justice	3	2
Prosecutor General to the Court of Appeal	1	-
Investigating judges	2	1
Credit institutions	-	20

<sup>29</sup> Companies of which more than 50 percent of the capital is wholly owned by the Government individually or jointly are subject to controls and audits of the type conducted in the public sector by the competent inspection bodies. Moreover, in the post-2011 context, which ended the systematic capture of the state and economy for the benefit of a single clan, the risk that these companies will use their accounts for corruption is low.

77. The main statistics on this cooperation for the years 2012 through 2014 are described in the tables and paragraphs below:

*CTAF/police cooperation*

78. In Tunisia, the Criminal Investigation Department collaborates with the CTAF to share information. The CTAF is consulted by the investigative services and, under its general powers, provides analyses of cases submitted to it. The police departments state that they are very satisfied with the analyses provided by the CTAF. These exchanges increased significantly in 2014.

	<b>Requests Sent to the CTAF</b>	<b>Requests Received from the CTAF</b>
2012	2	44
2013	4	13
2014	24	18

Source: Criminal investigation services statistics

*CTAF/Customs cooperation*

79. Customs is a major sector in the monitoring of flows of foreign currency and goods and was specifically involved in Operation Hannibal, which was launched by the CTAF in 2014 to analyze imports of foreign banknotes. This operation led to close cooperation between Customs and the CTAF. Customs issued only one suspicious transaction report to the CTAF in 2012, as the complex cases discovered by Customs are generally referred to the police and to the Public Prosecutor. The CTAF has direct access to the database of incoming or outgoing foreign currency declarations maintained by Customs, although this database does not mention incidents (false declarations, failures to declare, etc.), which is a deficiency to the extent that the suspicious transaction reports submitted by Customs, which are not mandatory, are rare. In 2013, suspicious transaction reports from Customs received by the CTAF totaled as follows:

<b>Year</b>	<b>Number of STRs</b>
2010	1
2011	1
2012	2
2013	1

*Cooperation between the CTAF and the judicial authorities*

80. After analysis of the suspicious transaction reports, the Tunisian Financial Analysis Commission forwards cases to the Public Prosecutor in Tunis along with its conclusions and any documents useful for determination of the follow-up to be given. The Prosecutor in the Financial Unit and the investigating judges have indicated that the analyses forwarded by the CTAF are generally relevant and well-argued and that they can, if necessary, consistently obtain additional information from the CTAF within reasonable time frames. The information-sharing can also take place in the other direction, with the CTAF asking for information from the judicial authorities. The judicial authorities also depend on the expertise of the CTAF for financial analysis in cases not arising from an STR.

### *Cooperation between the police and the judicial authorities*

81. There is formal cooperation and coordination between the prosecutors and the police, including special investigation units such as the Subdirectorate for Economic and Financial Investigations, in the context of the supervision of investigations conducted by the Public Prosecutor. However, the lack of a criminal policy guidance disseminated by the Ministry of Justice to the public prosecution offices and to the criminal investigation services is an obstacle to coordinated processing of cases of money laundering or financial offenses to the extent that an overall policy, based on national priorities and applied in all public prosecution offices, is not being promoted and coordinated at the ministerial level. There are no assurances of the consistency of the criminal AML/CFT policy in the various judicial jurisdictions.

### *Police/Customs cooperation*

82. In the area of smuggling and for the seizure of large amounts imported illegally, cooperation is necessary to prosecute the perpetrators, and Customs refers cases that could be subject to criminal prosecution to the police, including cases of false declaration or failure to declare foreign currency.

## **Conclusion**

83. Overall, efforts by the Tunisian authorities since 2011 have led to the identification and the understanding of the major risks related to predicate offenses and the implementation of appropriate sectoral measures (1.1). An overall analysis supporting a national strategy independent of sectoral policies (currency smuggling, corruption, terrorism) has yet to be finalized, but significant progress was achieved in understanding money laundering and terrorist financing threats and systemic vulnerabilities (1.2). Decisions have already been taken to deal with the major risks as well as vulnerabilities, and appropriate sectoral measures have been applied<sup>30</sup> (1.3). The mechanisms to ensure consistency between these measures and the national policies should be reinforced by the adoption of a finalized analysis and a national strategy (1.4).

84. At the operational level, the development of interagency cooperation is under way to fight the main risks, including grand corruption, terrorist financing and smuggling. National cooperation has been enhanced significantly since the ministerial working session devoted to the assessment of the national AML/CFT system. The framework for this cooperation is however insufficiently formalized in some areas, including the provision of policy guidance to the public prosecution offices. No coordination mechanism for combating the financing of the proliferation of weapons of mass destruction has been introduced (1.5). The finalization of the overall risk analysis is necessary to boost the implementation of the risk approach by financial institutions and designated professions. (1.6).

85. **Finally, the identification and the understanding of the main risks accompanied by the adoption of a first set of appropriate measures are significant achievements, but they do not justify a substantial level of effectiveness given shortcomings related to points 1.2, 1.5 and 1.6, which show**

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<sup>30</sup> Specifically, the 2015 budget law, which limits cash payments; the BCT guidance aimed at drying up the supply of foreign currency to the parallel market; the creation of an anti-terrorism unit; and the suspension of the activities of associations suspected of being used for the financing of terrorism. Moreover, the Anti-Terrorism and Extremism Commission created by decision of the Supreme Council for Security (chaired by the President of the Republic), of which the CTAF is a member, is endeavoring to prepare a national anti-terrorism and extremism strategy.



**that major improvements are needed. Tunisia has thus achieved a moderate level of effectiveness for Immediate Outcome 1.**

#### *2.4 Recommendations on national AML/CFT policies and coordination*

- Tunisian authorities, with the assistance of the supervisory authorities for the nonfinancial sector, should finalize the overall risk analysis with a view to establishing a national strategy that could be applied in the priority sectors.
- The analysis of the major risks already identified (corruption, smuggling, financing of terrorism, including foreign combatants) must be further disseminated to the various sectors concerned so that a targeted preventive approach can be established in the financial institutions and in the high-risk professions.
- The risks of money laundering and the financing of terrorism in the foreign exchange, money transfer and real estate sectors and in operations carried out with politically exposed persons or with legal persons (including associations) should be subject to a systematic approach implemented by the Steering Committee.
- The risk-based approach should more systematically include the need and obligation to identify the beneficial owners of transactions carried out by or on behalf of legal persons or other legal arrangements.
- The sectoral measures to combat corruption, smuggling and the financing of terrorism should be included in an overall strategy to ensure the allocation of necessary resources to the priority sectors.
- Cooperation between the various authorities concerned by money laundering and the financing of terrorism should be enhanced, particularly through the dissemination of policy guidances and guidances interpreting the laws and regulations by the Ministry of Justice.

### 3. LEGAL SYSTEM AND OPERATIONAL ISSUES

#### *Key findings*

- The financial intelligence unit (FIU) provides high-quality strategic analysis. Its reports contain the information needed to open AML/CFT investigations.
- The CTAF contributes actively, in coordination with its institutional partners, to the development of a risk analysis and the identification of vulnerable sectors.
- The increasing number of unprocessed suspicious transaction reports is explained by the staff shortages in the CTAF.
- The independence of the CTAF's decision-making body should be enhanced in the context of a discussion on the appointment and powers of its members.
- The law enforcement authorities have not sufficiently defined overall AML/CFT strategies.
- Few money laundering investigations are initiated on the basis of predicate offenses except in grand corruption cases.
- The investigation and prosecution services do not have sufficient human resources (experienced trained staff) or legal resources (Laws on special investigative techniques) needed to effectively perform their functions.
- The law enforcement services (police, gendarmerie, judges and prosecutors) are insufficiently aware of the importance of and priority to be given to the confiscation of all of the proceeds of a crime. No criminal policy guidance has been issued by the Ministry of Justice on this topic to establish short- and medium-term goals.

#### *3.1 Background*

##### (a) Legal system and offenses

86. The offense of money laundering is defined in Article 62 of Law 2003-75 of December 10, 2003 on the international efforts to combat terrorism and money laundering (AML/CFT law). In this definition, the components of the offense and the applicable sanctions are in line with the provisions of the Vienna and Palermo Conventions. Tunisia has selected a broad approach since the predicate offenses cover all crimes and misdemeanors. Tunisian law also sanctions offenses related to the money laundering offense, such as complicity and attempted money laundering. The conviction of self-laundering is also possible.

87. The AML/CFT law, the Criminal Code and the Code of Criminal Procedure (CPP) organize the legal framework applicable to the freezing, seizure and confiscation of criminal assets.

##### (b) Operation and law enforcement

88. Office of the Public Prosecutor: Investigations are the responsibility of the magistrates in the Public Prosecutor's Office (Public Prosecutor, deputies and investigating judges). In Tunis, the Public Prosecutor's Office consists of the Public Prosecutor, who has 2 assistant prosecutors, 8 senior deputies and 12 deputies. The Court of First Instance of Tunis includes 31 investigating judges, who are judges with a certain amount of seniority, with 5 specializing in terrorism and 10 in financial matters. The magistrates direct the investigations by supervising the work of the criminal investigation officers and prosecute any criminal offense committed on national territory.

89. Police: The criminal investigation officers identify offenses committed on the national territory and investigate them under the authority of the Public Prosecutor. The Criminal Investigation Directorate

is organized into five subdirectorates: Economic and Financial Investigations, Narcotics Operations, Social Protection, Criminal Affairs, and Research and Monitoring.

90. Customs: Customs comes under the Ministry of Finance and it operates throughout the national territory. Customs officials have the status of criminal investigation officers for the identification of customs offenses only (Article 10 of the CPP). In this context, they are subject to the oversight of the Office of the Public Prosecutor. The Customs Investigations Directorate (subdivided into two subdirectorates) is responsible for handling complex investigations that may involve organized crime.

91. National Anti-Corruption Agency (INLCC): Created by Decree-Law 120 of November 14, 2011, the INLCC is responsible for investigating corruption committed by public or private legal or natural persons or any organization or association, and for verifying the accuracy of the information and documents collected and presented to the Office of the Public Prosecutor. It is authorized to conduct searches and to seize documents and personal property at any location. Moreover, Article 33 of the decree-law allows it to have recourse to any competent authority (CTAF or judicial authorities) to request the freezing of assets.

### *3.3 Effectiveness: Immediate Outcome 6 (Financial intelligence)*

#### **Appropriate use of financial intelligence and all other relevant information**

##### *Database available for analysis*

92. The CTAF has a database for financial analysis that can be used to verify whether the subject of a report has previously been reported or cited in a request for cooperation from the judicial authorities, the law enforcement authorities or their foreign counterparts.

93. The online data providers “World Check” and “Factiva-Dow Jones” include politically exposed persons (PEPs), judicial decisions concerning individuals convicted of money laundering, fraud, terrorism, financing of terrorism, etc., and lists of sanctions or embargoes, particularly those of the United Nations, FATF, the Office of Foreign Assets Control (OFAC), USEMBARGO and the U.S. Department of Justice (USDOJ).

94. The Central Bank of Tunisia manages three databases:

- the CRE database (Database of Economic Information), which can be used to identify the status of legal persons and their relations with other legal or natural persons (shareholder type, etc.) and the status of natural persons (functions, consumer credit, NSF checks);
- the CCI database (NSF Checks Database) for consultations on delinquencies; and
- the “foreign exchange” database of revenues and expenditures in foreign currencies reported by banks, which provides useful information for the analysis of foreign currency financial flows between Tunisia and the rest of the world. The majority of suspicious transaction reports in fact relate to operations involving the receipt and transfer of foreign currency, which can be identified in this database on the basis of the bank reports.

95. The database of the Commercial Register can provide access to all information on businesses, financial statements and businesspersons.

96. The “SINDA” (Automated Customs Information System) database of the General Directorate of Customs can be consulted for foreign currency import and export declarations.

### *Access to other relevant information*

97. The CTAF can obtain other relevant information from the reporting entities. The requests can cover data concerning customers, accounts, specific transactions or any other type of document obtained in respect of the requirements of the legislation on money laundering (see typologies).

98. The analysts can also send requests for information to the various government departments that may have information relevant to the analysis, specifically the criminal investigation services, Customs, the Property Registry, the Tax Directorate and the supervisors.

99. The detachment of customs and police officers assigned to the CTAF (on a permanent basis in the operational unit) facilitates information-sharing with these authorities and speeds up the turnaround time for written requests sent to the police or Customs in urgent cases.

100. It is the responsibility of the financial analyst to assess the appropriateness of sending requests for information, either to the reporting entity or to any other person subject to the AML/CFT provisions or government department that may have information relevant to the analysis. That being said, the approach established during the operational analysis is to consult all accessible databases (directly or indirectly) to collect the maximum information regarding the suspicious transaction report.

101. For requests sent to persons subject to the AML/CFT provisions, particularly the reporting entity, the response deadlines are two days to one week. Having a CTAF correspondent at the reporting entities facilitates the information-sharing.

102. The various government departments may take up to 10 days to respond, and responses from counterpart FIUs may take as long as one month.

103. Once the information relevant to the analysis is obtained, the average time need to process the case varies between 3 and 4 days. It should be noted that suspicions of the financing of terrorism, which involves the highest risk, are given priority for processing with a response and processing deadline of a maximum of 48 hours from receipt.

104. Thus, based on the cases studied by the CTAF, the time for obtaining information from reporting entities and government departments is reasonable. The response times for requests made to counterpart FIUs are longer.

105. When the CTAF decides to refer a suspicious transaction report to the Public Prosecutor, the file forwarded consists of an analysis report comprising primarily: (i) the full identification of the person who is the subject of the STR or STRs; (ii) a description of the financial transactions and operations; (iii) the information obtained from the law enforcement authorities and any other authority or government department; (iv) the information collected from open sources, particularly the Internet; (v) analysis and enrichment of the data obtained; (vi) ML or FT suspicion indicators; and (vii) any supporting documentation.

106. The sealed case file, labeled “confidential,” is delivered directly to the office of the Public Prosecutor, which decides whether or not to open a judicial inquiry on the basis of the suspicion indicators contained in the analysis report sent by the CTAF.

107. The law enforcement authorities do not have direct access to the CTAF database. The Public Prosecutor, the criminal investigation services or any authority responsible for law enforcement sends written requests for information to the CTAF. Apart from the files forwarded by the CTAF, the Public

Prosecutor may, for his own investigations and by the authority vested in him, asked the CTAF whether a person or entity has already been the subject of a suspicious transaction report.

108. In application of Article 83 of the AML law, the criminal investigation services or Customs may also, in the context of investigations they are conducting, ask the CTAF whether a person or entity is known to its services. They may ask it to conduct an analysis of financial transactions conducted by this person or entity.

109. Within the CTAF, in the context of the operational analysis, the data are stored in the “SPSS” system (a data processing and analysis software). This software also allows multiple responses in the context of the strategic analysis and the National Risk Assessment. It is available to all of the analysts (for example, it provides information concerning the number of transfers to a particular country within a particular period of time).

110. The CTAF cooperates with the National Committee for the Recovery of Ill-Gotten Gains Held Abroad in the context of the investigations into the financial operations of the former President and members of his family. Similarly, in 2013 the nonprofit association sector was under particular scrutiny by the CTAF and the law enforcement authorities. Broad cooperation with these authorities was established in the second half of the year.

**Table 1 - Statistics on Requests Sent or Received by the CTAF**

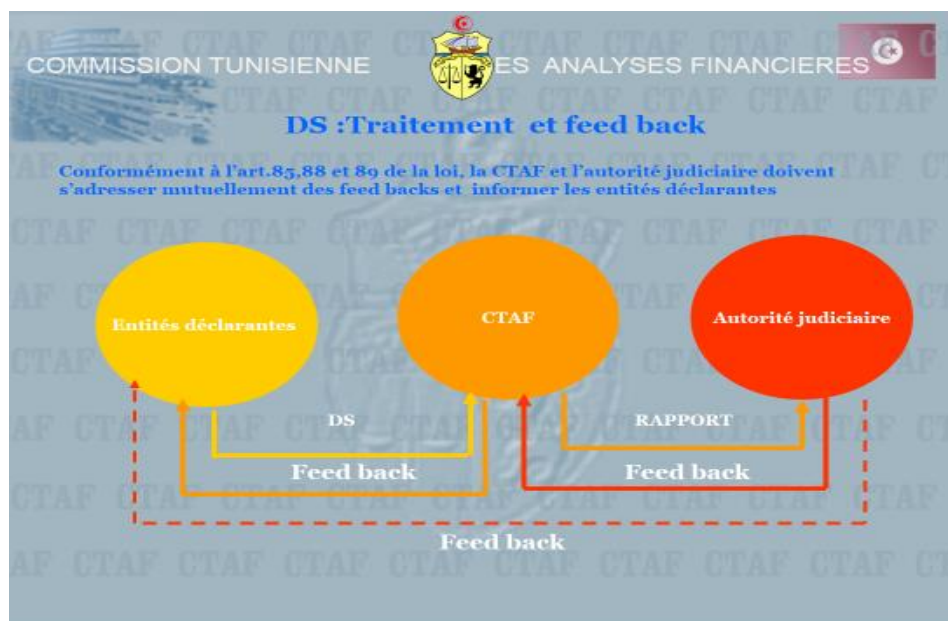
<b>National Agencies (2013)</b>	<b>Requests Received</b>	<b>Requests Sent</b>
Confiscation Commission	1	
General Directorate of Public Accounting and Recoveries		2
General Directorate of Customs	1	2
BCT	3	
Ministry of Foreign Affairs	1	
Criminal investigation services	4	13
Ministry of Justice	3	2
Prosecutor General to the Court of Appeal	1	
Credit institutions		20
Investigating judges	2	1
	<b>16</b>	<b>40</b>

***Information-sharing with foreign counterparts***

111. Interaction with foreign FIUs is particularly useful to the CTAF, specifically in cases in which it is necessary to recreate cross-border financial transactions. The CTAF, which is a member of the Egmont Group, has obtained information from other FIUs in this Group, particularly in the context of procedures launched against the country’s former leaders after 2011.

*Dissemination of analysis results: contribution of the CTAF to the prevention of money laundering and the financing of terrorism*

**Fig.2: STRs' Processing and Feedback**



**Key:** Tunisian Financial Analysis Commission, STR : Processing and Feedback

112. The competent authorities receive the CTAF reports and all information collected during its analysis. This analysis covers inflows and outflows, as well as the origin and destination of the funds. It provides indications on a possible correlation between the transactions and a predicate offense. The investigating judge, appointed by the Public Prosecutor, then decides whether or not to investigate the case and collect evidence.

113. In urgent cases, to avoid the disappearance of the suspicious funds, an emergency measure may be taken to freeze the assets for a legal period of five days. Once the analysis of the case has been completed, the report is then submitted to the Committee, which decides whether the suspicion is substantiated or not. If it is, the case is referred to the Office of the Public Prosecutor of Tunis, which is the only department authorized to proceed.

114. This cooperation with the judicial authorities is important. For this reason the CTAF has undertaken a specialized training program for investigating judges together with the Ministry of Justice.

115. The law enforcement authorities, the investigative services and the public prosecutors interviewed by the assessment team use the reports sent to them by the CTAF to analyze financial flows and transactions that could be connected with ML or FT and, potentially, predicate offenses. In several cases, this analysis has resulted in the freezing of funds and other assets by the judicial authorities (see Table 2), which is an indication that the system is working.

116. A significant alignment between the risks identified by the CTAF during its financial analyses and the follow-up given by the Office of the Public Prosecutor is indicative of the quality of the reports transmitted. In 2014, out of 141 suspicious transaction reports analyzed, 46 reports (or 32.6 percent) were referred to the Public Prosecutor, and 44 were subject to a freezing of funds. All of the referrals resulted in investigations being opened. The remaining 67.4 percent of reports concerned accounts belonging to the

former President, members of his family, associated persons or persons with the same name and were closed. These reports, which were made in 2011, proved unusable after verification and cross referencing.

117. The annual report of the CTAF contains typologies based on the STRs received that were referred to the Public Prosecutor after analysis.

118. In the context of the periodic meetings organized with the correspondents of entities subject to the AML/CFT provisions, the CTAF has identified typologies and trends.

119. The CTAF publishes reports on its website regarding doubtful activities such as the report on pyramid sales. Pyramid sales were also the subject of a letter to the Ministries of Justice and Commerce. A technical committee made up of the Ministry of Justice, the Ministry of Commerce, the BCT, the CTAF and the consumer protection agency has been tasked with examining this phenomenon, proposing appropriate solutions and potentially preparing a regulation prohibiting pyramid sales.

120. Finally, the CTAF draws the attention of supervisors to failures on the part of persons subject to the AML/CFT provisions. This is the case, for example, of the supervision by banks of accounts opened in the name of associations, which have given rise to an inspection by the banking supervisor. Similarly, the development of nonresident companies involved in pyramid sales gave rise to a letter to the BCT asking it to request that banks be more vigilant concerning this type of company.

**Table 2 - Statistics on Cases Closed or Referred by the CTAF**

<b>Heading</b>	<b>2005 to end-2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>Total</b>
STRs received	135	566	220	301	1,222
STRs examined	59	63	199	160	481
<i>Of which: STRs referred to the public prosecution office</i>	4	24	60	92	180
<i>Of which: STRs referred to the public prosecution office with freezing of funds</i>		9	8	58	75
End-of-period outstanding STRs*	76	579	600	<b>741</b>	

### **Types of reports requested and received**

121. The CTAF receives reports from various kinds of reporting entities. The statistics for 2014 show that almost all reports, or 96 percent of the total, came from credit institutions. No reports were received from securities brokers, insurance companies, accountants, real estate agents or Customs. The small number of reports received from DNFBBs seems to result from an insufficient awareness on the part of these professions in a legal context that is not very conducive to reporting, since those subject to the AML/CFT provisions are defined in Article 74 of Law 2003-75 on the basis of transactions made and not in the form of a complete listing of professions covered. The assessment team deems that in the Tunisian context this situation is problematic for effectiveness.

122. Many reports on persons connected with the former regime were made in the weeks following their departure, explaining the particularly high level in 2011. In 2014, most of the STRs closed related to these

initial reports, which concerned accounts belonging to the former president, members of his family and associated persons or persons with the same name. These reports explain the decline in the number of STRs from 566 in 2011 to 292 in 2014.

123. The STRs concerning persons with the same name were closed because there was no indication of suspicion. For the remainder, many STRs related to the former regime were closed for the following reasons:

- there were no suspicion indicators for the accounts regarding which the STRs were submitted (there had been no activity on several accounts since they were opened);
- the funds available in these accounts had already been confiscated by the government under the 2011 decree-law;
- the accounts and their holders had already been subject to a judicial investigation.

124. In 2014, 31 cases (out of 46 STRs) were referred to the Public Prosecutor: 10 cases concerned suspicions of terrorist financing and 21 involved suspicions of money laundering.

125. The distribution of reports pending at end-2013 shows that 37 percent of the total involve a medium to high risk of money laundering, as against a rate of 32 percent in 2012. Reports representing a low to moderate risk totaled 63 percent, as against 68 percent in 2012. Thus, out of a total of 741 STRs under examination by the CTAF financial analysts, 270 STRs involved a potential risk of money laundering. Although this scoring system allows for a classification and ensures the rapid processing of higher priority reports, this situation is not entirely satisfactory. An increase in the staff assigned to the CTAF operational unit is needed to reduce this rising volume of pending reports.

126. The CTAF has a permanent staff of 12, including 6 financial analysts working in the operational unit, which is subdivided into three subunits, i.e., the financial investigations subunit, the database management subunit and the financial data centralization subunit. Given the workload of the financial investigations subunit, its effectiveness is hampered by its limited human resources.

127. Moreover, the suspicious transaction reports (STRs) of reporting entities are received by mail, and their content is posted manually into the data centralization system. Given the increasing number of STRs, the introduction of an electronic receiving system is necessary.

128. In 2013, based on the national cooperation provided for in Articles 80 and 83 of Law 2003-75, the CTAF, in the context of its examination of STRs, issued 309 requests for information to entities subject to the AML/CFT provisions and to government departments, as against 688 requests in 2012, a 50 percent decline explained by the improvement in the information contained in the STRs issued by the reporting entities.

**Table 3: Suspicious transaction reports by reporting entity sector (2011-2014)**

<b>Reporting entities</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>
Banks	547	210	300	281
Securities brokers	10	1	1	
Insurance companies		1		
National Post Office	5	1		5
Accountants	1			
Lawyers		1	1	1
Customs	1	2	1	1
Ministries	2			2
Anonymous				2



Total	566	216	303	292
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129. The CTAF receives STRs containing precise and relevant information, particularly from credit institutions. This information is well used in the strategic and operational analyses conducted by the CTAF:

- The CTAF publishes typologies underlying the ML/FT risk factors in its annual report.
- It holds periodic meetings with entities subject to the AML/CFT provisions to report on new ML/FT trends.
- On its website it publishes indications concerning doubtful activities.
- It draws the attention of supervisors to deficiencies so that they can implement the necessary supervisory measures.

130. Under Law 2003-75 (new Article 74), Customs is not subject to reporting requirements. However, it in fact appears that its reports are made directly to the CTAF, which treats them as suspicious transaction reports although neither the decree nor the regulations sets out the possibility for Customs to report to the CTAF. However, the CTAF does receive reports on incoming or outgoing cross-border currency flows directly. It participated in Operation Hannibal on the “Typology of Money Laundering by Means of the Physical Cross-Border Transportation of Funds.” This platform, which the final report proposed be made permanent, covers the Ministry of the Interior, Customs and the banks and allows for coordination between these three sectors to detect the destination of foreign currency imported into Tunisia.

131. The CTAF has launched a National Risk Assessment based on a study of the STRs that it received from 2005 to 2014. This study has concluded that the banking and financial sector is the most vulnerable.

132. The lack of STRs in the case of insurance companies is justified by the fact that life insurance as a savings product is not yet very common in Tunisia. Most life insurance policies are taken out in the context of bank consumer or real estate loan operations or in the context of contracts signed by employers for the benefit of their employees (death benefits).

133. According to the information collected by the assessment team during its on-site visit to accountants, the latter did not consider themselves to be systematically concerned and protected by Law 2003-75. The accountants interviewed by the mission indicated that they had questions regarding the capacity of the CTAF to protect the confidentiality of suspicious transaction reports.

134. The CTAF deems that the real problem in this area is the requirement for an investigating judge to give the accused’s lawyer access to the documents contained in its file, including the CTAF report.

135. Increasing awareness in the real estate sector does not appear to have been considered a priority thus far. The mission wondered about the lack of suspicious transaction reports from real estate agents, lawyers and notaries involved in real estate transactions given that a number of the persons interviewed reported a recent unoccupied stock of real estate. The CTAF indicates in this regard that, according to the most recent census conducted in 2014 by the National Statistics Institute, there are 3,289,903 residential units in Tunisia for 2.7 million households, with the vacancy rate standing at 17.7 percent and corresponding to secondary residences in coastal and tourist areas. More generally, the CTAF prepared the following analysis:

*Purchases by nonresidents:*

- ✓ The BCT 2013 annual report reported foreign investments in the tourism and real estate sector of D23 million (or US\$11.79 million) in 2011, D77 million (or US\$39.49 million) in 2012 and D19 million (or US\$9.74 million) in 2013. The tourism sector accounts for 80 percent of these amounts. These figures indicate that the financial stakes in these operations are quite small.
- ✓ The purchase of residences by foreigners is subject to administrative authorizations and must be financed by foreign currency funds duly imported via the banking system. The banking system reports the funds in question to the BCT. The real estate promotion board had tried to obtain an easing of procedures for foreigners from the government and the BCT to revitalize this sector, which has slumped since the revolution, but the authorities did not change the procedures in order to protect the sector from suspicious real estate acquisitions.
- ✓ The real property registry declines any registrations for real property that is not purchased in accordance with the regulations in force.

*Purchases by residents:*

- ✓ For residents, the financing of housing purchases in Tunisia is essentially based on housing savings plans and loans granted mainly by the *Banque de l'Habitat*. Housing loans in fact represent 43.4 percent of all loans to individuals according to the 2013 report of the BCT. Moreover, medium-term consumer loans intended for refurbishing houses for residential use make up 41.3 percent of loans to individuals.

136. Despite these factors, the real estate sector is used for money laundering purposes. The strategic analysis conducted by the CTAF also showed that in some cases funds were laundered via real estate purchases and these facts were referred to the Public Prosecutor. Despite the size and limited value of the Tunisian real estate sector, the lack of suspicious transaction reports from lawyers, notaries and real estate agents is a weakness. Awareness-raising with these sectors is therefore necessary.

**Analytical process used by the CTAF**

**First level of analysis**

137. After recording the suspicious transaction reports in the CTAF database and centralizing the related financial information, the analysts in the financial investigations subunit proceed with the preliminary processing of the case and compile information on the person concerned, the subject of the report, the facts and the financial flows. At this stage, the analyst assesses the completeness of the information. The input of this preliminary information and the assessment by the analyst makes it possible to attach a risk level to the suspicious transaction report and to establish its priority for further analysis. Any updating or additional information results in a revision of the assigned score.

138. The scoring by each financial analyst is based on the following algorithm:<sup>31</sup>

**Table 4: Algorithm for the Calculation of the Money Laundering Risk**

	Age/date of creation	Address Head Office	Resident/nonresident	Profession/Sector	Reported to the CTAF?	Occasional customer	Reason for the STR	Amount in question	STR related to other STRS	Information from supporting documentation	PEP	Analyst's assessment	SCORE	SCORE IN %	RISK CLASSIFICATION
	2	1	1	2	1	1	1	1	1	1	1	2	150		
CASE No 1	10	0	10	8	10	0	10	10	10	10	0	9	114	76%	HIGH RISK
CASE No 2	0	0	10	9	0	0	10	10	10	10	10	9	96	64%	AVERAGE RISK
CASE No 3	0	0	0	2	0	0	5	0	0	5	0	3	20	13%	LOW RISK

**High risk: Score > 66 %**  
**Average risk: 50 % ≤ Score ≤ 66 %**  
**Moderate risk: 33 % < Score < 50 %**

### Second level of analysis

139. This stage involves recreating the financial flows, establishing the economic and legal reasons for the transfers, identifying the subjects concerned by the suspicious activity, and verifying the hypotheses.

140. The analysis of a suspicious transaction report results in a presentation of all the information collected (consultation of databases + collection of information from other sources) and involves the following three-pronged approach:

- *Summary of the information obtained from the reporting entity.* This initial stage involves analyzing the reasons given by the reporting entity by reviewing the documents provided in support of the report
- *Tactical analysis.* This analysis is based on a search for additional information on the subject from other sources. The analyst then compares the information received from the reporting entities with the data held by the CTAF or to which it has access.
- *Operational analysis.* This involves the use of tactical information (tactical analysis) to formulate various hypotheses for the preparation of the operational information:

<sup>31</sup> The figures 1 or 2 represent the weighting of the factor in the risk calculation.

- ✓ Phase 1: Financial investigation to establish patterns of activity, new targets, links between the subject and his accomplices.
- ✓ Phase 2: Collection of additional information from supplementary sources (corporate registry, property registry, police agencies, motor vehicle registration bureaus).

141. For complex cases involving several natural and/or legal persons and a large number of transactions and operations, it is recommended that graphic diagrams be prepared to clearly present and organize all of the information (chronological diagram; relational diagram showing the relationships between individuals, organizations, companies, countries, etc.; a flow chart showing financial flows to allow for tracking of the movement of the proceeds: money, vehicles, property, etc.).

### **Results of the CTAF analysis**

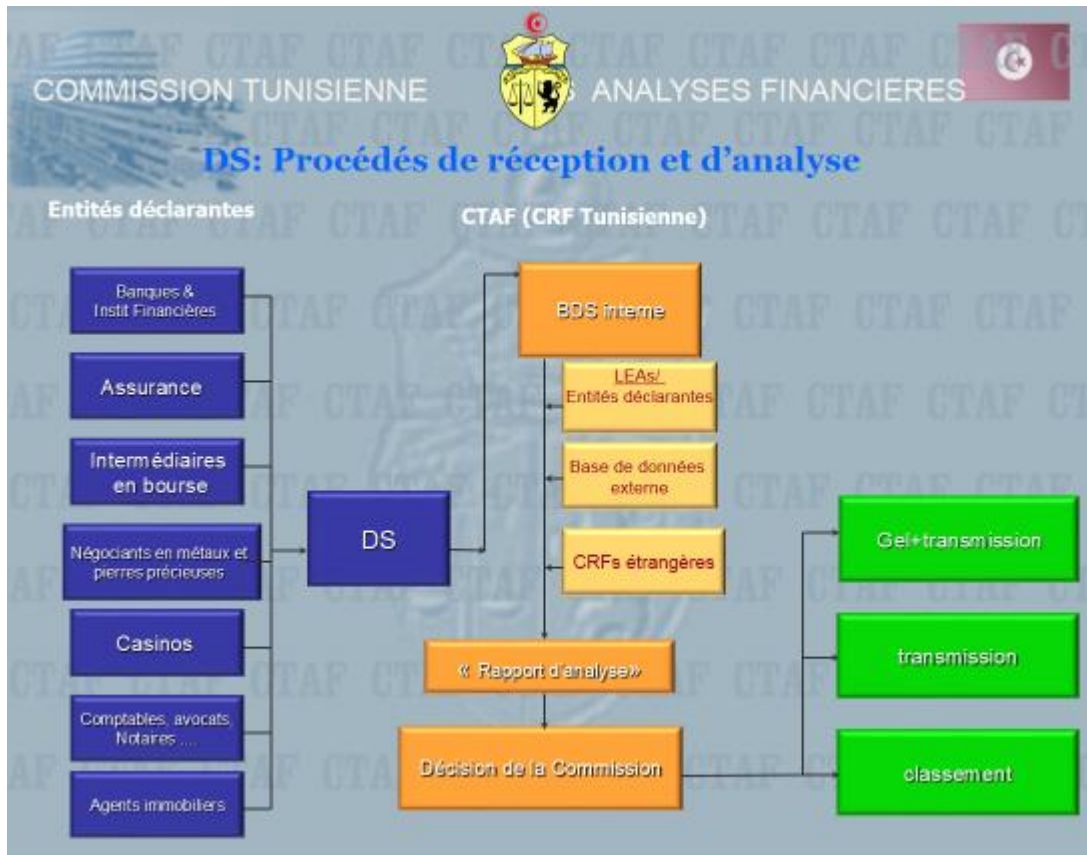
142. The results of the analysis are presented in a report or set of reports (for example, same persons or related operations, etc.). At the end of each report, various proposals can be presented (the definitive closing of the STR, the implementation of enhanced customer due diligence by the reporting entity, further investigation and analysis by the analyst, freezing of the funds subject to the STR, and referral of the case to the Public Prosecutor in Tunis).

143. The final disposition of these reports is decided by the members of the CTAF.

144. Although the law provides that the members of the CTAF's decision-making body (consisting of 8 members appointed by decree) perform their functions with full independence, they continue to perform their duties in their original departments. This situation is not without risk to the extent that the influence of the members of the CTAF decision-making body on the referral decisions could be a potential obstacle to the opening of criminal proceedings. The CTAF maintains that the decisions of its decision-making body have never been influenced by political changes (6 governments since 2011). In fact, the CTAF indicates that all analyses recommended for referral to the law enforcement agencies since 2011 were indeed referred.

145. However, the permanent full-time involvement of the members of the CTAF's decision-making body is desirable to ensure its independence in cases of conflict of interest. It should also ensure the diversity of the members of the committee and improved workflows: the members of the CTAF's decision-making body meet every two weeks or, as needed, to examine suspicious transaction reports but these meetings are not sufficient to process all reports on the docket. As a result, their review is postponed to a later date. The establishment of a committee made up of full-time members would resolve this problem.

**Fig.3: STR Receipt and Analysis Procedures**



**Key:** Tunisian Financial Analysis Commission, STR Receipt and Analysis Procedures

**Typology: Use of associations for the financing of terrorism**

146. The CTAF provided the assessors with a typology concerning a case of terrorist financing involving the use of an association. In the case provided, the CTAF had received 4 suspicious transaction reports from different banks involving an association A1, a construction company E and the manager of that company, Mr. G.

147. Several factors led the banks to send STRs to the CTAF. First of all, it appeared that Mr. G, manager of the construction company E and a customer with no previous dealings with the bank, had never applied for bank loans. Second, the funds received by the company E generally came from the association A1 and were transferred immediately into the personal account of Mr. G or withdrawn in cash. Finally, when questioned by the bank on the purpose of the funds received and their destination, Mr. G was suspiciously reluctant to respond and threatened to break off customer relations with the bank.

148. In light of this, the CTAF analysis covered the date of creation of the association, the correlation of its purpose with its activities, the volume and origin of the funds, the list of founders and their profiles, the relations between the various persons involved, the beneficiaries of the operations and, finally, the nature of the banking transactions. The consolidation of the accounts and cross-referencing of the amounts, dates and purposes of the funds revealed proven links between the association A1 and the company E since

Mr. G was manager of E and a founding member of A1. The CTAF was also able to identify the origin of the funds received: various foreign associations (one of the founding members of which was listed by OFAC) transferred sums to company E. Following the discovery of these facts, which constituted strong FT suspicion indicators, the CTAF referred the results of its analysis to the Public Prosecutor and decided not to freeze the funds in order to not alert the persons suspected.

149. The results of the police investigation conducted by the anti-terrorism team established documented links between the association A1 and the company E for the purpose of financing the travel of young Tunisian fighters to Syria for jihad. Nine individuals (including Mr. G) were arrested and their accounts were frozen (including those of the association and the company). The case is still in progress.

### **Strategic analysis**

150. In addition to identifying typologies on the basis of the STRs, the CTAF has conducted a strategic analysis of its referrals, looking at the information collected from the banks and other reporting entities. This analysis was aimed at assessing the real level of risk in the banking system in order to identify trends and typologies in this sector. For the 80 reports referred covering STRs received from 2005 to 2014 (one referral can relate to several STRs), the predicate offenses, which correspond to the country's risk profile, are provided in the following table:

**Table 5 - Examples of the Main Predicate Offenses Found in the STRs Reviewed**

<b>Predicate Offenses</b>	<b>Number of cases out of 80</b>
Corruption	22
Terrorism and its financing	16
Fraud	14
Smuggling	10
Scams	9
Violations of the exchange regulations	7

### **Cooperation and information-sharing**

151. All of the competent authorities interviewed by the assessment team sought increased cooperation with the CTAF and stated that they were satisfied with its contribution. Some noted a lack of feedback, which apparently relates to the volume of old STRs that have not yet been processed.

152. The following figures show the requests sent by the CTAF to the public authorities in the context of its analyses (they do not cover the databases to which the CTAF has direct access).

**Table 6 - Requests sent by the CTAF to the Public Authorities and Foreign Counterparts in the Context of its Analyses:**

<b>National Agencies (2013)</b>	<b>Requests sent</b>
General Directorate of Public Accounting and Recoveries	2
General Directorate of Customs	2
Criminal investigation services	13
Ministry of Justice	2
Investigating judges	1
Foreign counterparts	49
<b>Total</b>	<b>89</b>

153. In practice, the CTAF pays particular attention to protecting the confidentiality of (financial or other) information collected and an IT security policy has been developed. A very detailed internal regulation establishes the procedures and terms and conditions for access to information in the databases. Confidential information must be sent to the party concerned in a secure manner, specifically in a sealed envelope or by encrypted email that can be unencrypted only upon receipt by the party concerned. Similarly, information-sharing with foreign FIUs uses the Egmont Secure Web channel.<sup>32</sup> It should be noted, however, that referrals to the Public Prosecution Office are sent exclusively by courier, as these are hardcopy reports. In this case, a courier delivers the file in a closed envelope labeled “confidential” directly to the prosecutor’s office against official proof of delivery. The CTAF reports are attached to the investigation files and are thus accessible to the lawyers involved.

## **Conclusion**

154. The CTAF and Law Enforcement Agencies receive a wide range of financial data and other relevant information that enable them to analyze financial transactions suspected to be linked to money laundering, TF or predicate offences. Tunisia has a well-structured FIU with analytical resources, sophisticated tools and access to a wide range of sources and data that enable it to produce reports containing high-quality financial analyses. The CTAF issues reports containing high-quality financial analyses and collects high-quality financial information which is largely used by law enforcement agencies. Feedback from the CTAF to the supervisors helps them to take measures and improve the quality and quantity of STRs submitted by the banking sector (6.1).

155. Even if the major risks identified in Tunisia are well taken into account by the CTAF, the reception of relevant information is hampered by the very small number (almost the inexistence) of STRs submitted by DNFBPs (particularly notaries, lawyers and accountants). DNFBPs seem to consider that they are not concerned or protected by the AML/CFT Law. Increased awareness raising and a clear mention of each concerned profession in the Law are necessary to make them accountable and encourage them to report more suspicious transactions (6.2).

156. Reports and analysis coming from the CTAF are well adapted to the operational needs of law enforcement agencies, investigation services and public prosecutors which use the reports to analyze financial flows and transactions that could be related to ML or FT and, potentially, the predicate offenses. The fact that investigations have been systematically opened following the referral of reports to the Public Prosecutor is indicative of the quality of the information and analysis provided by the CTAF. The dissemination of financial information is however hampered by delays in dealing with some suspicious transaction reports. The 2013 annual report from the CTAF indicates that the 741 STRs pending at the end of the year included 270 STRs with a significant ML/FT risk. The CTAF explains that the reduction of this stock requires an increase in the number of analysts. This lack of human resources impedes the CTAF’s effectiveness (6.3).

157. All relevant Law Enforcement authorities met by the mission said they were generally satisfied with the CTAF’s contribution. The secondment of police and customs officers with the CTAF facilitates the exchange of information with these agencies and enables them to develop operational analysis and investigations. Moreover the CTAF pays specific attention to the confidentiality of collected information (6.4).

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<sup>32</sup> Egmont Secure Web is a secure internet system that allows members of the Egmont Group to communicate with each other using a secure e-mail system to request and share information on cases, typologies, analysis tools, etc.

158. **Despite the CTAF's significant efforts and the quality of its work, the effectiveness of the entire system for collection, analysis and processing of financial information is moderate owing to insufficient resources and low reporting levels for the DNFbps.**

### *3.4 Effectiveness: Immediate Outcome 7 (ML investigation and prosecution)*

159. Money laundering investigations and prosecutions are conducted by the Public Prosecutor and his deputies and by investigating judges. The Financial Unit and the investigating judges may call upon the services of the criminal investigation services.

160. At the date of the visit, the Judicial Financial Pole, created in late 2012, was conducting 154 money laundering cases referred by the Public Prosecutor and the Chief Justice of the Court of Tunis. However, only a few money laundering cases have been finalized. An example of a conviction for money laundering was provided to the assessment team. This verdict, dating back to 2012, involves a case in which the defendant, a son-in-law of former President Ben Ali, was prosecuted for having falsely justified a payment of EUR 500,000 into his accounts in Switzerland and Tunisia through the sale of Tunisian shares in a fictitious foreign corporation. The individual involved was sentenced in absentia to 15 years in prison for forgery and money laundering and an international arrest warrant was issued for him.

161. The very limited number of sentences handed down for money laundering appears to be related, on the one hand, to the many lengthy proceedings opened after the 2011 revolution concerning cases of corruption under the former regime. Many of these cases involved extremely complex international investigations necessitating mutual legal assistance requests to numerous jurisdictions and financial centers. Some of these jurisdictions and financial centers did not respond or provided delayed and insufficient responses (See developments in section 8 on international cooperation). On the other end, the inadequate training and the lack of experience or resources of the prosecuting authorities should be mentioned as an impediment to a fully effective implementation of AML legislation. Difficulties existed in 2011 in the enforcement of the money laundering offense in a legal context that required prosecuting authorities to prove a direct link between the predicate offense and the illicit profits. The investigating judges and the public prosecution offices lacked the experience needed in practice to prosecute money laundering in the absence of clear evidence of a link between an offense and the financial transactions. Specifically, the investigating judges were reluctant to use the charge of money laundering in the absence of past case law clearly establishing that the proof of the fraudulent origin of assets may result from a set of objective circumstances, in particular the behavior of the defendants. Tunisian authorities have since then passed a new legislation reversing the burden of proof in specific circumstances showing that financial transactions show an obvious intent to conceal the nature of transactions or the ownership of assets. As a result, more cases were sent to the indictment chambers (see paragraph 172)

162. In the police, the Criminal Investigation Directorate has a specialized unit that handles complex economic cases. This directorate, which has 81 agents, gave the team examples of financial investigations that it has conducted. These examples indicate, however, that the emphasis has often been placed on prosecuting the predicate offense and, in some cases, the confiscation of its proceeds, rather than on the money laundering. Since 2011, many training activities on the investigation and prosecution of financial offenses have been organized by international organizations (World Bank, the Stolen Asset Recovery Initiative (StAR), UNDP, UNODC) and by Tunisia's partners (France and Switzerland in particular). Nonetheless, the lack of experience of Tunisian investigators and magistrates and the lack of established practices remain a handicap.

163. The Criminal Investigation Directorate provided statistics for the predicate offenses producing the greatest profits.



**Table 7: Predicate offences producing the highest profits.**

Predicate Offense	Number of Cases				Number of Persons Arrested				Seizure/ Value
	2011	2012	2013	2014	2011	2012	2013	2014	
Corruption	42	99	159	266	56	95	160	273	Confiscation of real estate, bank account, vehicles (cases involving President Ben Ali and his family)
Smuggling	312	563	1508	2252	356	508	1144	2172	Value of goods: D71 million (tobacco-fuel-alcohol)
Drugs	596	731	957	1112	786	1025	1308	148	3 metric tons of cannabis 1,006 grams of cocaine 17,880 pills
Immigration	283	85	63	73	121	75	60	64	D 409,000 230 boats 70 ships 2 automobiles

Source: Criminal investigation statistics

164. The statistics provided by the General Directorate of Customs to the Steering Committee for the national risk assessment show that smuggling and, to a lesser extent, drugs are at first glance the offenses leading to seizures.

**Table 8: Seizures by offenses (2011-2014)**

2011-2014	Seizures	Value
Drugs	6,100 kg cannabis	unknown
	87,437 pills	unknown
	3,129 g cocaine	unknown
Goods	tobacco, alcohol, fuel, etc.	D275 million
Foreign currency		D25,655,715

165. In most cases, these matters have not resulted in money laundering proceedings or been the subject of a parallel financial investigation, despite the fact that these offenses are the main sources of criminal proceeds and constitute significant risks for Tunisia. The criminal investigation services provided the assessment team with statistics on the values of seizures in the context of investigations into corruption, smuggling, narcotics and immigration (see above table) but did not provide information on the real revenues generated by these offenses. However, since August 2014 the Economic and Financial Investigations Subdirectorates has handled cases targeting 4 major traffickers and implicating 19 other persons. The latter have been brought before the courts (13 are in prison, 3 are on the run, and 3 remain free pending completion of the proceedings). The four cases have resulted in the seizure of 1,865 bottles of liquor and 500 electrical

appliances. Bank transactions valued at an estimated D5 million have been uncovered. The Financial Unit is investigating the charges of smuggling and money laundering.

166. The Economic Investigations Subdirectorate has also provided other statistics recorded in the database of the criminal investigation services. As indicated in the table below, very few money laundering cases handled by the criminal investigation services are in response to instructions from the Public Prosecutor or orders from investigating judges.

**Table 9: ML investigations by the criminal investigation services.**

<b>ML investigations by the criminal investigation services</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>
Investigations by the public prosecutor	7	6	2	3
Letters rogatory	4	2	6	5
Based on CTAF reports	12			
Arrests	4 persons			
Seizures	US\$15 million frozen in the context of an investigation based on a CTAF report			

167. Even though the Economic and Financial Investigations Subdirectorate is specifically charged with investigating the facts of money laundering, its volume of activity in this area remains limited. This can be explained in several ways: (1) the fact that the Public Prosecutor, which receives the cases from the CTAF, may or may not delegate these investigations to the Economic Investigations Subdirectorate; (2) the assumed priority given by the authorities to prosecuting the predicate offenses to the detriment of the ML offenses; and (3) the fact that parallel financial investigations are only opened if the money laundering operations are conducted by a third party or abroad. The Tunisian authorities did not provide statistics on the latter type of investigation.

168. Tunisia has provided a few examples of the use of special investigative techniques. However, the absence or lack of clarity of laws and regulations framing and organizing the use of these techniques (especially in regard to wiretapping, joint investigations, infiltration, or controlled deliveries) poses legal problems which a new bill under discussion by the Parliament is supposed to eliminate. Thus, surveillance of communications is used in cases of smuggling or terrorism on the basis of a telecommunications law and other general laws that give the investigating judge the authority to impose the measures needed to uncover the truth.

169. The Economic Investigations Subdirectorate indicates that it can identify the financial assets of suspects for the purpose of later obtaining court authorizations to freeze the assets. It is not possible to identify and quantify these parallel financial investigations on the basis of the data provided to the team by the Tunisian authorities.

170. According to assessments by the criminal investigation services, illicit profits in Tunisia flow from a series of national and foreign predicate offenses, particularly smuggling of goods and foreign currency, corruption, financial fraud, swindles (Ponzi schemes), and trafficking in migrants and other human beings.

171. The Judicial Financial Unit was created in late 2012 and includes 10 investigating judges and 5 deputies to the Public Prosecutor. The unit's magistrates are conducting proceedings related to the 154 money laundering cases referred to them by the Public Prosecutor and the Chief Justice of the Court of Tunis. At the same time, the unit's investigating judges continue to conduct investigations into regular cases referred to them before their assignment to the Financial Unit. Furthermore, they do not enjoy the support of assistants specialized in financial matters. To date, 22 money laundering cases have been finalized; 14 have been sent to the Indictments Chamber of the appeal court, and 8 have resulted in the dismissal of charges. In addition, 18 terrorist financing cases have been referred to the unit, 2 of which have been sent to the Indictments Chamber of the appeal court. The Financial Unit is still an institution under development, and there is no specific law framing or organizing its activities. The effectiveness of this new unit depends on a series of legislative or regulatory measures and their implementation. This applies in particular to defining the role of the legal assistants charged with helping the magistrates study the financial aspects of specific cases.

172. At the same time, the public prosecution office in the Financial Unit processes cases prior to submission to the investigating judges in the unit.

**Table 10: Number of cases prior to referral to the investigating judges**

Number of cases prior to referral to the investigating judges	Origin of Cases				Number of persons prosecuted	Number of freeze orders	Value of frozen amounts	Number of orders to lift freeze
	CTAF	Complaint	Government	Private sector				
108	46	18	40	4	340	50	In progress	2

Source: Public Prosecutor

173. Among these cases, 80 have been sent by the CTAF to the Public Prosecutor since 2011; there were no referrals prior to this period.

**Table 11: Statistics on the disposition of the STRs forwarded by the CTAF**

	2011	2012	2013	2014
Referred to prosecutor with freeze	9	8	58	2
Referred to prosecutor without freeze	24	60	92	44
Total STRs	33	68	150	46

Source: CTAF

174. In 2013, for example, the CTAF referred 16 cases involving 150 STRs to the Public Prosecutor in the Court of First Instance of Tunis, or an average of 9 STRs per case. The 16 cases were broken down into 14 cases involving 130 natural persons, most of whom were nonresidents, and 2 cases involving 20 legal persons. The cases processed in 2013 involved primarily the following predicate offenses: tax and customs fraud, corruption in connection with a foreign public contract, embezzlement of public funds coming from a foreign country, and pyramid schemes.

175. Looking at the predicate offenses, the cases handled in 2013 are based on suspicions of tax and customs fraud, corruption in connection with a foreign public contract, embezzlement of public funds coming from a foreign country, and pyramid schemes. In addition, as a result of strong mobilization of AML/CFT tools to recover ill-gotten gains and fight corruption (an absolute priority since 2011), 1,368 corruption cases have been opened (including 669 cases involving the former President and his family and 136 cases of money laundering).

176. The Ministry of Justice has not issued general directives to guide the activities of the public prosecutors and explain the anti-money laundering policy. Thus, it has not been able to clearly define an order of priority, which would be helpful for investigations in this area. In practice, priority often goes to cases in which persons have been arrested or in which the most serious offenses are alleged. These criteria are not in sync with the need to give priority to the risks of money laundering and terrorist financing.

177. The law enforcement authorities each have data bases (public prosecutor, investigating judges, courts) but these are not interconnected. The Tunisian authorities took note of the existence of such deficiencies and expressed their intention to give a clear priority to money laundering and terrorist financing offenses and corruption.

## **Conclusion**

178. Prior to 2011, there were almost no investigations or prosecutions for money laundering or the financing of terrorism. The efforts undertaken, and the results achieved since 2011 are thus important, since 154 cases were in process at the date of the visit in 2015. Since 2011, priority has been given to the recovery of ill-gotten gains and the prosecution of grand corruption offenses. Analysis of the laundering of the profits of this corruption has taken place essentially as part of these cases. In this context, the Tunisian authorities have endeavored to set up a more effective system for the investigation, prosecution and sanctioning of ML offenses. The creation and development of the Economic Investigations Subdirectorate within the Criminal Investigations Directorate, the creation of the Judicial Financial Unit in late 2012, the training of judges and investigators with the assistance of a number of international organizations (UNDP, UNODC, World Bank, OECD), the detection of financial offenses by the CTAF, and the systematic opening of investigations on the basis of suspicious transaction reports are all part of this effort. The result has been that today 154 ML investigations are under way while there were none before this date. 14 of these cases have been sent to the indictment chamber, which shows they are close to a conclusion and a trial (7.1).

179. These investigations and prosecutions concern ML activities resulting from predicate offenses deemed to be major threats, i.e. corruption, terrorist financing and smuggling into Tunisia (7.2).

180. The length and difficulty of the international investigations launched to identify assets held abroad by persons prosecuted for corruption (their assets in Tunisia having been confiscated by administrative channels) go a long way in explaining the fact that only one conviction for money laundering has been handed down. It should be noted that, according to the Tunisian authorities, these lengthy procedures and the stagnation of some cases is partially the result of the lack of or insufficient cooperation from some key countries. The analysis of international cooperation issues (see section 8 of the report) confirms this analysis to a certain extent.

181. The mission notes however that other problems should be mentioned. Specifically, the specialized Judicial Financial Pole does not seem to have all of the resources it needs to perform its mission, since the magistrates working there must at the same time handle regular cases already under way in their offices when they joined the Pole. Moreover, the legal framework for the operations of the Pole has not been set up by law, which is delaying the development of the corps of financial assistants to support the work of the judges. The Financial Pole is thus still an institution under development, and its effectiveness depends on

a series of legislative or regulatory measures and their implementation. This is the case in particular for the identification of the role of the judicial assistants responsible for helping the magistrates study the financial aspects of cases. The absence or lack of clarity in the laws and regulations governing or organizing the use of special investigative techniques (particularly regarding wiretapping, joint investigations, infiltration or controlled deliveries) poses legal problems. A bill under discussion in Parliament at the time of the on-site visit (and approved in July 2015) was deemed necessary to better frame and establish a sounder legal basis for the use of these techniques (7.3).

182. The assessment team cannot comment on the effectiveness, proportionality and dissuasiveness of the sanctions on the basis of a single criminal conviction for ML, but note that alternative measures like administrative confiscation of proceeds of corruption have ensured that many perpetrators do not benefit from illicit profits (7.4).

183. In the cases in which an ML conviction is not possible, the team is not aware of specific alternative measures under the criminal justice system. However, the administrative confiscation of all of the assets of the persons prosecuted for corruption has allowed for the confiscation of several hundreds of millions of dollars in assets since 2011 without waiting for a criminal conviction (7.5).

184. Finally, the recent mobilization of AML/CFT tools (since 2011) resulted in the launch of 154 money laundering cases in high priority risk areas necessitating highly complex international investigations and proceedings. One of these cases resulted in the criminal conviction and the confiscation of the defendant's assets which was enforced in a foreign country, allowing the return of \$ 29 M to Tunisia and 14 cases, sent to the indictment chamber, are thus close to their conclusion. This mobilization cannot remedy the years of inaction and disinterest in a matter of months, as shown by the small number of convictions to date. While measures were taken to remedy the lack of experience and the insufficient legal or material resources impeding the prosecution of the cases launched after 2011, the assessment team notes that ensuring the effectiveness of the system still requires major improvements.

185. **Tunisia has achieved a moderate level of effectiveness for Immediate Outcome 7.**

### *3.5 Effectiveness of Immediate Outcome 8 (Confiscation)*

#### *Administrative confiscation*

186. In connection with the fight against corruption initiated following the revolution and the fall of the Ben Ali regime, the recovery of ill-gotten gains has been a fundamental priority for the Tunisian authorities. A policy of administrative confiscation was introduced in March 2011, with:

- 1) the imposition of confiscation measures targeting the personal and real property of the ex-President, his wife Leïla Trabelsi, and their close relations based on adoption of the decree-law of March 14, 2011 (Decree-Law 13-2011);
- 2) the creation of a Confiscation Commission (Decree-Law 13-2011, Article 3);
- 3) the creation of a National Committee for the Recovery of Ill-Gotten Gains Held Abroad pursuant to Decree-Law 2011-15 of March 26, 2011;
- 4) the creation of a National Commission for the Management of Confiscated or Recovered Assets and Funds on behalf of the State pursuant to Decree-Law 2011-68 of July 14, 2011.

187. Annex 1 (Technical Compliance Report – Section 1, Recommendation 31) provides more details on this mechanism. The results obtained by the administrative confiscation system set up soon after the Tunisian revolution are significant, as the Confiscation Commission has thus far confiscated 536 buildings, 674 companies, and 42,739 personal property items belonging to the 114 designated persons covered by Decree-Law 13-2011. This policy has led to the recovery of several hundred millions of dollars in assets (roughly US\$600 million in 2012, or 5 to 6 percent of the government budget, and US\$225 million in 2013) through the sale of the confiscated assets.

188. It should be noted, however, that the validity of these administrative confiscation measures is currently being challenged in legal proceedings.<sup>33</sup>

189. In February-March 2011, international letters rogatory were issued for the purpose of identifying, freezing, and confiscating the overseas assets of persons covered by the decree-law. On this basis, some US\$90 million in Swiss accounts, several apartments in Paris, and roughly US\$30 million held in Lebanon were located and frozen. Some assets have been recovered, including two aircraft (one in France, the other in Switzerland), two yachts (one in Spain, one in Italy), and US\$30 million frozen in Lebanon.

**Table 12: Recovery of Assets Pursuant to Administrative Confiscation Measures**

<b>Recovery of Assets Pursuant to Administrative Confiscation Measures</b>	
<b>Property and Assets in Tunisia</b>	
Buildings	536
Companies	674
Personal property	42 739
Cash	US\$40 million
<b>Repatriated Overseas Property and Assets</b>	
Cash	US\$30 million
Aircraft	2
Yachts	2
<b>Overseas Property and Assets Identified and Frozen</b>	
Cash	US\$90 million
Buildings	4 building seized

*N.B.: Other accounts and properties have been identified in several countries, but this information has not been made public except for the four properties in France that were targeted for legal seizure under the French justice system and the property in Canada, which has been discussed in the press since 2011.*

### **Criminal confiscation**

190. The interim protective and criminal confiscation measures provided by the Tunisian legal framework call for mandatory confiscation of proceeds generated by a money laundering offense and, in the event that these assets are inaccessible, they call for equivalent confiscation (“fine equal to liquidation value,” Article 67 of the AML/CFT law). The criminal code provisions on special confiscation permit the judge to order the confiscation of the instruments used to commit the offense of money laundering and those intended to be used to commit the offense. It should be noted, however, that confiscation is an accessory penalty to a criminal conviction. This observation also holds true in the area of terrorism and its financing.

191. While the Tunisian legal framework permits confiscation of the proceeds of a crime and its instruments, with the exception of the corruption cases brought against the former regime, the Ministry of

<sup>33</sup> In May 2015, a district court invalidated Decree-Law 13-2011; this ruling is, however, subject to appeal. The team did not receive the decision or the grounds for the ruling.

Justice has not issued a criminal policy memorandum that gives priority in investigations to the seizure of these assets, and the system is still little used in money laundering and terrorist financing cases or in cases involving predicate offenses.

192. Tunisia has no system for managing confiscated assets and executing legal decisions calling for confiscation. The statistics and data on seizure and confiscation provided by the CTAF and the law enforcement authorities are not presented in consolidated form and are sometimes impossible to cross-check, which makes it difficult to interpret them to assess whether the effectiveness criteria have been met.

193. In cases referred by the CTAF to the judicial authorities, it is clear that the CTAF is indeed moving ahead with measures for the freezing of funds (119 STRs with freezes since 2011, see table below). In 2014, almost all the referred cases included freezes.

**Table 13 : Breakdown of STRs Referred to the Public Prosecutor by the CTAF since 2011**

	2011	2012	2013	2014	Total STRs since 2011
STRs referred to the prosecutor without freezes	24	60	92	2	178
STRs referred to the prosecutor with freezes	9	8	58	44	119
Amounts frozen	Euro 9,626,271 \$15,001,839 D1,645,689	D377,448 Euro 76,316	Euro 44,456 \$429,342 £2,351 D 207,197	\$1,800,064	Euro 9,747,043 \$17,231,245 £2,351 D 2,230,334
Total STRS	33	68	150	46	297

(Source: CTAF)

194. The assessment team was unable to obtain consolidated and usable information on interim protective measures implemented by the law enforcement authorities in money laundering investigations, since these statistics were not provided to the team by the police, and the figures obtained from the Economic and Financial Unit of the Office of the Public Prosecutor of Tunis indicate only the number of freeze orders handed down (see table below), without systematically showing the amounts frozen. The figures provided to the team show that interim protective measures have actually been handed down in slightly less than half of money laundering cases (50 freeze orders in 108 cases). Furthermore, the absence of complete information on the nature and amounts of goods and assets that have been frozen and seized makes it impossible for the assessors to judge the adequacy of these measures in relation to the money laundering risks facing the country (cf. risk analysis). The partial statistics provided to the assessment team on seizures related to investigations of predicate offenses similarly make it difficult to establish the priority given to these measures: seizures in drug trafficking investigations target only the drugs themselves, as there have apparently been no seizures of cash or freezing of the bank accounts of arrested persons, and the same holds true of seizures related to migrant and arms trafficking and smuggling.

**Table 14 : Disposition of Cases Before Investigating Judges in the Economic and Financial Unit**

Number of cases prior to submission to investigating judges	Origin of Cases				Number of persons prosecuted	Number of freeze orders	Value of frozen amounts	Number of orders to lift freeze
	CTAF	Complaint	Government	Private sector				
108	46	18	40	4	340 known and others	50	In progress	2

(Source: Public Prosecutor)

195. It is difficult to assess the effectiveness of the confiscation measures handed down as criminal penalties in money laundering cases since only one money laundering case has been judged by the Tunisian courts. However, this ruling is important because it enabled the team to verify the use of equivalent confiscation in money laundering cases. The court to which this case was referred ordered a confiscation measure for the laundered amounts, which was converted to a fine equal to the liquidation value since the funds were not accessible. The statistics on confiscation measures handed down in predicate offense cases were not provided to the team.

196. Tunisia possesses effective tools for recording data on cross-border movements of cash (databases at Customs, the Ministry of the Interior, the central bank, the CTAF that are quickly updated and cross-referenced; interdepartmental coordinated use of data; rapid interagency feedback, particularly through monthly reports). Customs Administration seizes cash each year, although the existing databases do not make it possible to obtain statistical information on the number of false declarations, the number of failures to declare, and the amounts in question. No statistics were provided to the assessment team on these points. In cases of undeclared imports of currency or false declarations, customs agents seize and confiscate the undeclared amounts and may impose a fine as high as D 3,000 (Article 383 of the Customs Code). In the event of suspicions of money laundering, the Customs Administration sends an investigation request to the Public Prosecutor; however, no figures were given to the team on the number of referrals to the judicial system and the outcome of these cases.

## Conclusion

197. Since 2011, the recovery of the proceeds of crime in high priority risk sectors such as corruption has been a priority for the Tunisian authorities and the results obtained at the time of the on-site mission are indicative of the effectiveness of the administrative confiscation measures established by the Government.<sup>34</sup> In particular, domestic assets representing \$ 885 MUSD were confiscated in 2012 and 2013 (8.1 and 8.2). Customs generally seize cash resulting from cross border non declared movements (8.3). However, in the context of traditional criminal proceedings, the mechanism established by the AML/CFT law and the Criminal Code remains insufficiently effective and does not deprive criminals of the proceeds and instruments of their offenses (8.4). While the National Commission for the Management of Confiscated or Recovered Assets and Funds on behalf of the State has established transparent and appropriate management of the confiscations ordered, the lack of a similar mechanism under criminal law hampers the effective management of the goods subject to confiscation. It also deprives the competent authorities of the tools to analyze the effectiveness of the mechanism and to make informed policy decisions for its improvement. Major improvements are needed.

<sup>34</sup> It should be noted that the judicial authorities are currently examining the validity of the confiscation measures established by the Government under Decree-Law 13-2011.



198. **Tunisia has achieved a moderate level of effectiveness for Immediate Outcome 8.**

***3.6 Recommendations on the legal system and operational issues***

- The human and material resources of the CTAF must be increased to deal with the growing number of suspicious transaction reports.
- Maintaining a link between members of the CTAF decision-making body and their original departments and requiring a quorum of 6, which in practice means that all must be present in order to finalize any particular case, may also constitute an obstacle to its effectiveness. As a result, it would be useful to reconsider the process for the referral of cases to the justice system.
- The CTAF should hold more frequent AML/CFT awareness-raising activities with DNFBDs.
- The Tunisian law enforcement authorities should develop an overall strategy for handling AML/CFT offenses. Specifically, the Criminal Investigations Directorate should encourage the public prosecutors, by means of a guidance, to require the use of the charge of money laundering when circumstantial evidence is sufficient to prove a link between a transaction and a potential predicate offense. The public prosecution offices should, moreover, be encouraged to undertake ML investigations and prosecutions on the basis of predicate offenses.
- The law planned by the Tunisian authorities to require the plaintiff to prove the licit origin of assets when the complexity and economic justification for transactions suggest that their main purpose is to hide offenses should be prepared and approved quickly.
- The lack of material resources, training and laws and regulations on special investigative techniques and on the organizational structure of the Financial Unit should be addressed and resources should be allocated to improve the effectiveness of investigations and proceedings.
- The law enforcement authorities (police, gendarmerie, judges and prosecutors) should be made aware of the importance and priority of confiscating all the proceeds of the crime, including proceeds transferred to third parties, and should receive instruction in this area. A criminal policy guidance indicating this should be issued by the Ministry of Justice, setting clear short- and medium-term objectives, establishing guidelines to ensure that financial investigations are systematically opened in large-scale cases, particularly for the most important predicate offenses in Tunisia, and increasing the training for authorities responsible for seizures and confiscations.
- The competent authorities are urged to establish a mechanism to manage seized assets and execute judicial decisions calling for confiscation. As the establishment of a central agency for the management of goods seized and confiscated by administrative confiscation has been a positive step, the national authorities could study the possibility of establishing a similar central structure for criminal confiscations. This measure would enable judicial agencies to obtain legal and practical assistance useful for conducting planned seizures and confiscations or managing seized or confiscated assets until a final decision is handed down.
- Centralized, relevant, and clear statistics should be kept on seizures and confiscations of assets in Tunisia and abroad, asset sharing, offenses underlying these measures (ML and predicate offenses), confiscations related to false disclosures or false declarations at the border, and amounts paid to victims, in order to determine what criminal policy adjustments are needed.

## 4. TERRORIST FINANCING AND FINANCING OF PROLIFERATION

### *Key findings*

- Investigations into terrorist financing have been only partially incorporated into national strategies.
- The creation by the decree of September 29, 2014 of the “Anti-terrorism Pole” appears to signal the development of a more strategic approach.
- The system for applying specific sanctions does not include a legal mechanism imposing the immediate freezing of assets of designated persons on “all persons.”
- There is no legal mechanism for applying sanctions related to proliferation financing (PF).
- The level of effectiveness achieved in the prevention of terrorist financing is moderate given the legal and practical limitations on applying sanctions against designated persons.
- The competent authorities’ lack of resources is a major obstacle hindering the oversight of nonprofit organizations.

### *4.1 Background*

199. Tunisia ratified the New York Convention for the Suppression of the Financing of Terrorism on June 10, 2003. The 2003 AML/CFT law transposed this convention in the domestic legal context. Tunisia has also adopted a legal mechanism that enables a court or competent authority to designate persons or entities in accordance with Resolution 1373 and a mechanism for freezing the assets of the persons or organizations listed by the Sanctions Committee. The law of August 12, 2009 called for additional measures concerning the freezing of assets, and these measures were reiterated in an order issued by the Minister of Finance on January 24, 2014.

### *4.3 Effectiveness: Immediate Outcome 9 (TF investigation and prosecution)*

#### **(9.1) Terrorist financing prosecutions and convictions**

200. The Tunisian authorities did not report any convictions for acts characterized as terrorist financing.

#### **(9.2) Terrorist financing investigations**

201. However, investigations are in progress. The National Counter-Terrorism Unit (UNECT), which until June 2014 fell under the criminal investigation services and has since then been placed under the Special Services Directorate, held ten persons in police custody in 2014 in connection with a case against an association. This association was suspected of having relations with a terrorist enterprise, based on its relationship with a foreign association that had sent it various monetary transfers from a foreign country. In this particular case, it appeared that the leaders of the association in Tunisia were known to the special services for their links to Tunisians who died in Syria. The case was referred to the courts after the seizure

of several million dinars, computers, and vehicles. UNECT reported several other cases referred to the public prosecution office concerning the financing of travel expenses for combatants headed to Syria. Beyond this case, specific investigations result from suspicious transaction reports and subsequent referrals, after review of the case, by the CTAF to the law enforcement authorities. Thus, of the 80 referrals to the public prosecution office by the CTAF since 2010, 16 cases were based on suspicions of terrorist activities or terrorist financing. The Financial Pole has thus had a total of 18 terrorist financing cases referred to it, including the 16 from the CTAF. Two of these cases were referred to the Indictments Chamber of the appeal court and are close to a ruling.

202. The activities of the police and the specialized Judicial Financial Pole suffer from the same imperfections in this area as those noted in the analysis of IO 6 and IO 7. The use of special investigative techniques is still limited and a bill under discussion in Parliament at the time of the on-site visit (approved in July 2015) was deemed necessary to better frame and establish sounder legal bases for the use of these techniques. Information on the departure or return of foreign combatants has not been used consistently to develop investigations into the networks that finance these fighters. Moreover, no specific legislation frames or organizes the unit. The investigating judges suffer from a lack of specialization since they continue to investigate regular cases referred to them before their assignment to the Pole. They do not have the support of a corps of assistants specializing in financial issues. The Financial Pole thus remains a judicial institution under development, the effectiveness of which depends on a series of legislative or regulatory measures and their implementation. This is the case in particular for the definition of the role of the judicial assistants responsible for helping the judges study the financial aspects of cases.

### **(9.3) Integration of investigations and use of the resulting information in a national strategy**

203. The ongoing UNECT investigations have served to expose a few elements of the typology of the offenses related to the terrorist financing under investigation: the types of offense involve, in particular, postal or hawala transfers to the families of persons killed in combat and the provision of sums of money to help in the journey to the war zones in Syria or Iraq.

204. Furthermore, Ministry of the Interior departments indicate that, based on their investigations or the information they have gathered, 157 associations have had their operations suspended by administrative decision. In particular, many associations were made up of persons who had participated in combat in Syria or Iraq, repeat offenders convicted of terrorism, and persons connected to extremist movements. At the present time, no final decision appears to have been made about the future of these associations.

205. In addition, after receiving a suspicious transaction report, the CTAF referred a case to the justice system involving the use of a non-resident export services company (telecommunications, call center) that had opened accounts in euros and convertible dinars, then received funds from the personal account of the manager and the accounts of legal persons in Europe. The funds had then been transferred to the accounts of an association established in Europe and persons located in Africa by way of “zakat” (religious tax) or gifts. After verification with the foreign authorities, it turned out that the association receiving the funds in Europe was the subject of a freeze order due to links with natural persons considered to be terrorists. Furthermore, its manager had previously been convicted of commercial fraud. Given these factors, the CTAF observed that the Tunisian financial space could be used in this case for laundering in connection with fraud and terrorist financing. The case had not been finalized as of the writing of this report.

206. Currently, terrorist financing investigations do not appear to have been incorporated into comprehensive national strategies. However, several recent changes reflect the development of a strategic approach based on the gathering and analysis of information and its consideration from a strategic perspective

207. First of all, Decree 173 of September 29, 2014 did indeed create the “Anti-Terrorism and Organized Crime Unit” with representatives from the Ministries of Defense, the Interior, and Foreign Affairs. With a staff of 120, which could eventually climb to 220, the function of this organization is to use information from the investigative agencies and the Ministry of Finance to study the evolution of terrorist activities and develop appropriate strategies. It is still being set up. In addition, UNECT has analyzed certain typologies by identifying various elements of terrorist financing, such as bank, postal or hawala transfers to support the families of combatants in Syria, Iraq, or Libya, and financial transfers to finance the travel expenses of these combatants. Furthermore, a channel of cooperation has been established between UNECT and the CTAF. The latter now receives requests from UNECT asking it to analyze the financial flows of certain persons suspected of having links to terrorism or terrorist financing. However, the CTAF refers STRs only to the Public Prosecutor.

208. Lastly, a National Anti-Terrorism and Extremism Commission was created by decision of the National Supreme Council for Security following a meeting chaired by the President of the Republic on February 11, 2015. This commission has been charged with establishing a national strategy to combat extremism and terrorism. The commission meets at the Ministry of Foreign Affairs, which chairs the meetings, and is made up of representatives of the Office of the President of the Republic, the Office of the Head of Government, the Ministry of Justice, the General Directorate of Prisons and Corrections, the Ministry of the Interior (General Directorate of National Security, General Directorate of the National Guard, General Directorate of Special Services, Anti-Terrorism and Organized Crime Security Unit), the Ministry of Defense, the Ministry of Finance, the Ministry of Technologies and the Digital Economy, the General Directorate of Customs, and the CTAF. The commission has organized several meetings in order to prepare “a national strategy to combat terrorism and radicalization.”

#### **(9.4) Sanctions against legal and natural persons**

209. To date no sanctions have been recorded.

#### **(9.5) Other measures used**

210. In the absence of criminal sanctions, the most noteworthy measure used is the process resulting in the suspension of the activities of 157 associations based on information collected by departments of the Ministry of the Interior. However, as terrorist activities have clearly developed in Tunisia, including after these suspensions, the effectiveness of this measure must be considered to be limited

211. **The level of effectiveness achieved by Tunisia on Immediate Outcome 9 is low**, given the lack of convictions for terrorist financing (9.1), the partial investigations into the financial aspects of terrorism cases (9.2), insufficient integration of investigations into terrorist financing in the national anti-terrorist strategies (9.3), and the lack of criminal sanctions against legal or natural persons (9.4). Measures other than criminal sanctions that have been used against the 157 associations suspected of financing the networks of combatants abroad seem circumstantial in the Tunisian context marked by significant risk (9.5).

#### ***4.4 Effectiveness: Immediate Outcome 10 (TF preventive measures and financial sanctions)***

212. **As regards the financial sanctions under Resolution 1267**, organizations or individuals linked to terrorist activities in Tunisia have recently been entered on the list of sanctions against Al Qaeda. This is true in particular of Ansar al-Shari’a in Tunisia (AAS-T), which was listed on September 23, 2014 as an associate of Al Qaeda due to its participation in financing, organizing, facilitating, preparing or carrying out acts or activities in association with Al Qaeda in the Islamic Maghreb.

213. In addition, a list of 16 persons belonging to Ansar al-Shari'a involved in terrorist operations (planning, financing, logistical support, execution) was presented in September 2014 to the U.N. bodies by the Tunisian Government. In this context, the leader of Ansar al-Shari'a Tunisia, Seifallah Ben Hassine, who had also created the Tunisian Combatant Group in 2002 to help combatants reach Al Qaeda's training camps in Afghanistan, and two other natural persons had their names entered on the 1267 lists in April 2015. Currently, Tunisia is making efforts to finalize inclusion of the 13 other persons on the list. The inclusion of Tunisian nationals specifically involved in the pipeline of Islamic State combatants thus remains limited even though, according to government estimates, there have been 6,000 departures for Syria followed by about 500 returns to Tunisia and 681 arrests. This raises questions about the capacity of the Tunisian authorities to gather, cross-check, and use information required for the identification and surveillance of members and leaders of terrorist networks and their sources of financing.

214. The effectiveness of the legal mechanism currently in effect to ensure the application of sanctions against persons entered on the 1267 list is debatable. The mechanism established by the January 24, 2014 order requires that those covered by the anti-money laundering law to consult the lists accessible on the Ministry of Finance's internet site. But there is no ban applicable to any natural or legal person against conducting transactions with the designated persons. A freeze or a ban against providing any resources can therefore be legally imposed only against banks and nonbank financial institutions and the professions engaged in activities covered by the anti-money laundering law.

215. In practice, even when the discussion is limited to those covered by the anti-money laundering law, none of the professions involved (for example, accountants, etc.) appears to refer to the United Nations lists in their day-to-day activities or to consider such verification to be mandatory.

216. "Screening" (systematic verification) of the existing customers of banks is necessary to identify persons added to the U.N. lists. However, the practices of banks informed about the mechanism are deficient in a number of ways. Discussions with various banks who described their compliance systems did not indicate that this systematic verification was being performed under conditions compatible with the obligation to immediately freeze the assets of listed customers. In several banks, this verification may not be performed until a month after the lists are amended. The Tunisian authorities indicate that several Tunisian banks perform a daily screening of their customer base to compare it with the various lists of sanctions (particularly the 1267 list), which are integrated into their filtering software.

217. **For Resolution 1373**, the current system, which is based on a freeze order issued by the Tunis court, does not establish a general ban on making economic resources available, as required by FATF. It also does not allow for the immediate freezing of the assets of a person targeted by the sanctions. For a freeze to be applied to all assets, and not just to a previously identified account, there would need to be a mechanism for publishing or disseminating the court's decision. No operative decision of this type, for example concerning requests from foreign authorities, was cited by the Tunisian authorities, apart from cases reviewed and sent by the CTAF to the judicial authorities.

218. **For the oversight and surveillance of nonprofit organizations**, the oversight mechanism set out in Decree-Law 88 of September 24, 2011, which guarantees the freedom to form associations, is rooted in the "declaration" regime and replaces all earlier licensing or authorization procedures. This has resulted in a sharp increase in the number of associations: between 2011 and 2014, 8,250 new associations were created (i.e., a 47 percent increase). A study on associations was carried out in 2013 under the aegis of the NRA Steering Committee.

219. The replacement of the prior authorization system with a declaration regime—a democratic measure to promote freedom of expression—thus requires additional resources for oversight of the sector.

In particular, the enhanced transparency requirements for associations that receive public financing, that are partially financed by foreign grants or whose resources exceed a specific threshold must be enforced.

220. **For associations financed with foreign grants**, financial operations must take the form of bank checks or transfers for amounts above D500. The receipt of foreign financial assistance must be published in a print medium and on the association's website within one month and the Secretary General of the Government must be informed within the same timeframe. The association must also publish its financial statements along with an external auditor's report in a print medium and on the website. Finally, grants may in no case come from countries without diplomatic relations with Tunisia or from organizations defending the interests of those countries.

221. **For all associations with more than D 100,000 in annual resources**, Article 43 of the decree-law introduces an obligation to appoint an external auditor. Above D 1 million, the association must appoint one or more external auditors who are members of the Tunisian Association of Accountants and Auditors. In both cases, the external auditor must submit its report to the Secretary General of the Government, which will make it available for review by the General Directorate of Associations.

222. **The General Directorate of Associations**, which is responsible for collecting this information, ensuring that the legal arrangements are respected and monitoring the sector, was created by Decree 2013-4573 of November 8, 2013 within the Office of the Head of Government. Information on the life of associations is already tracked to some extent since the subdirectorate had, at the time of the visit, issued 180 notices for violations regarding foreign grants (out of 564 declarations), 246 notices for violations of the public financing regulations (out of 308 beneficiary associations) and 300 notices for miscellaneous violations. In particular, 157 suspensions of the activities of associations were issued by the governates in response to reports or investigations by the Ministry of the Interior. However, the effectiveness of this follow-up is limited by the lack of resources. The supervisory departments have insufficient staff to verify respect of the regulations, analyze the information collected and verify the accuracy of the legal and accounting information reported by the associations. The directorate has 13 staff in all. Within it, the subdirectorate responsible for monitoring associations consists of 6 persons and is responsible for monitoring the creation and activities of more than 17,000 associations (including the 8,250 created since 2011) throughout the national territory, without the help of local intermediaries.

223. The Tunisian authorities have indicated that the abusive use of associations for terrorist financing is to be the subject of a sectoral analysis. In coordination with the European Union, the General Directorate of Associations has begun a study for the revision of the decree on associations, creation of a complete electronic system to monitor their activities using a risk-based approach, enhancement of the logistics and simplification of procedures in the directorate, and establishment of a forum for communication between the directorate and the associations. As well, the publication of a specific accounting standard, which does not currently exist, is to be fast tracked.

## **Conclusion**

224. For the moment, the lack of convictions and confiscations for terrorist financing and the deficiencies in the system set up for the implementation of Resolution 1267 significantly limit the effectiveness of the policies intended to deprive terrorist organizations of their financing

225. Given these systemic weaknesses, the actions listed above seem insufficient to address the recognized major risk of the development of terrorist activities and the financing of terrorism in Tunisia. As terrorist organizations such as Ansar al-Shari'a in the West and the Islamic State are active on Tunisia's borders (in the east and south) and deadly attacks have recently taken place, including in the center of Tunis, the issue of the technical, financial and human resources to be deployed to deal with these threats is crucial.

In addition, legislative reforms were needed to ensure the compliance and the effectiveness of the implementation of United Nation's resolutions. Some of these reforms were passed after the visit of the assessment team. They cannot be taken into account in this report.

226. **The level of effectiveness achieved by Tunisia for Immediate Outcome 10 is thus low.**

***4.5 Effectiveness: Immediate Outcome 11 (PF financial sanctions for proliferation)***

227. The Tunisian authorities reported no specific mechanism for the implementation of (or ensuring the implementation of) financial sanctions for the financing of the proliferation of weapons of mass destruction. More specifically, the dissemination of lists of persons targeted by sanctions on the site of the Ministry of Finance covers only terrorist financing. **Tunisia has achieved a low level of effectiveness for IO. 11.**

***4.6 Recommendations on terrorist financing and financing of proliferation***

- The Tunisian authorities should give priority to the allocation of administrative, human and financial resources to the departments responsible for monitoring and tracking associations.
- The Tunisian authorities should enhance and implement internal cooperation mechanisms for information-sharing on terrorist financing methods.
- The Tunisian authorities should establish legal mechanisms to prohibit any person from providing resources to the persons included on the 1267 list.
- The Tunisian authorities should establish legal mechanisms ensuring the effective immediate dissemination of inclusions on the 1267 lists or in application of Resolution 1373, and the immediate freezing of their assets.
- The Tunisian authorities should establish legal or administrative mechanisms for: (1) the identification of natural or legal persons that Tunisia could propose for inclusion on the U.N. lists and (2) the designation of natural and legal persons in Tunisia in application of Resolution 1373.
- The Tunisian authorities should establish specific legal mechanisms for the imposition of financial sanctions for the financing of the proliferation of weapons of mass destruction.
- The Criminal Affairs Directorate should prepare criminal policy guidances encouraging the public prosecution offices to give priority to the opening and development of terrorist financing proceedings.

## 5. PREVENTIVE MEASURES

### *Key findings*

- The banks have a partial understanding of the risks to which they are exposed, while other participant in the financial sector, i.e., leasing companies, securities brokers and insurance companies, seem to have a very limited understanding of the ML/FT risks. The DNFBPs have a very limited understanding of the risks to which they are exposed.
- The customer due diligence obligations are understood by some banks only, with deficiencies in terms of the specific requirements for beneficial owners and politically exposed persons (PEPs).
- On the whole, implementation of the customer due diligence requirements remains very limited in the banks in terms of proportionality to the risks involved. While some banks classify customers on the basis of risk criteria (customer, activities, country), almost all of them are still in the process of putting in place the procedural and technical aspects of their customer due diligence mechanisms.
- The enhanced customer due diligence measures for PEPs, correspondent banking, targeted financial sanctions and high-risk countries do not seem effective in the banking sector and are nonexistent for leasing companies, securities brokers and insurance companies.
- Almost all suspicious transaction reports are submitted by banks, but under conditions that tend to create confusion between the CTAF reporting channel and the reporting channel in implementation of Resolution 1267, for which the Ministry of Finance is responsible.
- The targeted financial sanctions relating to Resolution 1267 are not implemented effectively by a number of banks and most of the other participants in the financial sector owing to a failure to use technical means to filter data on customers and transactions.
- The fact that the compliance function is exercised by a single person in some banks is indicative of the lack of human resources assigned to AML/CFT in the banking and financial sector.
- The failure of the AML/CFT law to specifically list those subject to its requirements creates uncertainty as to the scope of the law in the case of the DNFBPs. They do not see themselves as being concerned by the customer due diligence obligations, which explains the small number of STRs submitted by them.
- The internal controls for casinos are generally well implemented by the Gaming Commission, which conducts unannounced inspections. The other DNFBPs have not implemented AML/CFT internal control systems or enhanced measures for high-risk situations or clients.

### *5.1 Background*

#### (a) Financial sector

228. The Tunisian financial system is dominated by the banking sector, which accounts for close to 70.4 percent of financial assets in Tunisia, followed by the financial market (13.9 percent), collective



investment schemes (5.6 percent) and the insurance sector (3.1 percent). Tunisia has 22 resident banks, 2 of which are involved in Islamic finance, and 7 offshore banks. The 2 investment banks are financial establishments and are not considered to be banks within the meaning of Article 54 of Law 2001-65. Their role is limited to consulting and assistance in asset management, financial management, financial engineering and, in general, all services for the creation, development and restructuring of companies.

229. Cash foreign exchange operations are handled solely by the banks in Tunisia in the absence of a legal framework allowing the licensing of specialized entities. The authorities plan to authorize non-bank exchange bureaus in the future. Currently a large number of cash foreign exchange transactions are conducted by non-authorized parties (merchants and other natural persons). The cash foreign exchange sector is thus a sector with significant risks.

230. Money transfers are carried out exclusively by banks and the Post Office, with the latter having handled a total of 1,079,583 transfer operations as at end-2013, including 1,037,126 operations from overseas for a total amount of D 658 million. Although almost all money transfer operations in Tunisia are handled by the Post Office, it did not begin to put in place its AML/CFT system until late 2013 and is still in the process of implementing it.

231. Similarly, the banks and the Post Office are linked with international money transfer companies by contracts allowing them to use their networks to carry out money transfer operations. The BCT, the Post Office and the banks interviewed indicate that these contracts were concluded in compliance with the AML/CFT regulations and do not constitute an obstacle to the implementation of the customer due diligence requirements contained in Tunisian laws in terms of the availability of information concerning these transfers. However, the assessment team was unable to obtain any further information on these partnership contracts.

232. The insurance sector in Tunisia remains small: out of the 23 companies in operation, only 5 offer life insurance products, which account for only 15 percent of the business of the sector. According to the representatives of the insurance companies and CGA interviewed, a limited number of life insurance policies are taken out by individuals and there is no corresponding Islamic finance product. However, the deficiencies identified in the implementation of customer due diligence requirements by persons in this sector subject to the AML/CFT provisions make life insurance activities more vulnerable to money laundering risks.

233. The Tunisian Stock Exchange is still small, in the neighborhood of D10 billion, with annual transaction volumes of D1.8 billion for 77 listed companies. Intermediation is exercised by 23 brokers, most of which are subsidiaries of banks and manage some 121 collective investment schemes with net assets of D 4.8 billion. Given the limited development of the sector it does not represent a significant risk factor

234. The microfinance sector is also not highly developed in Tunisia. Established in 1997, it focuses essentially on microlending and involves primarily the *Banque Tunisienne de Solidarité* and the NGO ENDA Interarbe.

(b) Designated nonfinancial businesses and professions (DNFBPs)

235. Lawyers: 9,245 lawyers are currently active (2014 data). Lawyers have exclusive jurisdiction in the preparation of the articles of association of companies and in the drafting of contracts and instruments for the transfer of real property and contracts for real estate contributions to the capital of commercial companies (while not impinging on the purview, reserved by law, of notaries and land property preservation

deed writers). Verifications of the origin of the funds and identification of the parties concerned are minimal, and lawyers seem to have little awareness of the AML/CFT provisions.

236. Notaries: There are currently 1,049 notaries active in Tunisia. The nature of transactions recorded by notaries and the identity of the parties are based on supporting documentation. Despite the rigors of the formal requirements imposed on these professionals, the origin of funds is seldom verified when cash is involved. The profession does not seem to have a great deal of awareness of the AML/CFT provisions.

237. Real estate agents: There is a National Association of Real Estate Agencies, but only 46 of the 1,500 real estate agencies in the country are registered with it.<sup>35</sup> Its role is limited and it has no AML/CFT oversight functions. The profession is not aware of the anti-money laundering provisions.

238. Certified public accountants: There are currently 873 certified public accountants and 358 accounting firms active in Tunisia. Specific awareness-raising regarding the AML system does not appear to have started and interviews show that accountants and auditors give only limited consideration to AML/CFT compliance.

239. Casinos: There are only three operational casinos in Tunisia and they are strictly reserved for nonresidents. Access to the gaming rooms is subject to presentation of an admission ticket, which can be obtained only with proof of identity. Moreover, the Gaming Commission, which is made up of representatives of the Ministries of Finance, the Interior and Tourism and the BCT, conducts unannounced inspections of the casinos approximately once per quarter. Given these measures, the Ministry of Finance estimates that the ML vulnerability of the casinos is very low. Information obtained during the on-site visit supports this risk analysis.

240. Dealers in precious metals and precious stones: In 2012, there were 823 professional jewelers. There is no specific awareness-raising of the ML/FT risks to supplement the sector's supervisory regime.

241. Trust and company service providers: Some activities of trust and company service providers are covered by the AML regulations, such as cases in which the provider acts as agent in the establishment of a legal person. However, trusts do not exist under Tunisian law and the risks are thus limited. However, foreign trusts can have financial activities in Tunisia.

242. Most vulnerable professions: The real estate sector in Tunisia is used for money laundering purposes, as shown by several cases referred by the CTAF to the Public Prosecution Office. In this context, the professions most vulnerable to ML/FT risks are: (1) lawyers, who can handle property transfers, particularly of real estate; (2) notaries, who can conduct real estate transactions by private instrument under formal rules that are much less strict; and (3) real estate agents, even if they cannot receive amounts, effects or assets in connection with the operations in any form whatsoever.

(c) Preventive measures

243. For financial institutions: The customer due diligence requirements applicable to financial entities subject to the AML/CFT provisions are based on Law 2003-75 of December 10, 2003. Following the evaluation of the Tunisian AML/CFT system in 2006, this law was amended on August 12, 2009 (Law 2009-65) to introduce amendments to the requirements for those subject to the law by adding 11 new articles detailing the definition of those subject to the law, the customer due diligence rules applicable at

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<sup>35</sup> Figures provided by the National Association of Real Estate Agencies.

the start and end of a relationship, and the high-risk countries (see details on each requirement in the technical compliance annex).

244. The AML/CFT law in effect specifically requires persons subject to its provisions to exercise constant due diligence over their business relations and to closely examine operations executed. Law 2003-75 requires financial institutions to establish the identity of their customers, including occasional customers, on the basis of official documents. The customer due diligence measures were enhanced by the April 20, 2006 directive from the CTAF and by BCT Guidance 2013-15, which require credit institutions to apply these measures from the start of a business relationship. The insurance sector is also covered by the customer due diligence measures of the AML/CFT law. More broadly, the Tunisian system contains a general obligation to systematically obtain information on the purpose and nature of the business relationship. In case of suspicions of money laundering or terrorist financing regarding a financial operation, the financial institutions are required to submit a report to the CTAF.

245. However, although the laws and regulations governing customer due diligence requirements list some of the areas of ML/FT risk, which should be taken into account by some of those subject to the provisions of the law, particularly banks and financial institutions, the requirement to adopt a risk-based ML/FT approach is not indicated. This is clearly evident in the actual application of the provisions of the law by most of the banks and financial institutions interviewed.

246. ***For DNFBPs:*** All the customer due diligence measures established in the AML/CFT law are applicable to DNFBPs by virtue of Article 74, which provides that: “*Bank and nonbank financial institutions and any person, who in the exercise of his profession prepares or carries out, on behalf of his customer, financial operations or transactions for the purchase or sale of real estate or goodwill, manages customers’ capital and accounts, organizes contributions for the creation of companies or other persons, operates or manages them, controls such operations or transactions or provides advice in their regard, shall take the required customer due diligence measures. . . . The provisions of the preceding paragraph apply to jewelers, dealers in precious stones and any other precious objects, and directors of casinos for transactions with their customers, the value of which is equal to or higher than an amount to be established by order of the minister responsible for finance.*”

247. Thus, the AML/CFT law does not explicitly list all of the professions subject to its provisions, but defines categories of professions by referring to the operations and transactions that they conduct or control and by expressly mentioning casinos and jewelers and dealers in precious stones. This can create some uncertainty regarding the scope of this law, as shown by the interviews with accountants. Moreover, although the laws and regulations governing the customer due diligence requirements list some of the ML/FT risks that should be taken into account by some of those subject to the law’s provisions, there is no obligation to adopt a risk-based approach to ML/FT.

(d) Exemptions to or expansion of risk-based preventive measures

248. ***For financial institutions:*** The Tunisian AML/CFT system does not provide for any exemptions to or expansion of risk-based preventive measures for a particular category of financial or nonfinancial entities subject to the law.

### ***5.3 Effectiveness: Immediate Outcome 4 (Preventive measures)***

#### *Understanding of ML/FT risks and AML/CFT obligations*

249. The assessment team found that banks have a partial understanding of the risks to which they are exposed. According to the authorities, some banks with formal internal AML/CFT mechanisms, dedicated

structures and work procedures have presented their ML/FT risk management procedures and confirmed that they have adopted a risk classification. However, they are unable to estimate the degree of their exposure to ML/FT risks or to take the real factors related to the services and products that they market into consideration.

250. Other banks in the sample interviewed are still at the stage of understanding the legal provisions concerning AML/FT requirements and those requiring the adoption of a risk-based approach, the introduction of risk mapping and the analysis of the terms and condition for the implementation of provisions requiring them to adopt a risk-based approach. This is the case in particular for some public banks, whose anti-money laundering mechanisms should be improved through the acquisition of compliance decision-making tools, review of procedures and cleanup of the databases.

251. Other participants in the financial sector (leasing companies, securities brokers and insurance companies) appear to have a very limited understanding of the ML/FT risks. Some of the participants interviewed suggested that there were no ML/FT risks in their area and asked the assessment team to indicate to them in which context they would be concerned by ML/FT.

252. This situation, in which there is a poor understanding of the ML/FT risks by this category of financial entity subject to the provisions of the law, is explained in large part by a fairly limited mobilization by the supervisory authorities for these entities. The regulatory agencies do not seem to be in a position to assess the exposure of the sectors under their supervision to ML/FT risks.

253. The lack of a National Risk Assessment or its deployment in the banking and financial sector, which has itself not done such an assessment at the sectoral level, is also a factor leading to insufficient consideration of the risk in the private sector.

#### *Understanding of the customer due diligence requirements specific to beneficial owners*

254. Some banks suggested that they are in a position to handle the various requirements imposed by the laws and regulations and issued by the supervisory authorities. However, the banking sector's understanding of the specific rules applicable to beneficial owners is still deficient.

255. During interviews with the banks' compliance officers, the assessment team identified significant discrepancies between the legal requirements and the customer due diligence to be applied during the process of identifying beneficial owners.

256. Thus insufficient account appears to be taken of the distinction between the concept of legal representative of the legal person and that of beneficial owner. The information needed for this identification, particularly in the case of a legal person held by foreign structures, is not understood.

257. In the end, the banks are still in the process of understanding the basic customer due diligence rules to be applied.

258. Leasing companies, securities brokers and insurance companies still have only a very basic understanding of the customer due diligence obligations. During the discussions with the representatives of these entities, the assessment team noted the confusion on the part of these professionals regarding the scope of some obligations, particularly those relating to the concept of beneficial owner and politically exposed person.

### *Implementation of customer due diligence measures proportionate to the risks*

259. The implementation of due diligence measures remains limited in terms of proportionality to risks. Some of the banks interviewed indicate that they have a customer classification system based on risk criteria (customer, activities, country) and implement appropriate customer due diligence measures. These measures are indicated in their policies and procedures but have not been updated or reevaluated.

260. To remedy this situation, a program to improve the reliability of the customer databases has been launched in one of the banks interviewed. However, difficulties were seen in other banks, which indicated that they are still in the process of implementing their internal customer due diligence measures, through the development of draft internal AML/CFT policies and procedures, the launching of the process for the purchase of profiling and filtering software, and the restructuring of their organization charts through the creation of dedicated compliance units. Several of the banks interviewed have only a single compliance officer for their entire networks.

261. This situation is explained in particular, according to representatives of these banks, by the fact that actions for the implementation of the customer due diligence measures required by the laws and implementing regulations have been scheduled only recently and that the process for approval by the bank executives of the allocation of resources to bring the internal AML/CFT arrangements into compliance has taken a great deal of time.

262. Leasing companies, securities brokers and insurance companies do not seem to be in a position to implement their customer due diligence requirements in the context of a risk-based approach. According to the information collected during discussions with their representatives, only basic customer due diligence requirements, involving the identification of customers and record-keeping, are implemented, apart from the analysis of some operations that could be considered atypical. The habits of their customers were considered to be known in the context of a limited number of products not involving exposure to ML/FT risks.

263. The obligation to refuse to establish a business relationship or to carry out operations with a natural or legal person<sup>36</sup> at the start of a business relationship in the absence of sufficient information (awareness of the purpose of the business relationship, the customer or the origin of the funds) or proper identification seems to be understood and is being implemented. The requirement to submit an STR regarding a rejected customer has been included in Article 74bis, final paragraph.

264. No difficulty was identified regarding the implementation by all financial institutions of record-keeping requirements for operations and information obtained in the context of the implementation of customer due diligence requirements. It would be desirable, however, in order to enhance its effectiveness, to further detail the AML/CFT provisions in order to expressly specify the information that should be preserved.

### *Enhanced due diligence measures*

265. The enhanced or specific due diligence measures for PEPs, correspondent banking, the identification of beneficial owners, high-risk countries and electronic transfers are insufficient. Almost all financial sector entities subject to the AML/CFT provisions have difficulty in identifying the scope of the PEP concept, particularly at the national level. The Tunisians have prepared a clear list of functions which is annexed to the BCT guidance to identify national PEPs. Moreover, according to these authorities, most

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<sup>36</sup> With the exception of trusts and other structures that do not exist in Tunisia (not provided for in the law or in established practice).

national PEPs (presidents of political parties, members of Parliament, members of the government, senior judges, CEOs of public enterprises) are known public persons appointed by orders published in the Official Gazette. In practice, the identification is based solely on the nonbinding declaration of the customer in the information form used by some banks for entry into a business relationship. Supplementary research measures concerning foreign PEPs can be taken by some banks on the basis of lists provided by their parent companies. Since the identification of PEP customers is not systematic, the implementation of customer due diligence requirements in this area by the banking system cannot be considered to be sufficient.

266. Some of the banks interviewed confirm that they implement adapted customer due diligence measures for countries deemed to be high-risk by FATF, but in practice these institutions were not able to demonstrate that they use the FATF lists or that they enhance their due diligence measures for customers from these high-risk countries. Other categories of financial institutions are not aware of the requirements for high-risk countries and do not implement appropriate due diligence rules.

267. For correspondent banking, the banks interviewed confirm that they enter into relationships only with internationally renowned banks, without being concerned regarding the AML/CFT risk. A questionnaire is sent to the foreign correspondent and a contract is signed to formalize the relationship. These steps cannot alone replace particular attention in the case of establishments in an offshore zone, verification of the existence of supervision and the implementation of a clear distribution of responsibilities between the two banking correspondents.

268. As regards specific measures for electronic transfers, some of the banks interviewed declared that they ensure that all of the required information is provided by the originator. However, they do not seem to be able to demonstrate the extent to which the controls regarding transfers received are carried out and whether countermeasures (particularly refusal to execute) can be taken in cases in which relevant information is lacking.

269. As there are no operators providing money or value transfer services, the banks provide this activity directly via their networks, which are made available to international operators working from overseas for orders received from overseas.

270. The assessment team was unable to access the contracts linking the banks to the international operators which, according to the BCT, detail the responsibilities in terms of the application of the rules governing money transfers.

271. However, given the lack of a specific framework governing money transfer services, the BCT simply conducts upstream controls prior to the signing of the contracts between the Tunisian banks and international operators. This situation means that it is impossible to presume that the customer due diligence rules for money transfers are effectively implemented or that the legal or regulatory framework applicable to the operators of money or value transfer services has been implemented.

272. As for the application of targeted financial sanctions for the financing of terrorism, according to some information provided by the General Directorate of Banking Supervision of the BCT, only 17 banks have filtering tools for the identification of customers and operations based on the U.N. Security Council lists. The banks that have these tools confirm that they do such filtering by means of the lists provided by the suppliers (1) at the time of entry into the relationship with the customer, (2) in the case of electronic transfers, and (3) in monthly verifications or screenings of their customer databases. The result is that the updates of the U.N. lists are taken into account with a lag of up to one month, which goes against the desired aim, i.e., to immediately freeze the assets of existing customers who are added to these lists.

273. Other banks interviewed that do not have such filtering tools do not apply any controls in this area. Despite awareness-raising by the CTAF, a large proportion of the banks interviewed report cases detected to the CTAF but not to the Ministry of Finance, which is in fact responsible for ensuring implementation of the targeted financial sanctions, dissemination on its website of updates to the Security Council lists, and receipt of the cases detected.

274. In terms of the identification of risks related to the use of new technologies, the banks and other financial institutions, particularly the Post Office, have not taken the necessary steps to analyze the ML/FT risks related to the products marketed that use new technologies. Thus the implementation of adequate customer due diligence measures cannot be deemed to be relevant and effective to the extent that they do not keep pace with current changes to the techniques used, particularly by the Tunisian Post Office, in terms of the identification, assessment and implementation of adequate measures to mitigate these risks. This situation is also exacerbated by the lack of general regulations issued by the supervisory authorities.

#### *Implementation of customer due diligence measures specific to beneficial owners*

275. The compliance officials in the banks interviewed have real difficulties in implementing specific customer due diligence measures for the identification of beneficial owners. The assessment team noted the lack of clear positions or policies on some issues in this area. In the case of customers that are legal persons or involve series of connected companies, the officials concerned have questions on how far they must track upstream to identify the beneficial owner or if the business relationship should be broken in the event that the beneficial owner cannot be identified. The result is limited effectiveness regarding the application of customer due diligence rules specific to beneficial owners.

276. In the case of other financial entities subject to the AML/CFT provisions, i.e., leasing companies, securities brokers and insurance companies, the assessment team noted that the implementation of specific customer due diligence measures for beneficial owners was seriously deficient. In fact, no due diligence measures for this category of customer (beneficial owners) seem to have been implemented by any of the non-bank financial institutions interviewed. This finding is comes on top of the lack of understanding of the risks inherent in this category of customer.

#### *Suspicious transaction reports*

277. The banking sector forwards suspicious transaction reports (STRs) to the CTAF. In most cases, these STRs relate to suspicions of corruption and embezzlement of public funds. The involvement of other financial entities subject to the AML/CFT provisions (leasing companies, securities brokers and insurance companies) is limited and the CTAF correspondents have only recently been appointed in these entities.

278. As regards feedback on the STRs, except in cases in which the CTAF has decided in advance to freeze assets, the banks and other financial institutions interviewed indicated that they were concerned by the lack of regular feedback from the CTAF. In accordance with the AML/CFT law, the CTAF informs the reporting entity of the disposition of the STR (referral to the courts, decision to take no further action or placement under surveillance). However, no information is provided on STRs in process. Given the delay in the processing of a significant number of STRs submitted in 2011 and 2012, some banks have had no feedback several years after submission of the initial STRs.

279. Four annual reports containing statistics and typologies concerning the financial sector have been published since 2011, when the CTAF became operational. All of the STRs (with a few rare exceptions) are submitted by the banks, which seems to be indicative of a certain degree of cooperation.

280. No problem regarding the nondissemination and confidentiality requirements for STRs was raised by the financial entities interviewed.

#### *Internal controls*

281. Not all of the financial institutions interviewed have introduced internal AML/CFT controls and specific AML/CFT procedures. The accountants interviewed by the team do not seem to expressly audit the internal AML/CFT procedures. Some banks are still in the process of introducing AML/CFT procedures, while others indicate that they audit their internal customer due diligence procedures but that the results of these recent audits have not yet been implemented.

282. In terms of the implementation of internal AML/CFT controls and procedures covering financial groups that are applicable to all subsidiaries and branches, the assessment team identified the existence of AML/CFT rules covering the various activities of groups (parent companies and subsidiaries). However, the assessment team noted the lack of a comprehensive AML/CFT system adapted to the scale of the groups covering all aspects of information-sharing and the forwarding of data to the group's compliance officers.

283. This lack of implementation of effective internal controls by most financial institutions leads to the conclusion of a lack of effectiveness concerning the implementation of the specific requirements in this area.

#### *For DNFBPs*

284. The lack of an AML/CFT legislative framework listing the DNFBPs concerned and the authorities responsible for ensuring implementation of the AML/CFT obligations is a real problem. Some professions (accountants) seem hesitant to consider themselves to be covered by the AML/CFT provisions. The development and implementation of a risk-based approach are also limited by the lack of dissemination by the various DNFBP regulatory authorities of information on money laundering risks and the legislative provisions. The lack of awareness of the obligations resulting from the AML/CFT law and its relatively recent implementation are reflected in the lack of suspicious transaction reports from real estate agents, jewelers and notaries and by the (very) small number of reports from lawyers (2 STRs in 2014) and accountants (1 STR in 2011). No risk mitigation measures seem to be implemented by the DNFBPs.

285. Moreover, while some customer due diligence and record-keeping measures are implemented by casinos (identification of customers by means of the electoral card, passport, driver's license or residence permit), the other DNFBPs seem to implement very few of these due diligence measures. According to the information obtained by the assessment team, the DNFBPs implement few or no internal AML/CFT controls and the same is true for the implementation of enhanced measures for high-risk customers or situations.

286. The DNFBPs are not aware of their obligation to establish a management system for the identification of PEPs, to obtain information on all PEPs and their beneficial owners and the origin of their funds and assets, or to implement enhanced customer due diligence measures for all PEPs.

#### **Conclusion**

287. Banks partially understand the ML/FT risks and CDD requirements while other financial institutions (leasing companies, securities brokers and insurance companies) as well as DNFBPs have a very limited understanding of risks they are exposed to and CDD measures they should implement.



288. Measures implemented by the banking sector are not proportional in the absence of risk identification and analysis and some banks are still in the process of designing internal due diligence arrangements. DNFBPs do not implement any measures.

289. Only the banking sector implements the ongoing customer due diligence requirements (customer identification and record keeping measures) except for rules that cover solely the beneficial owner. The requirement to refuse the establishment of a business relationship or the implementation of a transaction in the absence of sufficient information or when it was impossible to identify the customer seems to be understood and is applied by the banks (4.3).

290. The implementation of enhanced CDD measures or CDD measures that are specific to the PEPs, correspondent banking, the identification of beneficial owners, high risk countries, and targeted financial sanctions is insufficiently carried out by the banking sector and does not seem to be carried out by other sectors (4.4)

291. The banking sector applies the suspicious transaction reporting requirement by referring almost all of the STRs to the CTAF and applies, without any difficulty, the tipping-off prohibition while the involvement of other reporting entities remains very limited (4.5).

292. The internal AML/CFT controls and procedures have not been introduced nor applied by all the financial institutions and their actual implementation by the groups is deficient (4.6).

293. **Tunisia has achieved a low level of effectiveness for Immediate Outcome 4.**

#### ***5.4 Recommendations on preventive measures***

##### *Concerning ML/FT risks*

- Accelerate the process for the identification and national assessment of ML/FT risks, disseminate the results and ensure that the supervisory authorities and professionals subject to the AML/CFT provisions take account of the results in risk analyses at the sectoral level and in internal policies, ensuring proportionality between the risk minimization objective and the financial inclusion goal.
- Further mobilize mechanisms for the application of targeted financial sanctions in the context of the efforts to combat the financing of terrorism.
- Develop and disseminate sectoral approaches explaining the conditions for the implementation of customer due diligence requirements and a risk-based approach specifically for PEPs, the identification of beneficial owners, correspondent banking, high-risk countries and electronic transfers.

##### *Concerning the legislative framework*

- Complete the Tunisian legislation in accordance with the FATF 2012 Recommendations by issuing provisions supporting the risk-based approach, particularly as regards national and foreign PEPs, high-risk countries, and ongoing customer due diligence measures
- Clarify the legislation and disseminate guidances or general directives on the identification of beneficial owners.

*Concerning the implementation of the risk-based approach*

- Guide banking and financial institutions subject to the AML/CFT provisions in the process of assessing ML/FT risks at the sectoral level.
- In future inspections, the BCT should take account of the information included in the banks' AML/CFT internal control reports

*Concerning suspicious transaction reports (STRs)*

- The CTAF should provide more frequent feedback on unprocessed STRs and improve the dialogue with the entities subject to the AML/CFT provisions regarding the typologies specific to the financial sector.

*Concerning DNFBPs*

- Clarify the list of professions covered by the AML/CFT law and specify the obligations applicable to the professions.
- Make a significant effort to mobilize and enhance the awareness of vulnerable sectors, particularly lawyers, notaries and real estate agents.
- Specifically monitor and supervise the application of measures for the identification of customers and beneficial owners and the due diligence measures of the DNFBPs.

## 6. SUPERVISION

### Key findings

- The supervisory authorities have not identified the highest risks for the banking and financial sector. Their understanding of the risks is incomplete as not enough on-site inspections are conducted by the BCT and CMF and none at all are conducted by the CGA.
- The supervisory authorities for the banking and financial sector are designated as AML/CFT supervisory authorities.
- In addition, a risk-based approach is not used in banking and financial sector audits owing to a lack of on-site inspections, insufficient resources and a lack of procedures specific to the supervisory personnel. Only the BCT has begun a methodological discussion of supervision.
- In 2014 the supervisory authorities sent out questionnaires on money laundering to the banking and financial entities subject to the AML/CFT provisions to identify inspection priorities, but without using a risk-based approach.
- Off-site examinations are not conducted. According to the Tunisian authorities, they should be based solely on internal control reports and the conclusions of the external auditors.
- The information dissemination policy of the banking and financial sector supervisory authorities is insufficient owing to the lack of specific, adapted and updated guidelines. The requirements of the anti-money laundering law are explained only via its implementing regulations.
- The banking and financial sector supervisory authorities have not imposed any sanctions for failures to comply with the customer due diligence requirements.
- Supervisory authorities have not yet been expressly designated for the AML/CFT supervision of most DNFBPs.
- No DNFBPs are subject to a supervisory arrangement that ensures that they respect their AML/CFT obligations. The supervisory authorities have not yet mobilized on these issues.
- The DNFBP supervisory and self-regulatory authorities have a limited understanding of the ML/FT risks to which these categories of professionals are exposed. Only the casinos and dealers in precious stones and precious metals have developed an appreciation of the risks in their respective sectors.
- The lack of procedures formalizing the supervision of DNFBPs can be considered a risk factor that has an impact on the adequacy of the supervision.

### *6.1 Background*

294. Financial entities subject to the AML/CFT provisions in Tunisia are supervised by pre-existing authorities. In the banking sector, the Central Bank of Tunisia (BCT) is the supervisory authority for credit institutions; insurance companies are supervised by the General Insurance Committee (CGA); while the Financial Market Board supervises participants on the financial market.

295. The above-mentioned authorities (BCT, CGA and CMF) supervise banking and financial entities subject to the AML/CFT provisions. The AML Law designates them as AML/CFT supervisory bodies by referring to “Non Banking and Banking “ Financial institutions that they monitor and supervise.

296. Moreover, there are gaps in the legislation regarding the authority supervising the Tunisian Post Office, which administratively comes under the Ministry of Telecommunications.

297. The following table indicates the number of entities subject to the AML/CFT provisions:

**Table 15: Number of entities subject to AML / CFT supervision**

<b>Category</b>	<b>Number</b>
<b>BANKS</b>	22
<b>OFFSHORE BANKS</b>	7
<b>INVESTMENT BANKS</b>	2
<b>LEASING COMPANIES</b>	9
<b>FACTORING COMPANIES</b>	3
<b>REPRESENTATIVE OFFICES</b>	9
<b>COLLECTIVE INVESTMENT SCHEMES</b>	121
<b>SECURITIES BROKERS</b>	23
<b>INSURANCE COMPANIES</b>	23
<b>LIFE INSURANCE</b>	5
<b>INSURANCE INTERMEDIARIES</b>	1,064

298. The Central Bank of Tunisia (BCT) is the supervisory authority for banks and financial institutions, including offshore banks. It has three essential powers: regulatory (the BCT issues management rules and prudential standards); supervisory (on-site inspections and off-site examinations) and disciplinary.

299. The BCT has also licensed two Islamic banks for the marketing of so-called “Islamic” banking products, despite the absence of a legal framework governing such activities.

300. Insurance companies are licensed by the Minister of Finance after receiving the opinion of the General Insurance Committee, in accordance with Article 50 of the Insurance Code. These companies are subject to supervision and monitoring by the General Insurance Committee (CGA), which is a legal entity with financial autonomy that reports to the Ministry of Finance.

301. Securities brokers are subject to regulation and supervision by the Financial Market Board (CMF) under Article 23 of Law 94-117 of November 14, 1994 organizing the financial market. The CMF provides oversight for collective investment schemes (unit trusts, mutual funds and debt investment funds classified in this category) as well as permanent oversight of the Tunis Securities Exchange; securities brokers; securities deposit, clearing and settlement companies; and portfolio management companies acting on behalf of third parties.

302. Microfinance companies are also supervised. Decree-law 2011-117 organizes microfinance activities and their oversight by an independent authority: the Microfinance Supervisory Authority.

303. The resources assigned to the supervisory authorities, particularly staff, seem insufficient compared to the number of entities subject to the AML/CFT provisions and given the profile of the personnel

dedicated to AML/CFT activities. The BCT has a staff of 13 auditors, including one IT specialist (information provided by the DGSB-BCT), but has no official specializing in ML/FT. Most inspectors have been involved in AML/CFT inspection missions and a significant number of auditors receive training each year in AML/CFT issues in Tunisia and/or abroad: this includes 6 in 2015, as against 5 in 2013 and 2012. For its part, the CGA has 17 licensed auditors to conduct off-site examinations and on-site inspections but they have no knowledge of AML/CFT matters and are not trained for missions in this area. The CMF has 15 sworn officials to conduct on-site inspections and off-site examinations but again without AML/CFT specialization.

304. *For the DNFbps* – All designated nonfinancial professions covered by the AML law are subject to regulation or self-regulation. The exercise of these activities is subject to licensing by the regulatory authorities, which conduct regular inspections, each within the limits of their authority. However, while Article 77 of the AML law gives the authorities concerned powers to monitor AML/CFT compliance by the DNFbps, neither this authority nor its practical implementation have been set out in the laws and regulations governing the activities of the DNFbps.

### ***6.3 Effectiveness: Immediate Outcome 3 (Supervision)***

#### **Measures to prevent criminals and their associates from entering the market**

305. In the banking sector, a license is required to carry out banking activities. The BCT reviews the license application on the basis of the information provided by the applicants, which relates in particular to their financial capacity and the quality of the providers of the capital. An analysis of the legal situation of the future directors focuses on their professional integrity; for this, the BCT looks in particular at official documents (for example, criminal records). New equity participations in banking institutions and changes in the directors are also subject to authorization rules and fit-and-proper tests based on the procedure indicated above. The CMF controls entries into the financial market using the same process recommended by the BCT.

306. The BCT and the CMF have refused equity participations in the capital of entities subject to the AML/CFT provisions under their supervision for reasons of opacity regarding the foreign applicants. Verifications regarding these equity participations may also be conducted via foreign counterparts. Only one case was presented to the assessment team by representatives of the CMF in which they called upon a foreign counterpart to verify the identity of the beneficial owner.

307. However, while these fit-and-proper tests are effective, the lack of indications in the laws and regulations or of procedures formalizing their implementation can be considered a risk factor that impacts the adequacy of the supervision.

#### **Risk management and AML/CFT supervision**

308. As regards the measures to be taken to manage ML/FT risks, the supervisory authorities for the banking and financial sectors (BCT, CMF, CGA) have not identified the risks specific to the sectors that they supervise or those specific to categories of institutions or individual institutions.

309. The process for the identification of risks in the banking and financial sector is at a fairly early stage and constitutes an obstacle to the implementation of a risk-based approach.

310. Moreover, as of the time of the on-site visit, the CTAF had involved other stakeholders (representatives of the private sector, banking and financial sector, particularly financial entities subject to AML/CFT provisions, etc.) very little in the national process for the identification of risks.

311. In the context of its three unscheduled on-site inspections in 2014, initiated on the instruction of the Governor, the BCT took account of risk factors in the choice of the banks to be examined, i.e., the existence of a sizable portfolio of nonprofit associations considered to be high-risk customers.

312. This choice is explained by the campaign conducted by the public authorities to endeavor to monitor associations, the number of which has increased steadily since 2011 in a context characterized by the external financing of these organizations and a lack of reliable information on the allocation of their resources.

313. In addition to its lack of planning of on-site AML/CFT inspections, the BCT does not have the tools needed to conduct targeted inspections based on a consideration of the risks incurred by the banking sector.

314. Beyond the main objective of the three on-site inspections, their results identified deficiencies in almost all of the customer due diligence measures that were supposed to be taken in application of the AML/CFT provisions by the three banks that were inspected.

315. While the BCT on-site inspectors seem to be in a position to identify the main ML/FT risks based on their experience and knowledge of the context in which they operate, no actions have been taken to conduct a sectoral evaluation of risks that could then be applied in the context of the inspection programs. The central bank also indicated it would like to use the reports of the accountants and external auditors to establish an on-site inspection program and to identify banks that should be subject to priority inspections. However, these professionals have not received the training or awareness-raising needed to conduct this work and do not yet implement the customer due diligence measures applicable to their own activities.

316. For its part, the CMF has scheduled six on-site inspection missions since September 2014 targeting six securities brokers, three of which have now been conducted. The maximum length of each mission was two days during which the CMF inspectors reviewed the various aspects identified in the anti-money laundering questionnaire completed by these intermediaries in 2014. In this regard, the assessment team notes that the scheduling of these missions by the CMF is very recent. Moreover, the questionnaire sent to the securities brokers, which according to the CMF supervisors constituted the focus of the inspection missions, is very general and there are no procedures based on a sectoral identification of risks. The assessment team deems that the three on-site inspection missions conducted by the CMF were very short and could therefore not cover the main aspects of an effective internal customer due diligence mechanism. This finding of the assessment team on the scope and adequacy of the CMF's on-site inspection missions is shared by the representatives of the sector interviewed by the team.

317. Finally, the CGA, which is the supervisory authority for the insurance sector, had not, as of the time of the visit, scheduled or conducted on-site inspections covering compliance with the obligations of the anti-money laundering law and its implementing regulations by participants on the insurance market subject to its provisions.

318. The BCT is in the process of developing a scoring system for credit institutions, which should make it possible to assess the AML/CFT risks inherent in these entities in the context of an overall assessment of prudential risk. In 2014 the BCT also prepared a draft AML/CFT supervision manual for on-site inspectors, and it should be finalized soon. The other supervisory authorities, i.e., the CMF and CGA, indicate that they do not have AML/CFT supervision procedures. Moreover, the technical resources brought into play

by the various supervisory authorities for the banking and financial sectors are insufficient owing to the lack of information systems that could help them in the analysis of the data reported by entities during the inspections.

319. In 2014, as part of its off-site examination process, the supervisory authorities (BCT, CGA, CMF) sent an initial AML/CFT questionnaire to the entities subject to the AML/CFT provisions. The results are being processed and should be taken into consideration in future on-site inspections and in the scoring system for banks being developed by the BCT.

320. The supervisory authorities deem that the AML/CFT questionnaire will also be a permanent off-site examination tool, but no specific details were provided on the frequency of its use or on regulations or procedures making it mandatory.

321. The supervisory authorities for the banking and financial sector indicate that they have never implemented consolidated supervision of financial groups, but that this situation has not been an obstacle to information-sharing. The CMF points to its participation in the IOSCO Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information. Beyond this international channel of cooperation, the CMF has signed five memoranda of understanding with its foreign counterparts in Morocco, Turkey, Egypt, France and the United Arab Emirates. The CGA has signed a cooperation agreement with the Central Bank of Malaysia. However, these cooperation and information-sharing agreements had not yet been implemented at the time of the on-site visit, despite the existence in Tunisia of subsidiaries of institutions established in the signatory countries and the presence in those countries of subsidiaries of Tunisian companies.

322. Overall, the lack of a sectoral identification of risks handicaps the supervisory process. As well, the lack of inspection missions and the fact that they have begun only recently have hampered the implementation of corrective measures or action plans to remedy the deficiencies identified. Despite the customer due diligence deficiencies identified during the inspections, no sanctions were imposed by the supervisory authorities of the banking and financial sectors, which stated that the entities subject to the AML/CFT provisions were in the process of setting up their AML/CFT mechanisms and the results of the audits were still being processed.

323. AML/CFT supervision by the regulatory authorities in the banking and financial sectors is still being implemented despite the lack of a risk-based approach, significantly impacting its effectiveness.

#### **Promotion of a clear understanding of the AML/CFT obligations and ML/FT risks**

324. The BCT and CGA have prepared implementation regulations that explain some of the provisions of the AML/CFT law, i.e., a guidance in 2013 and a regulation in 2012, and posted them on their websites. The CMF, as supervisory authority for the financial market, has not prepared a regulation explaining the conditions for the implementation of Article 77 of the AML/CFT law of 2009 by entities subject to its supervision. However, it has disseminated a guide. The representatives of the CMF deemed the provisions of the AML law and CTAF Decision 2007-03 of March 22, 2007 setting out general regulations for the financial market to be sufficient and the AML/CFT obligations to be largely covered by the prudential supervision regulations.

325. For its part, the CTAF has posted on its website Decision 01-2006 setting out the sample suspicious transaction report dating back to 2006, and Decisions 02-2006 and 03-2007 setting out general directives, which date back to 2006 and 2007, respectively, and include identical customer due diligence requirements for (1) credit institutions, nonresident banks and the Post Office and (2) the financial market.

326. These directives have never been updated, despite the revision of the law, and seem to contradict some aspects of the 2009 reform. For example, the sample suspicious transaction report attached to CTAF Decision 01-2006 contains specific headings for banking and financial operations that can be carried out only by banking and financial institutions in application of former Article 85 of the AML/CFT law of 2003. This sample suspicious transaction report, which is still in effect, makes reference to the aforementioned 2006 decision and targets only financial institutions. The new Article 85 expands the obligation to submit suspicious transaction reports to other nonfinancial institutions but the sample report is not applicable to them. Similarly, other provisions in Directives 02-2006 and 03-2007 relate to customer due diligence obligations that seem to duplicate the texts issued subsequently, particularly the BCT 2013 guidance.

327. The CTAF website, created in 2013, includes a FAQ section but it is still under construction and has no content. The reports prepared by the CTAF since its creation in 2003 cover only the years 2010, 2011, 2012 and 2013. In 2014, the CTAF published only two brief reports on its website, 1-2014 and 2-2014, which deal with the cases of taxi accounts and the use of the accounts of minors, the legal nature of which is not explained. These reports are drawn from STRs received and processed by the CTAF and are considered warnings both for entities subject to the AML/CFT provisions and for the general public to draw attention to the risk represented by certain scams operated by companies established abroad or in Tunisia that involve the use of pyramid sales or Ponzi schemes to attract public savings.

328. In the absence of a policy promoting an understanding of the AML/CFT risks and obligations based on instruments setting out specific, adapted and updated guidelines, the efforts deployed by the supervisory authorities in the banking and financial sectors and by the CTAF remain very limited, as indicated by the lack of understanding noted during the discussions held with entities subject to the AML/CFT provisions in the aforementioned sectors (*see Immediate Outcome 4*).

### **Concerning the DNFBPs**

329. No DNFBP is subject to a supervisory arrangement that ensures that it respects its AML/CFT obligations. The supervisory authorities have not yet mobilized on these issues.

330. The supervisory and self-regulatory authorities for the DNFBPs have a limited understanding of the ML/FT risks to which these categories of professionals are exposed. These authorities often seem to have little familiarity with the AML/CFT law, and the AML/CFT supervisory mechanism has been developed only for casinos and dealers in precious metals and precious stones. Lawyers and accountants seem to be particularly unfamiliar with the AML/CFT law. Even though the CTAF has organized some awareness-raising actions, only the casinos and dealers in precious stones and precious metals have developed an appreciation of the risks in their respective sectors. The mission was unable to meet with the supervisory authorities for real estate agents or notaries. Overall, the level of understanding of AML/CFT issues seems rudimentary in the nonfinancial sectors.

331. Casino games are subject to prior authorization by joint order of the Ministries of the Interior and Tourism. All casino personnel and the CEO and members of the board must be of age, in possession of their civil and political rights and licensed by the Ministry of the Interior. The Gaming Commission, which is made up of representatives of the Ministries of Finance, the Interior and Tourism and the BCT, conduct unscheduled inspections of casinos approximately quarterly.

332. The conditions of access to the professions of accountant, notary, real estate agent and lawyer are strictly supervised. Notaries are subject to strict controls by the Public Prosecutor, which inspects them every three months; real estate agents are required to maintain a service register indicating the services rendered and their remuneration and a detailed register of powers of attorney. The conditions of access to the profession of accountant are also strictly regulated and the Association of Certified Public Accountants



and Corporate Auditors includes a disciplinary chamber headed by a magistrate. Finally, there is a committee of the Tunisian Bar Association, of which all lawyers in Tunisia must be a member; all lawyers are subject to disciplinary sanctions if they fail in their duties.

333. However, even if these controls are effective, the lack of procedures formalizing their implementation can be seen as a risk factor with an impact on the adequacy of the supervision. In fact, the authorities mentioned only one example in which candidates to the aforementioned functions were prohibited from exercising them as a result of specific ML/FT risk verifications.

## **Conclusion**

334. Authorities in the banking and financial sectors apply efficient and rigorous control measures for market access ; the informal nature of this control process with no specific procedures however highly impact the effectiveness of these control measures (3.1).The supervisory authorities for the banking and financial sector have not fully identified and understood the risks in the sectors they supervise (3.2), and this results in a disconnect between the on-site inspection procedures and the need for a risk-based approach. (3.3).

335. The unwarranted lack of sanctions imposed on financial entities in violation of the AML/CFT provisions has had a significant impact on the effective implementation by said entities of their AML/CFT obligations (3.4).

336. Limited mobilization of the supervisory authorities to promote an understanding of the customer due diligence rules since the adoption of the legal reform in 2009 is a real obstacle to the effective implementation of the Tunisian AML/CFT system by reporting entities ( 3.5 and 3.6).

337. Based on the above, the Tunisian supervisory authorities are unable to ensure adequate supervision of entities subject to the AML/CFT provisions and cannot therefore ensure that they respect their AML/CFT obligations based on risk.

338. No DNFBP is subject to a supervisory arrangement that ensures that it respects its AML/CFT obligations. The supervisory authorities have not yet mobilized on these issues.

339. The DNFBP supervisory and self-regulatory authorities have a limited understanding of the ML/FT risks to which these categories of professionals are exposed. Only casinos and dealers in precious stones and precious metals have developed an appreciation of the risks in their respective sectors.

340. However, even if the supervision of the DNFBPs is effective, the lack of procedures formalizing its implementation can be considered a risk factor that has an impact on the adequacy of the supervision.

341. **Tunisia has achieved a low level of effectiveness for Immediate Outcome 3.**

## ***6.4 Recommendations on supervision***

### **Concerning the supervisory authority**

- Expressly designate the BCT, CMF and CGA in the law as the AML/CFT supervisory authorities and detail their powers in this area.

### **Concerning the licensing procedure and control of access to the markets**

- Formalize in writing the entire procedure for the investigation of applications for licenses and authorizations for new equity participations and changes in directors, with a view to ensuring processing efficiency and traceability.
- Update the mechanism for control of access to the market in line with international standards by including detailed procedures and designating the necessary implementation entities.

### **Concerning the identification and understanding of ML/FT risks**

- For the BCT, CMF and CGA, undertake the identification and documented analysis of sectoral risks in coordination with the CTAF as head of the risk identification project at the national level, and deploy the results in terms of work procedures and controls, including in the private sector.

### **Concerning increased resources and the implementation of supervision based on ML/FT risks**

- The BCT, CMF and CGA should better allocate resources (human and technical) in order to ensure effective supervision of the respect of the AML/CFT requirements by financial institutions.
- The BCT, CMF and CGA should develop a risk-based supervisory methodology.
- The BCT, CMF and CGA should adopt a comprehensive approach based on on-site inspections and off-site examinations to better control the ML/FT risk.
- The BCT, CMF and CGA should ensure that the ML/FT risk scoring system takes account of the results of off-site examinations.
- The BCT, CMF and CGA should develop off-site examination tools (updated ML questionnaire) and implement risk-based on-site inspection procedures supported by adequate training.
- The BCT, CMF and CGA should schedule and conduct on-site inspections with a risk-based frequency, boundaries, scope and adequacy, particularly in the areas of corruption, terrorist financing, imposition of financial sanctions and smuggling; increase the staff dedicated to supervision; use the data contained in the questionnaires already completed by the banking and financial institutions; and institutionalize this off-site examination document and adapt it to take account of the specific characteristics of each sector.
- For the BCT: the supervision manual should be used as soon as it enters into effect and should be updated regularly through the inclusion of adapted tools; the system for the scoring of credit institution should be finalized, with individualization of the ML/FT risk to ensure better adaptation of the controls.
- For the CMF: AML/CFT supervision procedures should be adopted; the AML/CFT expertise of supervisors should be improved; adequate time should be allotted for on-site inspections.
- For the CGA: the necessary prerequisites should be put in place so that it can act as the AML/CFT supervisory authority for insurance professionals, particularly in terms of the legal framework, work procedures, specialization of resources, and consideration of the size and volume of activity in the insurance sector concerned.

### **Concerning cooperation and coordination in the context of ML/FT supervision**

- Cooperation between the CTAF and the supervisory authorities on the requirements for suspicious transaction reports should be enhanced, particularly through the development of common approaches to ensure better targeting of vulnerabilities in the sectors supervised.
- Formal information-sharing channels should be set up between the CTAF and the supervisory authorities for the identification of risks at the national level and sectoral vulnerabilities, without depending entirely on questionnaires to be filled by these authorities.

### **Concerning the enhancement of actions to promote an understanding of risks and their prevention**

- The directives already published should be updated to take account of the 2009 legislative reform and the specific characteristics of each sector concerned, and detailed guidelines should be developed and published to assist entities subject to the AML/CFT provisions in the implementation of all of their customer due diligence obligations.
- The consultation and collaboration process should be activated by further involving the professional associations of those subject to the AML/CFT provisions, particularly through the development of guidelines.

### **Concerning the DNFBBPs**

- The CTAF and the supervisory and self-regulatory authorities should increase the DNFBBPs' awareness of their exposure to ML/FT risks. The supervisory authorities should improve the DNFBBPs' knowledge of the AML/CFT law and systematically organize AML/FT supervision in their sectors. Finally, the DNFBBPs should be closely involved in risk analysis.

## 7. LEGAL PERSONS AND ARRANGEMENTS

### Key findings:

- Based on the STRs received, the use of legal persons for criminal purposes has been identified as a significant risk in Tunisia, and the CTAF Steering Committee has launched three sectoral studies on the vulnerability of associations and companies operating in the international trade and services sectors to better understand these risks and identify risk mitigation measures.
- Following the AML/CFT evaluation of Tunisia in 2006, the Tunisian legal framework for the creation of companies was enhanced to increase transparency regarding companies. The identification of beneficial owners within the meaning of Recommendation 24 is still deficient, particularly in the case of chains of companies.
- Sanctions (fines) are included in the laws and regulations for violations of the transparency requirements, particularly the obligation to update data. However, these sanctions are not applied and the established fines are not dissuasive. The failure to impose sanctions tends to hamper timely access to information on beneficial owners.
- Tunisia does not have a legal framework applicable to trusts as these legal arrangements are not known. As trusts are not explicitly prohibited in national laws and regulations, it is possible for foreign trustees to establish business relations with Tunisian financial institutions or DNFbps, for a foreign trust or similar arrangement to own assets in Tunisia, or for a Tunisian lawyer or any other person to act as trustee/manager of an asset located abroad or in Tunisia or to act on behalf of a trust established under foreign law. Notwithstanding these situations, no specific anti-money laundering measure is provided in Tunisian law or the AML/CFT law to identify beneficial owners and ensure the transparency of transactions.

### 7.1 Background

#### (a) Presentation of legal persons

##### *Types of legal persons*

342. According to Law 2000-93 of November 3, 2000 enacting the Commercial Companies Code, there are five types of companies in Tunisia: general partnerships (*sociétés en nom collectif*), limited partnerships (*sociétés en commandite simple*), jointly owned companies (*sociétés en participation*), limited liability companies (*sociétés à responsabilité limitée—SARL*) and joint stock companies (*sociétés par actions*), which can be either public limited companies (*sociétés anonymes—SA*) or partnerships limited by shares (*sociétés en commandite par actions*).

343. The SARL is the most common form of company in Tunisia. It is an accessible structure as it requires a small capital contribution (D1,000 or the equivalent in foreign currency) and a limited number of founders at the time of its establishment (one only for sole proprietorships and a minimum of two for a traditional SARL). The articles of association for SARLs must include information on the founding legal and natural persons. A register of partners is kept at the head office under the responsibility of the manager (Article 111 of the 2000 law). When the share capital is equal to or exceeds D20,000, the partners must appoint an external auditor (Article 123 of the 2000 law). For SAs, external auditors are appointed by the General Meeting of Shareholders upon the full subscription of the share capital (Article 172 of the 2000

law). The external auditors ensure that the register of shareholders is maintained and updated, by the SA itself if it is not listed or by the securities broker in the case of SAs listed on the stock exchange

### ***Commercial Register***

344. According to Law 94-44 of May 2, 1995 on the Commercial Register, amended by Law 2010-15 of April 14, 2010, legal persons must apply for registration to the registry office of the court in the jurisdiction in which their head office is located. The registrar is required to verify the documentation and continuous consistency between the information included in the Commercial Register and the actual situation. In parallel to the local commercial registers held at the courts of first instance, a central register, including all information and instruments, is held by the National Institute of Normalization and Industrial Property (INNORPI) and centralizes the information included in each local register located in the offices of the registrars of the 27 courts of first instance and the 3 one-stop shops of the Industrial Promotion Agency (API) for Tunis, Sousse and Sfax.

### ***Associations***

345. The other legal persons are nonprofit organizations (NPOs) in the form of associations. Decree-Law 88 of September 24, 2011 eliminates the licensing and prior authorization procedures and establishes a declaration regime, thus guaranteeing the free establishment of associations. They can be created by two or more Tunisian or foreign natural persons who decide to work permanently for the achievement of objectives other than profit. While the system for the establishment of associations is declaratory, it is nonetheless necessary to obtain certification from a court officer-notary that the form and content requirements for the documents have been met. The association is deemed to be legally established once the registered letter with acknowledgment of receipt has been sent to the Secretary General of the Government, but it does not acquire the status of legal person until the date of publication in the Tunisian Official Gazette. The supervision of associations is limited—the supervisory authority has finite resources (see Section IV of the DAR), although an external auditor must be appointed when the resources of the association exceed D 100,000. For more information on the legal arrangements for associations, see Section III, Recommendation 8, of the Technical Compliance Report.

346. Statistics on companies in Tunisia (the mission was not able to obtain statistics on the number of foreign companies operating in Tunisia):

<b>Data on legal persons, 2014</b>	
<b>Type</b>	<b>Number</b>
Private limited liability company ( <i>société privée à responsabilité limitée</i> )	124,020
Public limited company ( <i>société anonyme</i> )	6,228
General partnership ( <i>société en nom collectif</i> )	204
Limited partnership ( <i>société en commandite simple</i> )	66
Jointly owned company ( <i>société en participation</i> )	-
Association	17,750

Source: General Directorate of Taxes, Ministry of Finance.

### (b) Presentation of legal arrangements

347. Tunisia's national law does not provide for trusts or similar legal arrangements in Tunisia and these arrangements do not exist in practice according to information collected by the assessment team. As trusts are not specifically prohibited in the national laws and regulations, it is possible in principle for foreign trustees to establish business relations with Tunisian financial institutions or DNFBPs, for a foreign trust

or similar arrangement to own assets in Tunisia, or for a Tunisian lawyer or any other person to act as trustee/manager of property located abroad or in Tunisia or on behalf of a trust established under foreign law. Despite this, no specific anti-money laundering measure is provided by Tunisian law or the AML/CFT law to identify beneficial owners and ensure the transparency of transactions. We should note that foreign trustees are not required to declare their status to financial institutions (or DNFBPs) when they establish business relations.

(c) International context for legal persons and arrangements

348. Tunisia is not an international center for the establishment and administration of companies or legal arrangements. Nonetheless, the increase in the number of import-export companies – the corporate purpose of which is contested – controlled by a growing number of foreign nationals (particularly Libyans) is a recent source of concern for the Tunisian authorities. According to the CTAF, STRs on high-value financial transactions conducted by legal persons owned by Libyans (international trade companies, service providers, etc.) without real activities in Tunisia were analyzed and referred to the courts, as the origin of the funds could not be identified. It should be noted that with the recent increase in the flow of refugees crossing the border, the number of Libyan nationals in Tunisia is rising, reaching 1 million in 2015, or 10 percent of the Tunisian population.

**7.3 Effectiveness: Immediate Outcome 5 (Legal persons and arrangements)**

*(a) Information on legal persons and arrangements*

349. Tunisia has mechanisms identifying and describing the various types, forms and characteristics of legal persons that can be established under Tunisian law. The various forms of company are described on some websites.<sup>37</sup> The procedures and the list of documents required for the creation of legal persons are also accessible to the public on several official websites.<sup>38</sup> Similar information is available for associations.<sup>39</sup>

350. A wide range of basic information on legal persons is available in registries maintained by the court of first instance. As well, the establishment of a central registry by INNORPI facilitates public access to this information, including access by entities subject to the AML/CFT provisions. Representatives of these entities and the public authorities interviewed by the mission are satisfied with INNORPI's operation and consider its information to be reliable.

*(b) Identification of the risks and vulnerabilities of legal persons*

351. The Tunisian authorities have thus far not taken any comprehensive structured action to identify and assess the ML/FT vulnerabilities of legal persons, by type of company, sector, etc. However, the authorities have a good understanding of the risks related to the abusive use of companies for money laundering purposes, particularly the laundering of the proceeds of corruption. These risks have been targeted by the CTAF and the law enforcement authorities: 29 cases referred to the courts by the CTAF

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<sup>37</sup> For example, <http://www.tunisie-societe.com/index.php/fr/constitution-societe-en-tunisie/guide-de-linvestisseur-formes-juridiques-societes-tunisie> or [http://www.blogavocat.fr/space/mathieu.croizet/content/tunisie---synthese-des-principaux-types-de-societes-commerciales\\_ada8da61-e747-4ebb-9559-4665b9b127fc](http://www.blogavocat.fr/space/mathieu.croizet/content/tunisie---synthese-des-principaux-types-de-societes-commerciales_ada8da61-e747-4ebb-9559-4665b9b127fc).

<sup>38</sup> For example, the Commercial Register website: <http://www.registre-commerce.tn/guide.html> or the website of the Ministry of Industry, Energy and Mines: <http://www.tunisieindustrie.nat.tn/fr/home.asp>.

<sup>39</sup> On the website of the Associations Advisory Council: <http://bac-associations.tn>.

out of 80 involved the use of shell companies and, according to the judicial authorities, a large number of cases involved the laundering of the proceeds of corruption connected with the former Ben Ali regime involving Tunisian companies, in some case held by foreign companies (companies registered in Panama, the British Virgin Islands and other financial centers).

352. Moreover, on the basis of suspicious transaction reports received and processed by the CTAF and the strategic analysis of these cases, the companies involved in the international trade and services sectors, particularly offshore companies (Tunisian companies doing business exclusively with nonresidents), post office box companies and companies involved primarily in technical assistance and consulting were identified as particularly vulnerable to money laundering. Typology exercises involving companies operating in foreign trade established in tax havens or shell companies were published by the CTAF. More in-depth risk analyses will be conducted of these vulnerabilities in the context of two sectoral studies by the CTAF Steering Committee on the abusive use of legal persons operating in the international trade and services sector. The results of these studies will be taken into account in the national study on ML/FT risks by the Steering Committee for the National Risk Assessment. The risks have thus been identified but they have not yet given rise to specific coordinated mitigation measures. We should note in particular that these sectors are not considered to be risky by the entities subject to the AML/CFT provisions.

353. The abusive use of associations for terrorist financing and money laundering, particularly the illicit financing of political parties, is a concern that is largely shared by the Tunisian authorities and the private sector. This vulnerability will be the subject of a third sectoral study commissioned by the Steering Committee, the results of which will be taken into account by the Steering Committee responsible for the National Risk Assessment.

*(c) Mitigating measures to prevent the use of legal persons and arrangements for ML/FT purposes*

354. In the case of companies, the objective of the National Risk Assessment, particularly the sectoral studies on international trade and services companies and associations, is to identify and introduce specific measures to ensure that these structures are not used for criminal purposes. As these studies have not yet been completed, no specific measure has thus far been adopted by the authorities in these areas, apart from the transparency measures contained in the laws and regulations. Following the AML/FT evaluation in 2006, Law 2010-15 on the Commercial Register and Law 2000-93 on the Commercial Companies Code enhanced the transparency measures applicable to commercial companies (see Technical Analysis Report, Annex 1). Moreover, the establishment of INNORPI is a step forward as it makes it possible to obtain reliable information on companies

355. Significant measures have been adopted by the authorities to deal with the specific risks related to the abusive use of associations for the financing of terrorism, in particular:

- a. the decision to suspend the activities of 157 associations suspected of facilitating the departure of young Tunisians wishing to fight for extremist and terrorist organizations in Syria or Iraq;
- b. the creation in the Secretariat General of the Government of a General Directorate of Associations (Decree 2013-4573 of November 8, 2013) to ensure oversight of nonprofit legal persons;
- c. the adoption by the central bank of a guidance dated November 7, 2013 imposing enhanced customer due diligence measures for the opening of accounts and oversight of financial operations of associations and political parties.

356. It should be noted that the General Directorate of Associations has a small staff of 6 officials, which does not allow it to ensure continuous effective supervision of the associations sector, and the inspections conducted are ad hoc, on the basis of requests from the Ministry of the Interior. This directorate was nonetheless involved in the case of the 157 associations whose activities were frozen for the purposes of conducting paper trail investigations. Following these investigations, 3 of the 157 associations were suspended (see Section III of the DAR for more information on the supervision of associations).

357. The CTAF has conducted awareness-raising with banks to ensure that they pay particular attention to business relations with associations and political parties. Nonetheless, the attention on associations has focused primarily on the financing of terrorism and less on the risk of money laundering. Typology exercises conducted by the CTAF are published in the annual report of the unit and are accessible to those subject to the AML/CFT law.

*(d) Reliable and accurate basic and beneficial ownership information on legal persons*

#### **Basic information:**

358. The financial institutions and DNFBPs interviewed and the competent authorities can obtain basic information on legal persons created in Tunisia in a timely manner. The authorities indicated that they did not have difficulty in obtaining satisfactory information. The use of the INNORPI site is preferred in the search for basic information. This website provides official information that is updated every 24 hours by means of a system for data synchronization with the local registers of the courts and the central Commercial Register. The following information can be found there: legal information entered into the Commercial Register and the financial statements and articles of association of Tunisian companies. A fee is charged for access to the various types of information. Based on the information needed, the price varies between D5 (for the identity record of the company) and D20 (for the entire file of the formalities completed by the company).<sup>40</sup> However, the information available in the various registries is not always up to date. The obligation to update the information reported to the Commercial Register in the case of changes is established by the law of April 14, 2010, but no effective oversight measures are assigned to the personnel responsible for the commercial registers. The accuracy of the information can therefore not be guaranteed. Furthermore, the transfer of shares is not subject to the publication obligation for SAs whose articles of association do not include transfer conditions.

359. For companies listed on the stock exchange, the register of stocks and bonds is kept by the securities broker and there is therefore no problem in obtaining information on shareholders. For unlisted companies, the register of shareholders is kept by the company itself, which must report it to the Financial Market Board. The external auditor may obtain an interim ex parte order from the court to obtain the information needed on the shareholders.

#### **Beneficial ownership information:**

360. The identification of beneficial owners in Tunisia involves the use of information contained in the Commercial Register and information held by entities subject to the AML/CFT provisions under the customer due diligence measures, which involve the obligation to take reasonable steps to identify the natural persons controlling a legal person and requires the involvement of the powers of the judicial authorities in the case of chains of companies. In practice, the entities subject to the AML/CFT provisions and LEAs interviewed by the mission indicate that they need the articles of association and an extract from the Commercial Register for the identification of legal persons. These entities acknowledge encountering difficulties in identifying beneficial owners when there is a link with other countries and in the case of

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<sup>40</sup> D15,000 must be paid to obtain the articles of association of the legal person.



chains of companies. When a company is held by another company, the Commercial Register mentions only the name of the shareholding company and does not indicate the natural persons ultimately exercising effective control over that company. If the shareholding company is Tunisian, consultation of the Commercial Register regarding the second company is possible – the law enforcement authorities indicate that they have no difficulty in this kind of case, which they frequently encounter. Significant difficulties were reported to the mission by these same authorities in cases of arrangements involving foreign companies, where the identification of beneficial owners is complex, if not impossible.

361. Another weakness of the Tunisian mechanism concerns the possibility for a company to be appointed as a member of the board of directors of an SA, without the identification of the beneficial owners of that company being required. Only natural persons may be appointed, but they are not obliged to identify the persons on whose behalf they are acting.

362. Regardless of the effectiveness of the legal framework in Tunisia, the importance of the informal sector in Tunisia constitutes an obstacle to obtaining accurate up-to-date information on economic agents. The informal sector is estimated to represent between 20 percent and 50 percent of total economic activity.

*(e) Sanctions*

363. The Tunisian legal framework establishes a system of sanctions against persons who do not comply with the transparency requirements for legal persons. However, the sanctions established are neither effective nor dissuasive – for example, a fine of just D100 to D1,000 is provided for any inaccurate or incomplete information provided in bad faith for registration. No statistical data were provided to the assessment team regarding the application of the system of sanctions, but the indications the team did receive show that the sanctions system is not implemented in practice. The commercial court registrar verifies the documentation and must ensure the continuous consistency between the information registered and the actual situation of the legal person, but in practice this task is jeopardized by the lack of dedicated personnel.

364. No statistics were provided to the assessment team on the number of criminal prosecutions and ultimate criminal or administrative sanctions, such as judicial orders for the winding up of entities in the case of their refusal to provide information. Based on information received by the assessment team, this sanction regime is not implemented in Tunisia where violations of transparency requirements are not detected or sanctioned. This lack of implementation prevents assessors from assessing the effectiveness of such.

365. Finally, Tunisia has not established central criminal records for legal persons. As a result there is no centralized access to information on criminal convictions that may have been handed down.

*(f) International cooperation to request and provide appropriate assistance in the identification and sharing of information on legal persons and arrangements*

366. Access to basic information on Tunisian legal persons is available online via INNORPI. The information is available in French and Arabic.

367. In general, the national authorities, including the CTAF and the law enforcement authorities, consider the quality of international cooperation (incoming and outgoing) on the identification and sharing of information on legal persons to be satisfactory. At the request of a foreign authority, the competent Tunisian authorities fully use their investigative powers to collect and provide the required information to those authorities in a timely manner (see Section 8).

368. In the case of foreign legal persons, the Public Prosecution Office has indicated that it depends entirely on police information obtained via international cooperation or letters rogatory addressed to its foreign counterparts.

369. The responses from the countries asked to provide feedback on international cooperation with Tunisia did not indicate any particular difficulties regarding the quality of information received on legal persons or how quickly such information is normally provided.

#### **IDENTIFICATION OF BENEFICIAL OWNERS**

Identification of beneficial owners is partially possible in Tunisia. In circumstances where shareholders and members of the board are not acting on another person's behalf, referring to the register allows access to basic information on legal entities and beneficial owners when the shareholders are natural persons or other Tunisian companies. In an investigation setting, other actors such as lawyers, notaries, accountants or real estate agents may also help identify beneficial owners.

However, some difficulties deny Tunisian authorities timely access to basic and beneficial owner accurate and up-to-date information:

- Updating data contained in the registries is not effectively implemented.
- The AML/CFT law requires entities subject to its provisions to identify beneficial owners. However, the financial institutions and DNFBPs interviewed by the team do not always distinguish between the concept of legal ownership of the legal person and the concept of beneficial ownership. The implementation of customer due diligence measures is limited to the banking sector and very insufficient among DNFBPs. Entities subject to the AML/CFT provisions interviewed by the team indicate that they simply use the articles of association of the company and an extract from the register for purposes of identification.
- The Commercial Register indicates only the largest shareholder, in the case of a company, and does not mention the natural persons that ultimately exercise effective control over the company.
- The identification of beneficial owners in the case of chains of companies with a link to other countries is difficult and requires the implementation of international cooperation, which does not always make it possible to obtain the information in a timely manner.
- A company can be appointed as a member of the board of directors of an SA without it being necessary to identify the beneficial owners of that company; only a representative natural person must be appointed.
- The transfer of shares is not subject to the publication obligation for SAs whose articles of association do not include transfer conditions.
- In the case of shareholders or members of the board acting on behalf of another person, including under a power of attorney, the Tunisian legal framework does not include any requirements to disclose the identity of the person designating them.

## ***Conclusion:***

370. Tunisia has a system allowing public access to information regarding the establishment and types of legal persons (5.1).

371. The ML/FT risk assessment linked to the use of legal persons is not complete. However, it is clear from the assessor's interviews that Tunisian authorities consider that it is a high risk sector and the identification of concrete measures to reinforce the national system is one of the objectives of sectorial studies planned by the steering committee of the CTAF. In the case of terrorism financing risks through the NGO sector, suspension measures were taken against NGOs (5.2 and 5.3).

372. Obtaining basic information and information on the beneficial owners of legal persons in cases where shares are held by other Tunisian companies through consulting the registers is made difficult by the absence of a disclosure obligation for shareholders and members of the board acting on behalf of another person (nominee shareholders). The absence of a publication requirement for the transfer of shares for SAs whose articles of association do not include transfer conditions adds to practical difficulties identified in the implementation of the update of data in the registers. Difficulties are also perceived by the authorities in cases where foreign companies own share in a Tunisian company, because the identification of beneficial owners relies on international cooperation and cannot be done in a timely fashion (5.4).

373. Tunisia does not have a legal framework applicable to trusts since these legal arrangements are not known. However, since trusts are not explicitly banned according to national legislation, it is possible for foreign trustees to establish business relationships with Tunisian financial institutions or DNFBPs or for a foreign trust or similar arrangement to own properties in Tunisia. A Tunisian lawyer or any other person acting as a "trustee"/manager of a property abroad or in Tunisia or a trust established under a foreign law can similarly act in various circumstances. In light of this situation, no particular measure is stipulated by Tunisian laws including the AML/CFT law to identify beneficial owners and guarantee the transparency of transactions in line with AML measures (5.5)

374. The Tunisian sanctions regime against persons violating information and transparency requirements is not effective, proportionate and dissuasive. Only fines are stipulated and sanctions are not applied in reality, since the means available to commercial court clerks are limited and do not allow for an effective verification of information (5.6)

375. **Tunisia has achieved a low level of effectiveness for Immediate Outcome 5.**

### ***7.4 Recommendations on legal persons and arrangements***

- On the understanding of the ML/FT risks: the Steering Committee should finalize the three studies in progress. However, beyond a sectoral approach based on the strategic analysis of the STRs, which are mainly submitted by banks, a more comprehensive, cross-cutting analysis methodology should be adopted for the risks related to the various types of legal persons and should involve other persons subject to the AML/CFT provisions—including lawyers and auditors, who provide services for the creation and monitoring of companies, particularly the audit of the accounts. The supervisory authorities for the legal persons concerned, particularly associations, should be involved in these exercises. This study should provide a better understanding of the situation in the country as regards trusts and other similar legal arrangements
- On the verification of the basic data on legal persons: increase the resources assigned to the units of the commercial courts responsible for verifying the documentation submitted to the registries so

that they have the resources needed to ensure the continuous consistency between the information in the registries and the actual situation of the companies.

- On the identification of beneficial owners: Tunisia should review its legal framework to include the obligation to identify the beneficial owners of legal persons and the obligation for foreign trustees to declare their status to the entities subject to the AML/CFT provisions when they establish a business relationship. Consideration should be given to the establishment of an effective mechanism for the provision of adequate, accurate and up-to-date information on the beneficial owners of legal persons, for example via the information recorded in the commercial registers or by other means.
- Review the legal framework applicable to legal persons to impose an obligation for nominee shareholders and board members to divulge the identity of the person that appointed them.
- Review Customer's Due Diligence measures, through the issuance of a directive from the CTAF to introduce a requirement for parties to a trust to declare their status to financial institutions as well as DNFBPs whenever they establish a business relationship. Tunisia should conduct programs for awareness-raising and the mobilization of persons subject to the AML/CFT provisions involved in the life of companies (lawyers, notaries, accountants and auditors), who for the moment do not implement a preventive AML/CFT system and thus do not reduce the risks of abusive use of legal persons for ML/FT purposes.
- Tunisia should review its system of sanctions for violations of the transparency obligations by legal persons to make them more effective and more dissuasive. The human resources assigned to the registry offices of the commercial courts should be increased to ensure implementation of the system of sanctions. The resources of the units responsible for tracking the activities of associations should also be increased.

## 8. INTERNATIONAL COOPERATION

### *Key findings*

- There has been increased international cooperation since 2011 on cases relating to the corruption of the former regime and the laundering of its profits. Tunisia seems to have an open and collaborative approach to international cooperation. However, a lack of resources and/or priority can delay or hamper the provision of the full support required by the foreign authorities.
- Several requests for mutual assistance in these cases have led to the identification, seizure, freezing, confiscation and repatriation of assets to Tunisia (including US\$28 million in Lebanon, two yachts in Spain and Italy and two aircraft in France and Switzerland).
- Despite progress, related in particular to the efforts deployed in the context of the Arab Forum on Asset Recovery and the plenaries of the StAR-Interpol Global Focal Point Network on Asset Recovery, numerous requests for mutual assistance or extradition have not been fulfilled and some requests have been considered insufficiently precise or justified by Tunisia's partners.
- The CTAF has developed its information-sharing with foreign FIUs since its admission to the Egmont Group in 2012 and in the context of bilateral memoranda with nonmember countries of the Egmont Group. These counterparts (particularly in Lebanon and Jordan) have considered the requests to be very satisfactory or satisfactory.
- The Criminal Investigation Directorate provided the assessment team with examples of assistance provided to their foreign counterparts in cases of ML/FT and related offenses.

### *8.1 Background*

376. Tunisia has signed bilateral mutual assistance agreements with numerous countries (list attached). Requests for legal mutual assistance are received by the Ministry of Justice and, in some cases, the Ministry of Foreign Affairs. For extraditions, the Ministry of Foreign Affairs receives the files and transfers them to the Ministry of Justice for checking to ensure that they are in order. An emergency procedure exists that allows for the direct exchange of letters rogatory between judicial authorities.

### *8.3 Effectiveness: Immediate Outcome 2 (International Cooperation)*

377. Tunisia's legal framework allows for extradition and mutual legal assistance in civil, commercial and criminal matters. Extradition and mutual legal assistance are authorized by the signing of various types of agreements: international agreements or treaties and simplified agreements such as protocols and memoranda.

378. While judicial cooperation between Tunisia and many countries is mainly bilateral, Tunisia is a signatory to the Convention on Mutual Legal and Judicial Assistance concluded by the Arab Maghreb countries (Ras Lanouf, March 9-10, 1991), the Arab Riyadh Convention on Judicial Cooperation and Extradition, and the Merida Convention (U.N. Convention against Corruption). The latter convention has been invoked by Tunisia on numerous occasions in the context of international investigations conducted since February 2011 for the freezing and recovery of assets misappropriated by officials of the former regime headed by Ben Ali.

379. In cases in which there is no convention, Tunisia can respond to requests for mutual assistance on the basis of reciprocity. Letters rogatory or requests for international mutual assistance are received through diplomatic channels and transmitted to the Ministry of Justice. When the file arrives at the Ministry of Foreign Affairs, it is forwarded to the Ministry of Justice (General Directorate of Criminal Affairs) within one week and then within two weeks to the investigating judge. The file is then sent by mail by a competent employee of the International Cooperation Department. There is no specific mechanism for assessing or prioritizing requests for assistance but an emergency procedure can accelerate the sharing of information between judicial authorities.

380. While Tunisia states that it has taken measures to ensure that mutual legal assistance is provided in a timely manner, there are no official statistics available regarding Tunisia's response times to such requests.

### ***Mutual legal assistance***

381. Based on the findings of the assessors, international cooperation in the combating of corruption has developed significantly since 2011.

382. Tunisia has given priority to using mutual legal assistance for investigations into corruption and money laundering related to the corruption of the former regime of President Ben Ali. Many requests for mutual assistance were nonetheless based solely on the lists of persons under suspicion and not on a precise and detailed presentation of the facts, which has harmed the effectiveness of these efforts. At the request of several countries, the Tunisian authorities subsequently provided more detailed documents and analyses to the foreign authorities contacted.

383. **Table 16: Statistics provided by the General Directorate of Criminal Affairs on the Number of International Letters Rogatory Issued against Former President Ben Ali.**

	<b>Initial Letter Rogatory</b>	<b>Supplementary Letter Rogatory</b>	<b>Total</b>
Arab countries	15	12	27
European countries	23	22	45
Countries in the Americas	8	7	15
African countries	2	0	2
Total	48	41	89

*Source:* Statistics from the Ministry of Justice-Criminal Affairs.

384. Tunisia indicates that the investigating judges sent a total of 296 arrest warrants to Interpol in connection with cases of corruption and money laundering linked to the former regime.

385. According to figures provided by the Ministry of Justice, Tunisia sent 60 initial letters rogatory (CRIs) between 2011 and 2014 and received:

- 35 partial execution responses
- 20 non-responses.
- 5 negative responses (or non-presence in the country of the assets of the persons in question).

386. During the same period, Tunisia indicates that it received 9 CRIs, which were executed. No statistics were provided on the CRIs involving ML/FT.

**Table 17: Number of CRIs received and sent**

	# of CRIs received	# of CRIs sent	# of partial executions	# of negative responses	# of non-responses	Assets and amounts repatriated
Algeria	1	2	-	-	2	-
Morocco	-	1	-	-	1	-
Saudi Arabia	-	2	-	-	2	-
Qatar	-	4	2	-	2	-
United Arab Emirates	-	8	3	1	4	
Lebanon	-	3	2	-	1	28M\$
France	3	9	8	-	1	-
Switzerland	3	8	4	-	4	Yacht
Italy	-	3	3	-	-	Yacht
Spain	-	3	3	-	-	-
Canada	-	5	5	-	-	-
USA	-	2	2	-	-	-
Luxemburg	1	3	3	-	-	-
Belgium	-	1	-	1	-	-
Argentina	-	3	-	3	-	-
U.K.	1	3	-	-	3	-
<b>TOTAL</b>	<b>9</b>	<b>60</b>	<b>35</b>	<b>5</b>	<b>20</b>	<b>-</b>

(Statistics provided by the Ministry of Justice – Criminal Affairs)

387. The overall statistics provided by the General Directorate of Criminal Affairs indicate that Tunisia sent 354 requests for mutual legal assistance, including 100 requests for mutual assistance relating to money laundering, 3 relating to terrorism and 105 relating to corruption. It received 254 requests for mutual legal assistance, including 12 relating to money laundering, 1 relating to terrorist financing and 2 relating to terrorism. The requests for mutual assistance primarily concern corruption and do not fully correspond to the risks of terrorism and terrorist financing.

**Table 18: Mutual Legal Assistance and Extradition requests.**

	Requests for Mutual Legal Assistance		Extradition Requests	
	Received	Sent	Received	Sent
All crimes	222	146	16	22
Corruption	11	105	2	9
Money laundering	12	100	-	6
Terrorism	8	3	-	-
Terrorist financing	1	-	-	-
<b>Total</b>	<b>254</b>	<b>354</b>	<b>18</b>	<b>37</b>

(Statistics provided by the Ministry of Justice – General Directorate of Criminal Affairs)

388. During the meeting, the Ministry of Justice also provided the assessors with the following tables, which show results different from those shown in the previous tables:

**Table 19: Number of CRIs received and sent**

CRI	Sent		Received	
	Provided	In process	Provided	In process
2011	19	14	41	17
2012	6	9	30	10
2013	9	16	28	16
2014	0	23	13	56
Total	96		211	

389. These statistics on mutual legal assistance indicate that Tunisia received 211 requests for mutual legal assistance and responded to 102. The statistics provided by the Tunisian authorities indicate that some requests for mutual legal assistance received since 2011 have not yet had a response. The assessment team did not receive any precise information on the execution of the requests received and the reasons for the delay. The system for the management of the files within the Ministry of Justice is still very basic.

390. Tunisia has also sent numerous requests for mutual legal assistance.

391. Several letters rogatory and requests for the freezing or seizure of assets have been executed by foreign countries, for example:

- CHF 34.5 million confiscated by Switzerland. The recent repatriation of the funds was decided by the Prosecutor General of the Confederation but an appeal procedure is under way.
- US\$28 million confiscated by Lebanon.
- Two yachts returned by Italy and Spain and two aircraft returned by France and Switzerland.

392. In 2014, at the request of Tunisia, France froze the financial assets of two nonprofit organizations owing to suspected or established relations with the financing of terrorism. Several buildings located in Paris were seized by the French judicial authorities at the request of their Tunisian counterparts in the context of procedures for the recovery of ill-gotten gains.

393. Several countries have provided comments on the quality of the requests for mutual assistance from Tunisia. In February 2011, for example, one country received a request for assistance for the identification, seizure, confiscation or repatriation of ill-gotten gains that might be located on its territories. The authorities indicated that Tunisia's request contained insufficient information on the alleged offenses or their link with its territory (location of the assets, individuals, transfers, etc.). Despite these deficiencies, the authorities conducted the preliminary investigations. Although a large number of requests for information (property titles, bank accounts, etc.) were made, they were unable to identify the goods covered by the request. In the end, in the absence of specific information connecting the persons indicated, the offenses or the assets to the country in question, the assistance that it was able to provide at Tunisia's request was limited.

394. The country thus suggested that in future the following information could be included in the request:



- a description of the presumed offenses;
- a declaration providing a summary of the facts and the relevant laws;
- the subject of the request;
- any specific information that could help the Australian authorities in processing the request (for example, the connection to Australia, including known bank accounts, travel in Australia, contact with Australian individuals, etc.).

395. Many foreign authorities have requested supplementary information similar to that mentioned by the above country. In the context of meetings of the Arab Forum on Asset Recovery in Doha (2012), Marrakesh (2013) and Geneva (2014), as well as those organized alongside the plenaries of the StAR-Interpol Global Focal Point Network on Asset Recovery in Lyon (2011) Amman (2012), Bangkok (2013) and Vienna (2014), the Tunisian authorities have endeavored to complete and explain their requests to the numerous countries concerned by these cases (in particular France, Switzerland, Lebanon, Italy, Spain, etc.).

396. These matters and the cases discussed with the team show that the Tunisian authorities have sent numerous requests for mutual assistance to their foreign counterparts that were insufficiently substantiated or lacked the necessary details for analysis and execution of the requests. Few cases concerned terrorism and its financing, with the accent since 2011 clearly on corruption and money laundering. The contradictions between the figures sent and the figures obtained on-site during the assessment mission and the lack of clarity regarding the dates and the purpose of the data transmitted makes it difficult to assess effectiveness in the area of international cooperation. An effort to establish and update the data on international cooperation is needed. The system for the management of files at the Ministry of Justice does not allow for optimal, comprehensive monitoring of files and statistics, and response times are sometimes very long. The Ministry of Justice clearly has insufficient resources and is not well organized. Internal coordination has been provided by the Committee for the Recovery of Ill-Gotten Gains in the case of transnational cases relating to corruption. This committee ceased operations in 2015 and, by definition, covered only certain risks such as the financing of terrorism and smuggling. A similar body to mobilize and coordinate the various participants in judicial and administrative cooperation would appear to be necessary for proactive management of the international aspects of money laundering, terrorist financing, corruption, smuggling and transnational trafficking cases.

### ***Extradition***

397. Extradition requests are addressed to the Tunisian government via diplomatic channels. There are, however, some limits on extradition to the extent that Tunisian citizens cannot be extradited. They can, however, be prosecuted and judged directly by the Tunisian jurisdictions for offenses committed abroad. The quality of the assistance provided by Tunisia in the area of extradition does not seem to pose major problems despite the limited number of cases received by the Tunisian authorities since 2011 (19 requests for extradition).

**Table 20: Extradition requests sent and received**

<b>Year</b>	<b>Sent</b>	<b>Received</b>
2011	21	2
2012	8	6
2013	8	5
2014	7	6
<b>Total</b>	<b>44</b>	<b>19</b>

398. No accurate statistics were provided regarding the number of extradition requests executed, whether involving ML/FT offenses or not. According to the Tunisian authorities, in 2014 and 2015 two persons were extradited to Italy. The assessment team has no knowledge of a system for managing cases or any mechanisms to allow the competent authorities to select and prioritize requests.

#### ***Other forms of international cooperation***

399. Tunisia is a founding member of MENAFATF, having played an important role in its creation and expansion by attending the preparatory meetings. It is also a member of the Mutual Evaluation Working Group and the Typologies and Technical Assistance Working Group.

400. Moreover, the central bank can conclude bilateral cooperation agreements with the supervisory authorities of foreign countries that specifically include information-sharing. Since 2007, the BCT has concluded five cooperation agreements with its counterparts in foreign central banks, specifically the central banks of Morocco, Luxemburg, Romania, Portugal and Syria. These agreements cover the various aspects of cooperation, information-sharing and bank supervision, particularly in the case of the agreement with the Central Bank of Morocco. The mission does not have enough information to assess the quality of the cooperation with foreign supervisory authorities, as the only comments provided by the countries in response to questionnaires covered either mutual legal assistance or information-sharing between financial intelligence units.

401. A draft agreement to govern coordination among the various supervisory authorities, including the Ministry of Finance, has been prepared but has not yet been signed.

#### ***The CTAF***

402. Information-sharing by the CTAF with foreign FIUs has taken place since Tunisia's membership in the Egmont Group in 2012<sup>41</sup> via its secure channel, Egmont Secure Web.<sup>42</sup> Information is also shared in the context of bilateral memoranda of understanding, particularly with countries that are not members of the Egmont Group. The CTAF also requests assistance from its foreign counterparts. For example, one of these counterparts provided the assessors with the following data: between 2011 and 2014, this counterpart received six requests from the CTAF, one request from the Tunisian judicial authorities and three requests from the Tunisian embassy. Out of these 10 requests, six were considered very satisfactory or satisfactory.

403. Similarly, the CTAF followed up on requests for information from its foreign counterparts. The financial intelligence unit of one country indicated it had received a request for information from the CTAF that it deemed to be complete and accurate. Another counterpart indicated having received a full and satisfactory response in August 2014 to a request sent to the CTAF in February 2014 following the signing of a memorandum. On the basis of these responses, the team is satisfied with the way in which the CTAF is cooperating with its foreign counterparts.

404. It should be noted that this information-sharing is based on two essential principles: confidentiality conditions that are at least equal to those of the CTAF and use of the shared information solely for financial analysis in the processing of reports of suspicions of money laundering and terrorist financing. The

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<sup>41</sup> Since 2012, Tunisia has participated in the various meetings of the Egmont Group: Egmont Group Plenary of July 9-13, 2012 (Saint Petersburg, Russia), Egmont Group Plenary of July 1-5, 2013 (Sun City, South Africa) and the Working Groups of January 21-25, 2012 (Ostend, Belgium).

<sup>42</sup> Egmont Secure Web is a secure internet system that allows members of the Egmont Group to communicate via secure e-mail to request and share information on cases, typologies, analysis tools, etc.

information shared can be transmitted to the judicial authorities on either side only with the explicit prior agreement of the party concerned.

405. In 2013, the number of requests for international cooperation declined to about 75 requests, as against 91 in 2012. These requests for information are broken down into 49 received and 26 sent to and from the financial intelligence units in various countries. The statistics show that the greatest number of requests involved France, at 19, followed by the United Arab Emirates with 10.

***The criminal investigation services***

406. Tunisia has a seat on the Council of Ministers of the Arab Convention on the Suppression of Terrorism. Tunisia has signed agreements on organized crime with several foreign countries

407. The criminal investigation services play a central role in international police cooperation and have an important responsibility for the coordination of information with foreign police forces. Cooperation with foreign police forces essentially takes place via Interpol and the Arab Liaison Office in the context of the Council of Arab Interior Ministers. The cooperation is also based on direct contacts established between some police forces and their counterparts at embassies in Tunis.

408. The criminal investigation services provided the assessment team with examples of assistance given their foreign counterparts regarding predicate offenses:

- The interception of Diallou Ramatou, a Malian national, who was attempting to smuggle 1,500 g of cocaine. Information received by BCN Tunis via its counterpart in London.
- Interception of the ship Normad transporting 5,141 kg of cannabis and the arrest of four Spanish nationals. Information from the security attaché of the Embassy of France in Tunis.
- Arrest and extradition by Interpol Tunis to Italy of five individuals sought internationally over the past three years.

409. Statistic provided by the criminal investigation services on international cooperation:

**Table 21: Assistance requests received and issued**

Offenses	Assistance Requests Received		Assistance Requests Issued	Assistance Requests in Process
	2013	2104		
Fraud	5	5	23	15
Assets	1	4		
Money laundering	5	3		
Tax evasion	1	2		
Information on companies	9	3		
	11	17	38	

410. The statistics indicate a small number of assistance requests relating to money laundering. Out of 38 cases in 2013-2014, 15 have not been processed. The assessment team did not receive information on the time required to process and execute requests or the quality of the requests executed. Moreover, the

authorities did not provide statistics on requests sent by the police to its counterparts although there are significant domestic cases involving smuggling and trafficking of migrants or drugs that include international connections.

### *Customs*

411. Tunisia participates actively in the activities of the World Customs Organization. In the region, thematic operational meetings have been organized very regularly to promote the rapid circulation of information. The Tunisian General Directorate of Customs constantly develops partnerships with partner government departments and also with counterparts in countries such as Italy, France, Algeria and Libya owing to the volume of information shared.

412. Tunisian Customs participates in various international operations for the detection of smuggling and illegal immigration. Participation in these operations is concentrated on information-sharing with foreign customs authorities. One of the missions of the Customs Investigations Directorate has been to participate at the international level in investigations relating to efforts to combat fraud and to ensure coordination of research with regional customs departments and to collect information.

413. In the absence of statistics, it is difficult to assess the effectiveness of Customs in the area of international cooperation.

### **Conclusion**

414. Judging on the basis of quantitative and qualitative information, Tunisia has clearly adopted an open and collaborative approach in the area of international cooperation. Starting from zero in 2011, a very significant effort has enabled the Tunisian authorities to launch complex mutual legal assistance procedures, some of which have resulted in concrete results (e.g., the recovery of US\$29 million from Lebanon held in an account of the spouse of former President Ben Ali). Other assets, including two airplanes and two yachts owned by former officials or their associates were recovered in the context of requests sent to foreign authorities. Administrative cooperation mechanisms have been developed (membership of the CTAF in the Egmont Group, signing and implementation of memoranda, etc.). In particular, information sharing between the CTAF and its foreign counterparts, including in certain cases Law Enforcement authorities, has contributed to significant progress in international investigations of corruption or terrorist financing. The presence of foreign liaison magistrates in Tunisia and vice versa and frequent missions of Tunisian officials and magistrates abroad have made it possible to develop up permanent dialogue with countries that have sent mutual legal assistance requests to Tunisia or have received them from Tunisia. In some cases of extradition, this dialogue allowed for the step-by-step resolution of legal obstacles and movement toward a solution. However, the lack of resources, coordination and/or capacity to set priorities continues to delay or hamper the effectiveness of international cooperation. .

415. **Tunisia has achieved a moderate level of effectiveness for Immediate Outcome 2.**

#### *8.4 Recommendations on international cooperation*

- A more coherent and complete statistics system on international cooperation would allow for better tracking of cases and a more precise evaluation of the real level of effectiveness of cooperation.
- A mechanism for coordination and mobilization of the main national participants concerned in international cooperation on money laundering, terrorist financing, corruption, and smuggling and trafficking should be established or considered.

- There should be a better allocation of resources in the Ministry of Justice and the Financial Unit to ensure the processing and tracking of requests for mutual assistance sent or received by Tunisia.
- The development of a system to manage mutual legal assistance cases is essential and should be undertaken as soon as possible.
- The training of judges and the authorities responsible for international cooperation should be undertaken to enable them to draft requests for mutual assistance that respond to the needs of their foreign counterparts to the extent possible.
- The Tunisian authorities should continue to develop their use of administrative channels for international cooperation, particularly in the area of banking supervision.

## TECHNICAL COMPLIANCE ANNEX

1. This annex provides a detailed analysis of the Republic of Tunisia's level of compliance with the FATF Forty Recommendations. It does not include a description of the situation in the country or the risks to which it is exposed, but is limited to analyzing its technical compliance with the standards required by each Recommendation, and should be read in conjunction with the Detailed Assessment Report.

### NATIONAL AML/CFT POLICIES AND COORDINATION

#### *Recommendation 1 – Assessing risks & applying a risk-based approach*

2. **C. 1.1 and C. 1.2:** An assessment of the risks of money laundering and terrorist financing is now underway in Tunisia. During a meeting of the Inter-Ministerial Council held on June 18, 2014, the Tunisian Government ordered that a study be conducted to assess the level of ML/TF risks, and the meeting decided that a study to identify and assess AML/CFT risks should be conducted nationwide. To this end, it designated the Ministries of Justice and of the Interior, as well as the Tunisian Financial Analysis Commission [*Commission Tunisienne des Analyses Financières* CTAF] to coordinate and implement this study.

3. Tunisia's national risk assessment (NRA) is based on three approaches: an "interrogative" approach as regards the prevailing situation (a list has been drawn up identifying the threats and vulnerabilities on the basis of predicate offenses and specific questionnaires, a strategic analysis of suspicious transaction reports (STRs), and conducting sector studies); an empirical approach (national survey launched by the CTAF on the cross-border transport of cash in foreign banknotes with the collaboration of the customs authorities, the Ministry of the Interior, and private banks); and an academic approach consisting of field studies and targeted research.

4. There has been no analysis to date, however, that has yet led to a more thorough understanding of ML/TF risks nationally.

5. **C. 1.3:** According to the Tunisian authorities, the assessment of the country's ML/TF risks is underway.

6. **C. 1.4:** Once this study of the risks has been conducted and completed, Law 2003-75 of December 10, 2003 relative to supporting international efforts to combat terrorism and eradicate money laundering (the AML/CFT Law) states that the CTAF should be the channel for dissemination of results to all agencies and authorities concerned. Indeed, Article 80 provides that the CTAF shall:

*"[...] - - contribute to the study of programs that will be implemented to combat illegal financial channels, terrorist financing, and money laundering,  
- take part in research, and studies, and in general any activity related to the area for which it is responsible,  
- provide representation of the different departments and bodies involved in this area at the national and international level, and facilitate communication between them."*

7. **C. 1.5:** The Tunisian authorities have not yet adopted a risk-based approach stemming from a national study. Guidance 2013-15 to credit institutions (CIs) dated November 7, 2013 on the implementation of internal control rules for managing the ML/CFT risk distinguishes between simplified and enhanced due diligence measures when identifying customers that are associates or shareholders of corporations (Article 5). This approach is as follows:

- General and ongoing due diligence based on the real risk of money laundering and mandatory throughout the business relationship. This due diligence is simplified for some entities subject to a supervisory authority or for those in which the Government has a stake of at least 50 percent.
  - Enhanced due diligence for some business relationships (such as political parties, associations, etc.) and some operations particularly those of an unusual nature.
  - Special due diligence for business relationships with PEPs requiring the authorization of the board of directors or management, or any person responsible for pursuing business relationships with such persons.
  - Due diligence calibrated on the basis of the risk profile, based on the discretionary authority of credit institutions, in the context of an analysis based on detection limits (profiling, filtering). However, there is nothing to stop persons subject to regulation from extending their enhanced due diligence requirements to situations exempted from due diligence obligations by the regulations.
8. However, although this distinction demonstrates a desire for proportionality in the activities of credit institutions, it is not based on a national risk analysis communicated to the assessment team.
9. **C. 1.6:** On the basis of the regulations in place, the Tunisian authorities have provided certain simplified measures for identifying associates and shareholders of corporations (cf. C.1.5). Thus, identification measures are simplified only for customers who are corporations, the formation and line of business of which are strictly regulated by law, whether in terms of licensing, publication of information on their capital structure, or the activities in which they engage. Annex 2 of Guidance 2013-15 lists the corporations concerned.
10. **C. 1.7:** Notwithstanding the measures provided for in Guidance 2013-15, detailed above, Tunisia has not adopted a risk-based approach.
11. **C. 1.8/9:** No risk assessment has been completed to date.
12. **C. 1.10:** Article 4 of Guidance No. 2006-19 on internal control provides that the design of the internal control system lies with the governing body and must be approved by the Board of Directors or the Supervisory Board, which shall for this purpose:
- Identify all the sources of internal and external risks;
  - Establish a system for assessment of various risks and for measurement of profitability;
  - Develop a system linking the level of equity to risks;
  - Define suitable internal control procedures;
  - Define a method for overseeing compliance with internal policies; and
  - Provide the human and material resources needed to implement the internal controls.
13. Article 26 of Guidance No. 2013-15 provides that the internal procedures that credit institutions must develop to manage ML/TF risks are an integral part of the internal control system as defined by Article 3 of Guidance No. 2006-19.
14. Accordingly, the Tunisian regulatory system has provided the appropriate measures for identification by the credit institutions and for assessment of their risks.
15. For the managers of stocks and bonds portfolios (management companies, securities brokers, and credit institutions), Article 81 of the Regulations of the Financial Market Board (CMF) on mutual funds

and the management of portfolios of stocks and bonds for third parties provides that when establishing policies and procedures, the manager must consider the nature, size, complexity, and diversity of the services it provides and the activities in which it engages.

16. Furthermore, Article 13 of the CMF General Decision No. 17 of June 21, 2012 on the duty of the internal control and compliance assessment manager to monitor persons managing a stocks and bonds portfolio on behalf of third parties provides that the internal control and compliance assessment manager must draw up a mapping of the risk exposure by portfolio management line of business at least once a year. This analysis shall include an assessment for each risk, its potential impact, and the likelihood of its occurrence. Based on the annual risk mapping, the internal control and compliance assessment manager must draw up an annual work program that sets out the inspections to be carried out and their required frequency.

17. **C. 1.11:** The Tunisian legal provisions contain nothing to mitigate the ML/TF risks identified *ex ante* at the national level. There are typologies and lists of persons and entities to which special attention must be paid (see in particular the annexes to Guidance 2013-15 for the attention of credit institutions published by the Central Bank of Tunisia), but these representative examples are not the result of a national or even sectoral analysis of ML/TF risks.

18. **C. 1.12:** New Article 77 of the 2003 Law provides that “the authorities empowered to supervise the persons mentioned in Article 74 of this Law are responsible for developing programs and practices that are appropriate for combating money laundering and terrorist financing offenses and for ensuring that they are implemented. These programs and practices should include:

- A system for detecting suspicious operations and transactions,
- Internal control rules to ensure the effectiveness of the system ...”

The law thus gives a broad discretion to the regulatory authorities to determine the measures to be applied to individuals and institutions subject to their control. It is on the basis of this Article, for example, that BCT Guidance No. 2013-15 provided simplified measures for certain categories of customers, and enhanced measures for others.

### ***Weighting and Conclusion***

19. The institutional arrangements for risk assessment have been put in place. The NRA is underway and the Steering Committee is in the process of collecting and processing data, the analysis and consolidation of which will lead to a multisectoral analysis and the specific kind of actions to be taken. Furthermore, the main risks such as corruption, terrorism, and smuggling have been identified and measures have been taken to prevent and combat these threats. Finally, for credit institutions there are simplified and enhanced customer due diligence (CDD) measures for identifying customers that are associates or shareholders of corporations (Central Bank of Tunisia Guidance 2013-15).

20. However, a number of deficiencies are noted. The overall analysis is not completed and the absence to date of an AML/CFT policy and national strategy impedes comprehensive understanding of the risks (1.1). An authority has been designated to coordinate the national risk assessment (1.2), but the overall analysis of the latter is not up to date (1.3). The mechanisms for providing information on risk assessment results to different sectors are not clearly defined and applied (1.4). The risk-based approach is not widespread and is not based on any enhancement or a lessening of preventive measures defined in accordance with the gravity or triviality of the risks identified (1.5 and 1.6).



21. **Tunisia is partially compliant with Recommendation 1.**

***Recommendation 2 - National cooperation and coordination***

22. **C. 2.1:** The NRA is underway, and consequently any action based thereon has not yet been drawn up.

23. **C. 2.2:** The AML/CFT Law explicitly mandates that the Tunisian Financial Analysis Commission (CTAF) organize cooperation and coordination efforts at the national level to set out the policy guidelines for steps to be taken in combating money laundering. Article 80 of the Law also provides that the CTAF is responsible inter alia for establishing general guidelines applicable to persons subject to the provisions for the detection and reporting of suspicious operations and transactions. It must also ensure representation of the various departments and organizations concerned at the national and international level. Article 82 of the Law also specifies that the CTAF may seek the assistance of its foreign counterparts to which it is bound by Memoranda of Understanding in exchanging financial data that will ensure a rapid alert in cases of infringements targeted by this Law and prevent them from being carried out.

24. **C. 2.3:** According to Article 79 of the AML/TF Law, the CTAF has a Steering Committee that brings together experts from the Ministries of the Interior, Justice, and Finance, the Financial Market Board (CMF), the General Insurance Committee, the National Post Office, Customs, and an expert from the CTAF. The responsibilities of this Committee include studying programs to combat illicit financial channels and deal with terrorist financing and money laundering, and preparing guidelines applicable to persons subject to the provisions for the detection and reporting of suspicious operations and transactions. The Committee is also responsible for studying programs to combat illicit financial channels and the financing of terrorism. The Tunisian authorities have stated that the Committee is currently reviewing the policy to be implemented to prevent the financial sector from being used by nonresident shell corporations to abuse the freedom to own foreign currency accounts.

25. Also at the sectoral level, Article 46 of Law No 94-117 of November 14, 1994 on the reorganization of the financial market authorizes the Financial Market Board to cooperate with the banking and insurance regulatory authorities. To this end, it can conclude with these authorities agreements related in particular to:

- Exchange of information and experience;
- Organization of training programs; and
- Implementation of joint audit operations.

26. The Tunisian authorities have also indicated that in practice there is informal cooperation among the various regulators (BCT/CMF/CGA) and the CMF is represented in decision-making bodies of the other regulators (BCT/CGA). A draft cooperation agreement involving the three regulators (BCT, CGA, and CMF) to ensure financial stability is underway. This project will create a Financial Stability Board to facilitate cooperation between regulatory authorities and the execution of a macroprudential policy. Cooperation in controlling and combating money laundering and the financing of terrorism is one of the main goals of this agreement.

27. **C. 2.4:** The assessment team is not aware of any coordination mechanism established to combat the financing of proliferation of weapons of mass destruction.

***Weighting and Conclusion***

28. The Tunisian authorities work together on certain aspects of AML/CFT, including recently with the risks related to the security situation in neighboring countries. No mechanism has been established to combat the financing of proliferation of weapons of mass destruction. There is genuine coordination in the financial sector between the three regulators (BCT, CGA, and CMF). It appears however that this cooperation is done informally and there are no guidelines in this regard. The draft agreement drawn up between the Central Bank of Tunisia, the Financial Market Board (CMF), the General Insurance Committee (CGA), and the Microfinance Supervisory Authority provides expressly that those authorities should cooperate with each other and with the Tunisian Financial Analysis Commission in combating money laundering and the financing of terrorism. This cooperation will take the form of:

- Exchange of information and experience;
- Organization of training programs;
- Implementation of joint audit operations to assess the effectiveness of the internal control procedures of regulated institutions as regards combating money laundering and terrorist financing.

29. Pending adoption and implementation of this project, **Tunisia is partially compliant with Recommendation 2.**

### ***Recommendation 33 – Statistics***

30. **C. 33:** The Tunisian authorities have taken steps to improve the collection of data and statistics on AML/CFT. The CTAF has identified a set of figures covering the period from 2007 to the first half of 2014. These statistics include:

- The number of suspicious transaction reports received,
- The follow-ups to the reports processed,
- The number of freezes ordered by the CTAF,
- The number of cases referred to the public prosecutor, and
- The requests for national and international cooperation (requests sent and received).

31. These statistics also cover the number of investigations opened by the public prosecutor on the basis of CTAF reports, amounting on December 25, 2014 to 1,229 corruption cases and 135 money laundering cases (i.e. 1,364 in total). Indeed, the public prosecutor, after receiving the file from the CTAF, has five days to decide on whether to pursue the matter in court (Article 89 of the AML/CFT Law). Furthermore, Article 90 of this Law provides that “*Prosecutions, preliminary investigation, and trial in the area of money laundering offenses fall under the jurisdiction of the court of first instance in Tunis.*” Article 94 of the 2003 Law concerns procedures for the freezing of assets of individuals and businesses suspected of financing terrorism pursuant to Resolution 1373 of the Security Council (to date, 15 cases have been tried on the basis of this Article).

32. The authorities state that the General Inspectorate at the Ministry of Justice keeps statistics on ML/TF investigations, prosecutions, and convictions resulting from such investigations. In addition, the authorities indicate that application software was developed at the General Inspectorate of the Ministry of Justice for frozen or confiscated property. It was also stated that the General Directorate of Criminal Affairs attached to the Ministry of Justice keeps statistics and a runtime monitoring system for international letters rogatory sent and received. Statistics were provided to the assessors in this regard.

### ***Weighting and Conclusion***

33. Although the information provided to the assessment team shows an obvious concern to inform the authorities’ action by the use of statistical data, some additional data types, however, should be taken into account to cover a broader spectrum of AML/CFT information, such as the number of investigations initiated based on these offenses, prosecutions, and convictions. Similarly, with respect to frozen, seized, or confiscated property, the authorities should have more comprehensive statistics. While the CTAF is

making some effort to collect information, formal and comprehensive statistics on these issues are lacking. **Tunisia is therefore partially compliant with Recommendation 33.**

## LEGAL SYSTEM AND OPERATIONAL ISSUES

### *Recommendation 3 – Money laundering offense*

34. **C. 3.1:** Law No. 2003-75 of December 10, 2003 relative to supporting international efforts to combat terrorism and eradicate money laundering (the AML/CFT Law) stipulates in its Article 62 that laundering is “*any intentional act aimed, by any means, at disguising the illicit source of movable or real property or the direct or indirect proceeds of a crime or a misdemeanor. Money laundering is also deemed to be any intentional act aimed at the investing, depositing, concealing, managing, integrating, or holding the direct or indirect proceeds of a crime or a misdemeanor or assisting in such operations. The provisions [...] shall be applicable even if the offense from which the laundered funds result was not committed on Tunisian territory.*”

35. The definition of money laundering in the AML/CFT Law matches that given in the Vienna Convention and the Palermo Convention in that it describes principal and predicate offenses as “crimes and misdemeanors.” Tunisia has thus adopted a broad-based approach with respect to predicate offenses. The offense of money laundering as described in the AML/CFT Law applies to all types of property, *movable and real, and to the proceeds, whether direct or indirect*, of an offense. It is also applicable to a predicate offense even if the predicate offense was committed in a foreign country. Offenses related to money laundering, such as complicity and attempted money laundering, are punishable under Tunisian law.

36. **C. 3.2 and C.3.6:** All serious offenses such as those mentioned in the Glossary of the Forty Recommendations are defined in the Criminal Code (CC) and several other sectoral laws. Article 3 of Law 2003-75 specifies that CC provisions apply to offenses governed by this Law. Thus, according to Article 33 of the CC, the accessories to the offense (those who aided or abetted the perpetrator) receive the same punishment as the perpetrators of the offense. Attempts are punishable under Article 59 of the CC, and this is so even if the predicate offense was committed in a foreign country.<sup>43</sup> Offenses related to money laundering, such as complicity and attempted money laundering, are punishable under Tunisian law.

**Table 1 – - Predicate offenses in the Criminal Code**

<b>FATF designated categories of offenses</b>	<b>Articles of the CC criminalizing offenses</b>
Participation in an organized criminal group and racketeering	CC, Title I, Chapter IV, Section III on conspiracy (Articles 131, 132, 133, 134 and 135 of the Criminal Code)
Terrorism, including terrorist financing	Title I, Chapter I of the AML/CFT Law
Trafficking in human beings and sexual exploitation	Articles 231, 232, 233, 234 and 235 of the Criminal Code
Smuggling of migrants	Passports and Aliens Law
Trafficking in narcotic drugs	Law No. 92-52 of 18/05/1992
Arms trafficking (excluding exports)	Law of 12.06.1969
Illicit trafficking in stolen goods	Articles 32, 258, 264, and 276 of the Criminal Code

<sup>43</sup> The Tunisian authorities indicated that an offense committed abroad could constitute a predicate offense even if the act in question is not considered to be an offense in the foreign country. There is at present no specific case to support this analysis.

Corruption	CC, Title I, Chapter III, Section II
Fraud and Scams	CC, Title II, Chapter II, Section IV on fraud and other deceptions
Counterfeiting and piracy of products	CC, Title I, Chapter IV, Sections XVII (On counterfeiting and misuse of official seal) and XVIII (on counterfeiting and alteration of currency)
Murder	CC, Title II, Chapter I, Section I Homicide
Kidnapping, illegal restraint, hostage-taking	CC, Articles 237-240 bis
Theft/extortion	CC, Title II, Chapter II, Sections II (theft and similar offenses) and III (extortion, blackmail, theft, bankruptcy)
Smuggling	Articles 390-393 of the Customs Code (offense) and Articles 383-386-387-388 (penalties)
Forgery (other than forged passports) and counterfeiting currency	CC, Title I, Chapter IV, Sections XVII (On counterfeiting and misuse of official seal) and XVIII (on counterfeiting and alteration of currency)
Criminal tax offenses (direct and indirect taxes)	Code of Fiscal Rights and Procedures
Piracy	Article 306 bis of the Criminal Code
Environmental crime	Article 306 bis of the Criminal Code
Insider trading and market manipulation	Article 81 of Law No 94-117 of 14/11/1994 on the reorganization of the financial market

37. **C. 3.4:** Article 62 of the AML/CFT Law provides that “*Laundrying is any intentional act aimed, by any means, at disguising the illicit source of movable or immovable property or the direct or indirect proceeds of a crime or a misdemeanor.*”

38. **C. 3.5 and C. 3.7:** The AML/CFT Law does not require that a person be convicted for a predicate offense to prove that an asset is the proceeds of a crime. The authorities confirmed the autonomous nature of the offense of money laundering, and that the usual requirements of the Criminal Code and the Code of Criminal Procedure (CPP) on the furnishing of proof shall apply. The 2006 mutual evaluation report stated that the perpetrator of the principal offense (predicate offense)—otherwise the launderer—would then be prosecuted only for that principal offense and that the proceeds of the offense would then be confiscated in the context of that proceeding and liquidated for the benefit of the Treasury. Such confiscation requires a conviction for the predicate offense. The authorities did not say at that time what basic principle of Tunisian law makes it impossible to prosecute the perpetrator—otherwise the launderer—for money laundering (“self-laundering”), and particularly whether this would result from application of the principle of *non bis in idem*. It now appears that conviction of self-laundering is possible as the Tunisian authorities have pointed out that Article 63 of the AML/TF Law provides that “*any person found guilty of money laundering shall be punished by one to six years of imprisonment and fined five thousand dinars to fifty thousand dinars,*” the term “*any person*” meaning any person, including the perpetrator of the predicate offense.

39. **C. 3. 8:** The element of intent in Tunisian law is deduced from factual and objective circumstances.

40. **C. 3.9 and C. 3.10:** According to Article 63 of the AML/CFT Law, *any person found guilty of money laundering shall be punished by one to six years of imprisonment and fined five thousand dinars to fifty thousand dinars. The fine may be increased to an amount equal to half the value of the laundered assets.*”

41. For corporations, Article 66 prescribes “*a fine equal to five times the value of the fine for individuals. The fine may be increased to an amount equal to the value of the laundered assets.*” This is

*“also without prejudice to any extension of the disciplinary measures prescribed for said corporations under the existing applicable legislation, in particular prohibition from engaging in in their business for a given period or dissolution of said business.”* Penalties are more severe, ranging from between five years to ten years of imprisonment plus a fine of 10,000 (ten thousand) to 100,000 (one hundred thousand) dinars when the offense is committed under certain circumstances. Penalties may also be more severe in cases of laundering related to terrorist activities, as defined in Article 20 of the AML/CFT Law.

42. **C. 3.11:** Article 3 of Law 2003-75 specifies that the provisions of the CC apply to offenses covered by said Law. Thus, according to Articles 32 (definition of complicity) and 33 (same penalty imposed on the main perpetrator) of the CC, accessories to the offense (those who aided or abetted the perpetrator) are punished with the same penalty as imposed on the perpetrators of the offense. Attempts are punishable under Article 59 of the CC.

### ***Weighting and Conclusion***

43. The elements of the offense of money laundering and the applicable sanctions comply with the standards. **Tunisia is compliant with Recommendation 3.**

### ***Recommendation 4 - Confiscation and other provisional measures***

44. **C. 4.1:** Regarding money laundering, Article 67 of the AML/CFT Law provides that the court shall order the confiscation of assets and the proceeds generated directly or indirectly by the offense of money laundering. The Article adds that *“if the actual seizure has not been possible, a fine having the same effect as liquidation shall be imposed, the value of which shall not in any event be less than [...] that of the funds to which the offense relates.”* Concerning terrorism, Article 46 of the AML/CFT Law states that the *“Court may also order the confiscation of all or a portion of any movable or real property and financial assets belonging to a convicted person, if there are serious charges regarding the use of said property and financial assets to meet the requirements of persons, organizations, or activities connected with the terrorist offenses.”* In cases of conviction for terrorist financing or money laundering, Article 28 of the CC—applicable based on Article 3 of the AML/CFT Law—states that the judge may order the confiscation of objects that have been used or were intended to be used in the offense and that were generated by said offense, regardless of who is their owner.

45. Tunisian law clearly states in its Article 67 that it is mandatory to confiscate any proceeds of the offense of money laundering and that in the event such proceeds are inaccessible it is possible to confiscate funds of an equivalent value. In imposing the special confiscation mentioned in the Criminal Code, the judge may also confiscate instruments used to commit the offense of money laundering and those intended to be used for committing the offense. The rights of third parties are protected, on the express condition they have acted in good faith, in accordance with the Palermo Convention. Article 5 of the Criminal Code provides for confiscation as an accessory penalty. Article 28 clarifies that special confiscation applies to items used or intended for use in committing the offense and to the proceeds, regardless of who owns them. Confiscation may be ordered by the judge in the event of conviction. If the items ordered and confiscated have not been seized or are not handed over, the judgment fixes the value of such items for purposes of civil imprisonment—which is carried out at the rate of one day of imprisonment for every three dinars or fraction of three dinars of the fine (Articles 343 and 344 of the CPP) for a term not to exceed two years. Confiscation of equivalent value for predicate offenses is therefore not explicitly provided for, but in practice the threat of civil imprisonment leads to payment of the amount of the financial penalty set by the judge. Regarding the definition of the items covered by Article 28, the authorities have indicated that the definition is broad and includes the indirect proceeds of an offense.

46. **C. 4.2:** Article 40 of the AML/CFT Law, which applies to the financing of terrorism, states that “*the investigating judge may [...] order [...] the seizure of movable or immovable property of the accused and his financial assets.*” As well, Article 94, applying to both the financing of terrorism and money laundering, provides that “*the Prosecutor General to the Court of Appeal of Tunis can [...] petition the President of the Court of First Instance of Tunis to order the freezing of assets belonging to individuals or legal entities suspected of having ties to persons, organizations, or activities related to the offenses covered by [the AML/CFT Law], even if they are not committed on the territory of the Republic.*” The Code of Criminal Procedure in general allows for the confiscation, as a precaution, of any item or property that is the proceeds of an offense or likely to establish the truth of the matter (types of evidence, traces, various indicia). In particular, Article 99 of the CPP provides that the investigating judge may order the seizure of any item, particularly correspondence and other dispatches if deemed useful to establish the truth, that is to say, provide evidence contributing to the establishment of the offense. In this respect, the scope of this measure is at least the same as that covered by the possibilities of confiscation at the time of judgment. Indeed, during the investigation, the scope of the measure may be wider since the issue is not yet the more limited one of a decision of guilt. This includes then items which could be confiscated following a judgment. The Tunisian authorities have confirmed that the judicial seizure measures (including the measures for freezing funds) are being applied in practice routinely. They also indicated that the penalty of confiscation is regularly ordered by the courts—the sums confiscated then being deposited for the benefit of the Treasury. The legal provisions on seizure and freezing do not require notification prior to a first request for freezing or seizure, and the information provided by the authorities indicates that this is the practice.

47. **C. 4.3:** Article 102 of the AML/CFT Law provides that judgments ordering the liquidation or confiscation of assets may in no case affect the rights of third parties acquired in good faith. In addition, the Tunisian authorities have indicated that Article 100 of the CPP protects bona fide third parties by allowing “*any person who claims to be entitled to items under criminal justice control may ask the investigating judge for restitution thereof and upon the latter’s refusal, the Indictments Chamber which shall rule on the matter upon a simple request made to it.*” Paragraph 2 states that potential owners nevertheless have three years from the order or judgment to claim the item before it finally becomes State property.

48. **C. 4.4:** Article 67 of the 2003 Law stipulates that “*the court must order the confiscation of the property and the income generated directly or indirectly by the offense of money laundering and its liquidation for the benefit of the State.*” The authorities have stressed, however, that there is currently no mechanism for managing frozen, seized, or confiscated assets but that this issue will be addressed in the draft of the new Code of Criminal Procedure currently being prepared.

### ***Weighting and Conclusion***

49. The AML/CFT Law and the Criminal Code establish a satisfactory system of freezing, seizure, and confiscation of assets. But the new Code of Criminal Procedure will need to implement an effective mechanism for management of frozen assets. **Tunisia is largely compliant with Recommendation 4.**

### ***Recommendation 29 – Financial Intelligence Unit***

50. **C. 29.1** – The Tunisian Financial Analysis Commission (CTAF) was created by the 2003 AML/CFT Law. Decree 2004-1865 of August 11, 2004, as amended by Decree 2011-162 of February 3, 2011 establishes the structure and operating methods of the CTAF and implements the legislative arrangements. The CTAF is responsible for the following tasks: formulating general directives to guide the subject professions in detecting suspicious operations; collecting and processing reports on suspicious or unusual operations and transactions, and notifying the action taken on them; collaborating on studies

on AML/CFT strategies; taking part in research, training, and studies; and representing the various units and agencies involved in AML/CFT activities at the national or international level, and facilitating coordination among them. It has national jurisdiction.

51. The unit is located at the Central Bank of Tunisia, where it has its head offices. The CTAF consists of a steering committee, an operational unit, and the General Secretariat (Art. 79 of the Law and Article 6 of the Decree). The Central Bank provides its secretariat. The Governor of the Central Bank appoints the Secretary General of the CTAF from among executives of the Central Bank (Art. 14 of the Decree of August 11, 2004).<sup>44</sup> The makeup of the CTAF is established by the Law (Article 79) and includes the BCT Governor (Chair), a senior magistrate, a representative of the Ministry of the Interior and Local Development, a representative of the Ministry of Finance, a representative of the Directorate General of Customs, a representative of the Financial Market Board (CMF), a representative of the National Post Office, a representative of the General Insurance Committee, and an expert specialized in measures to combat financial offenses, that is, nine persons and the Secretary-General. Members continue to have ties with the Ministry to which they are attached but, by law, they must still perform their tasks independently.

52. The Steering Committee of the CTAF, chaired by the Governor of the Central Bank or his deputy (Article 8 of the Decree), is in charge of defining general policy (Article 7 of the Decree). It is responsible in particular for preparing general directives to guide the subject professions in detecting suspicious transactions and reporting them, collaborating on studies on AML strategies, taking part in research, training, and drafting cooperation agreements between the CTAF and its counterparts.

53. The operational unit, for its part, presents proposals to the CTAF for following up on the reports after they have been analyzed. In its operational setting, the CTAF as defined in Article 79 of the Law meets on an as-needed basis (Article 3 of the Decree), with a quorum of at least six members. The decisions are adopted by a two-thirds majority of members actually attending the meeting (Article 4).

The General Secretary is in charge of supervision of the operational unit, of receiving the STRs and of notifying the decisions taken on them, of the administrative, financial and technical management of the unit, of preparing decisions and ensuring the implementation thereof, and of preparation of the annual report (Article 13 of the Decree).

54. **C. 29.2 (a):** According to Article 80 of the AML/CFT Law, “*the CTAF is responsible for the following duties:*

- *Formulating general directives to guide the persons referred to in Article 74 of this Law in detecting suspicious operations and transactions and reporting them,*
- *Receiving and processing the suspicious operations and transactions reports and notifying the decision taken on them;*
- *Collaborating in the study of programs that will be implemented to combat illicit financial channels, terrorist financing, and money laundering,*
- *Participate in research, training and study activities, and in general any activity related to its area of responsibility,*
- *Ensuring that the different departments and bodies involved in this field are represented at national and international level, and facilitating communication between them.”*

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<sup>44</sup> According to Article 79 of Law No. 2003-75 as amended by Law No. 2009-65, members of the CTAF are not representative of the position of a particular institution. They are chosen in their capacity as experts, and to ensure their independence from the Ministry to which they are attached.

55. Article 74 of the AML/CFT Law covers all regulated persons as recognized by the FATF. The professions concerned (including lawyers, notaries, certified public accountants, and real estate agents) are not mentioned as such but they are subject to regulation because of their processing or carrying out of transactions under the Law.

56. **C. 29.2 (b):** According to Guidance No. 2012-11 to licensed intermediaries, licensed intermediaries must report to the BCT foreign banknote transactions the value of which is equal to or greater than D 5,000. The BCT receives this information through its information-sharing system platform, to which the CTAF has direct access. Although this mechanism allows the CTAF to review this information, it is not the recipient and centralizing agency in the first instance of this information.

57. **C. 29.3** – Under Article 81 of the AML/CFT Law, as amended by Law 2009-65 of August 12, 2009, the CTAF may, in carrying out its duties, request assistance from the administrative authorities responsible for the enforcement of the law and the persons referred to in Article 74 of this Law. The latter are required to disclose to it the information needed to analyze operations and transactions that are the subject matter of reports collected within the legal timeframe. Professional secrecy is not, in this case, binding on the CTAF and the custodians of such secrets cannot be prosecuted as a result of any disclosure made by them.

In addition, the Tunisian authorities have indicated that in the course of carrying out its duties and in particular analyzing the STRs, the CTAF has access to different sources of information. Access is direct and indirect:

- Direct access to sources of information: the Commercial Register database, the database of the Directorate General of Customs' reports of foreign exchange being imported and exported, the BCT's information clearinghouse, the FACTIVE/Dow Jones database.

- Indirect access to sources of information: this refers to information obtained from queries and relates to information held by different public authorities and administrations, including the Land Registry (cadastre), the Mines Department (vehicle registration), the Tax Audit Administration, criminal investigation officers, and the General Directorate of Customs.

58. **C. 29.4 (a):** The CTAF has the powers usually assigned to bodies of this type, beyond its operational functions of receiving and processing STRs, facilitated by its multidisciplinary, interministerial structure. In particular, it has a right of communication (Article 82), being authorized to share information with foreign counterparts without excessive constraints. It has a coordinating role in the arrangement, with clear duties to define general strategies, conduct analysis, compile overviews of money laundering and terrorist financing, and review the effectiveness of the overall arrangements. It can also formulate instructions and thus has a decisive role in adapting the legal, regulatory, or technical framework to changes in money laundering or terrorist financing schemes and risks. Moreover, section 11 of the Decree states that "*the operational unit examines the reports received by the CTAF and proposes follow-up action to be taken by it.*" According to Regulatory Decision No. 736 of July 2, 2012, the operational unit includes three units: centralization of financial information and cooperation unit; database management unit, and financial investigations unit. The CTAF has powerful computer tools and is currently working on redesigning its global information system covering the electronic receipt, processing, analysis, and classification of suspicious transaction reports and any other request for information submitted to it nationally or internationally.

59. **C. 29.4 (b):** As regards strategic analysis, the CTAF provides insights into AML/CFT-related typologies and trends from STRs received and processed. They are published in the CTAF's annual reports, downloadable online, and are presented as part of training provided by the CTAF. According to the authorities, training actions have targeted customer relationship officers and compliance officers of credit institutions.



60. **C. 29.5:** According to Article 89 of the AML/CFT Act, “*if analyses confirm suspicions related to the operation or transaction dealt with in the report, the Tunisian Financial Analysis Commission shall without delay send its findings to the public prosecutor of Tunis as well as any related documents in its possession in order to determine the action to be taken in relation thereto, and notify the person making the report. The public prosecutor must decide what action to take no later than five days after receiving the information and notify its decision to the author of the report and the CTAF.*” According to the authorities, the case is handed over directly to the office of the public prosecutor. All information is sent by letter delivered personally by bearer in sealed and confidential envelopes to the authority requesting it, in return for a receipt from said authority.

61. **C. 29.6 (a) and (b):** By Office Guidance No. 1/2011 of October 21, 2011, the CTAF adopted internal regulations governing the functioning of its bodies and its professional ethics. This guidance also outlines a manual of procedures and a skills and competencies book setting out rules on security, confidentiality, allocation of duties, access to information, archiving, and record keeping.

62. The authorities have also stated that members of the CTAF identified in Article 79 of the AML/CFT Law should meet to decide on the action to be taken regarding proposals made by the financial analysts of the operational unit concerning suspicious transaction reports processed. Files sent to members are in due course recovered and stored in the vaults of the CTAF. They are not authorized to take any documents concerning STRs records outside the premises of the CTAF. Viewing the information stored in the database is reserved only for analysts who access it through an access code and an individual password.

63. Exchange of information with foreign counterparts is done through the Egmont Group’s secure website. This exchange of information with national authorities is carried out by letter delivered personally by bearer in sealed and confidential envelopes to the authority concerned.

64. Each member of the CTAF staff has a copy of the internal regulations, the skills and competencies book, and the procedures manual. Currently, according to the Tunisian authorities, the organization of tasks, processing of files, record keeping, and access to databases are made pursuant to Office Guidance No. 1/2011.

65. **C. 29.6 (c):** The CTAF has an autonomous information system completely independent of that of the BCT, with its own procedures regarding the receipt, centralization, and processing of information.

66. **C. 29.7 (a):** The head office of the CTAF is located in the premises of the Central Bank of Tunisia, with the latter acting as secretariat. In accordance with Article 79 of the AML/CFT Law, the CTAF members are designated as experts who perform their duties within the Commission independently of the Ministry to which they are attached. Changes have been made as well since the last assessment in 2006 to strengthen the power and capacity of the CTAF to freely exercise its functions, including by removing the provision granting the President of the CTAF, also Governor of the BCT, the casting vote in case of a tied vote. Henceforth, the new Article 4 of the 2004 Decree as amended in 2011 provides in its second paragraph that Commission decisions are taken by a two-thirds majority of members present.

67. Indeed the CTAF has a separate wing at the headquarters of the Central Bank which is exclusively reserved for it. This wing includes offices and equipment necessary for its operations. Access to this wing is reserved solely for CTAF staff through personalized magnetic cards. The security of the wing is ensured by surveillance cameras. Members not from the Central Bank are integrated into the CTAF according to the process of secondment. The CTAF has a specific budget line within the Central Bank budget, which is autonomous and separate from all government administrations.

68. **C. 29.7 (b):** The law empowers the CTAF to sign memoranda of understanding (MOU) for the exchange of information related to AML/CFT with foreign counterparts that satisfy the following two conditions cumulatively (Article 82 of the AML/CFT Law):

- The Foreign Financial Intelligence Units (FIUs) must, under national law, be subject to confidentiality obligations at least equal to that to which the CTAF is subject.
- It shall be subject to the obligation not to transmit or use data and information for purposes other than for combating and suppressing ML/TF.

Similarly, the sending of information to the judicial authorities of the foreign FIU is subject to the express prior authorization of the CTAF.

69. These memoranda require no administrative formality and do not require the authorization or prior consent of any authority. They are signed by the President of the CTAF or by an authorized person among the managers of the CTAF, following approval by the Commission.

70. In terms of national cooperation, under Article 83 of the AML/CFT Law the CTAF is required to give all information held in its database to the authorities responsible for enforcing the law. This takes the form of information sharing with the units of criminal investigation officers, customs, and the National Guard in particular. The Tunisian authorities have again pointed out that bilateral meetings are often held between the CTAF and these agencies to strengthen cooperation and the exchange of information.<sup>45</sup>

71. Finally, the CTAF also cooperates with other national authorities in giving its opinion on the rules drawn up in connection with its functions.<sup>46</sup>

72. **C. 29.7 (c):** The CTAF is established in the Central Bank of Tunisia where it has its headquarters. The main functions of the CTAF are clearly distinct from the function of the Central Bank of Tunisia as set forth in the laws on the books.

73. **C. 29.7 (d):** Under Article 15 of Decree 2004-1865, the CTAF is allocated the funds necessary for the performance of its duties. It is the BCT's Board of Directors that approves the annual budget of the CTAF.

74. **C. 29.8:** The CTAF became a permanent member of the Egmont Group at the 20th plenary meeting held in Saint Petersburg from July 9 to 13, 2012.

### ***Weighting and Conclusion***

75. The CTAF has the usual powers of organizations of this type. However, the members of its decision-making body are not integrated into the organization as full-time permanent employees. Although the law provides that members of the decision-making body of the CTAF carry out their duties independently, in fact they continue to perform their duties in the Ministry to which they are attached. The result is a possible question about the decision-making independence of the CTAF. **The system in**

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<sup>45</sup> The Tunisian authorities have informed the assessment team that for the year 2013-2014, six meetings were held with the authorities implementing the law and four meetings with the senior management of associations and political parties.

<sup>46</sup> The authorities referred to the collaboration of the CTAF with the banking supervisory authority for the development of Guidance 2013-15 of November 7, 2013 on AML/CFT for credit institutions and with the General Directorate of Insurance for development of the 2013 Regulations.

**place in Tunisia concerning the Financial Intelligence Unit and the CTAF is largely in line with the FATF's Recommendations.**

***Recommendation 30 – Responsibilities of law enforcement and investigative authorities***

76. **C. 30.1: Office of the Public Prosecutor:** Investigations are the responsibility of the Public Prosecutor and his deputies, and, when referred by a prosecutor, investigating judges, who are judges not operating under the authority of the public prosecutor. The latter are responsible for investigating the more complex cases, and, necessarily, crimes. Prosecutors, as well as investigating judges, police or customs officers with the status of criminal investigation officers, pursuant to Article 10 of the Code of Criminal Procedure are in charge of investigations. Investigating judges therefore direct the investigations conducted by the criminal investigation officers and have a significant role in supervising their work. In Tunisia, the Office of the Public Prosecutor consists of the Public Prosecutor, an assistant prosecutor, a senior deputy, and 17 deputies. The Court of First Instance of Tunis consists of 16 investigating judges, who are judges with a certain amount of seniority, with two specializing in terrorism, and three in financial matters. There are no specialized jurisdictions under Tunisian criminal procedures for dealing specifically with financial cases. However, the Law of 2003 confers exclusive jurisdiction on Tunisia in cases of terrorism, terrorist financing, and money laundering (Articles 34, 35, and 90 of the Law of 2003), without prejudice to other jurisdictions being able to carry out preliminary procedures in an emergency.

77. The Subdirectorate for Economic and Financial Investigations of the Ministry of the Interior is a specialized unit responsible for conducting investigations into economic and financial crimes. It conducts investigations of money laundering offenses under the supervision of the judicial authority, and under the instructions of the public prosecutor or the mandate of the investigating judge. If there is sufficient information on the existence of money laundering suspicions this unit can inform the public prosecutor and open an investigation.

A central directorate for investigation of terrorist crimes has also been created within the Ministry of the Interior (2013) with a specialized unit within the Directorate General of the National Guard.

78. **Police:** The Criminal Investigation Directorate is organized into five subdirectorates: (1) Economic and Financial Investigations, (2) Narcotics Operations, (3) Social Protection, (4) Criminal Affairs, and (5) Research and Monitoring. However, each subdirectorate has a research and monitoring unit. Specialized units such as the subdirectorate of economic affairs have national jurisdiction. Tunisia's security structure is unique, and is centralized within the Ministry of the Interior. Its level of organization is noteworthy, and it has powerful analysis and statistical tools.

79. **Customs:** Customs comes under the Ministry of Finance. There is a Customs Code containing the applicable legislation. The activities of the Customs Department cover the entire national territory. The total number of customs employees is 7,415, of whom 6,723 work in the Customs Department. There are 786 senior officers, 2,152 junior officers, 3,785 assistant officers, and 692 auxiliary staff. Customs officials have the status of criminal investigation officers for the identification of customs offenses (Article 10 of the Code of Criminal Procedure). In that context, they are subject to the oversight of the Public Prosecutors.

80. The Customs Investigations Directorate, which is responsible for handling complex investigations that may involve organized crime, is subdivided into two subdirectorates:

- The investigations subdirectorate is subdivided into a customs operations unit (inspection of industrial and agricultural products, economic regimes, and tax benefits), a unit handling violations of the foreign exchange law (responsible for violations involving precious metals, AML/CFT offenses, and control of customs operations), and a special affairs and drug trafficking unit (in charge of combating contraband, smuggling of products under government control, and drug trafficking).

- The subdirectorate of intelligence, documentation, and court proceedings is subdivided into an intelligence and documentation unit, an international administrative assistance unit organized to monitor relations with Arab countries, the European Union, and other countries, and a court proceedings unit responsible for monitoring proceedings, especially in the judicial phase, as well as statistics and records.

-The Customs Guard Directorate, with the authority to combat, throughout the customs territory as regards its economic and security mission, against contraband and the transfer of funds, and organized crime, comprises two subdirectorates: the Subdirectorate of Customs Operations and the Subdirectorate of Intelligence. Operational control is performed by seven units spread over the national territory, as well as a marine unit and a specialized unit (scanner and canine).

81. The Ministry of the Interior is constantly engaged in intelligence activity in the area of terrorism and terrorist financing. It closely monitors associations and their financing, and is especially vigilant in uncovering misappropriation of funds in that sector.

82. **C. 30.2:** According to the Tunisian authorities, if the infringements detected by the investigation are not mentioned in the public prosecutor's indictment, the investigating judge can urge the public prosecutor to extend the investigation to new facts discovered by the investigation. The public prosecutor may also refer the matter to an investigating judge to investigate the new developments if the interests of the investigation so require. The investigating judge may himself conduct the entire investigation or entrust all or part thereof to another entity that will ensure the completion of investigations regardless of the place where the predicate offense occurred (Articles 51 and 57 of the Code of Criminal Procedure).

83. In the same vein, a Judicial Financial Unit was created in January 2012 by ministerial decision. It has ten investigating judges and five deputy public prosecutors, and became operational in September 2012. The law officers of the financial and legal division have participated in several training sessions on economic and financial crimes, and training sessions specifically on combating ML/TF.<sup>47</sup>

84. The financial division was established by adopting administrative regulations, and it functions de facto in the Tunisian legal system. The Tunisian authorities have only indicated that a draft law establishing the financial and legal division was reviewed in June 2013 by an interministerial council and was the subject of a recommendation to enlarge the division to extend it to the entire criminal justice system. Likewise, they indicated that the organization of the division will be done by enacting implementing regulations under the Law after they have been approved by the Parliament. The draft law will facilitate the creation of this body of persons ready to assist the courts (financial analysts and specialists in taxation, customs, financial market, banks, and the stock market, etc.) who can be called upon to assist law officers of the division in their work.<sup>48</sup>

85. **C. 30.3:** Under Article 40, at any stage of a case the investigating judge may order the seizure of movable or real property and financial assets of an accused person ex officio or at the request of the public prosecutor, and may establish modalities for their administration while the case is being investigated or order that they be sequestered, where applicable. There is also a seals unit at each court. Sums of money that have been seized are deposited and blocked at the Deposit and Consignment Office [*Caisse des dépôts et consignations*]. Owing to the legal inaccessibility of assets in the absence of a final decision, they cannot at this stage be transferred to the Government. Law 2003-75 provides for specific procedures to be followed in the case of terrorism with a view to improving the organization of judicial referrals (Articles 34-37, especially regarding the exclusive jurisdiction of Tunis) in these matters, and redefining

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<sup>47</sup> Response to the self-assessment questionnaire

<sup>48</sup> Idem

the circumstances in which seizure is possible (Articles 38-40). Thus, the investigating judge is required to confiscate arms, ammunition, explosives, and other materials, as well as documents used to commit the offense or to facilitate the commission of the offense.

86. Furthermore, the CTAF is authorized under Article 87 of the AML/CFT Law to order the author of the suspicious transaction report to proceed to temporarily freeze the funds covered by the report. Should analysis confirm the suspicions, the CTAF shall forward its findings to the public prosecutor within five days of receiving the freeze order. The prosecutor must within five days decide on what action to take concerning the CTAF's report. Commencing a legal investigation would keep the freeze in force unless the judicial authority to which the matter was referred decides otherwise.

87. The Tunisian authorities have also indicated that the Subdirectorate for Economic and Financial Investigations (cf. C. 30.1) may also, in investigations and with reference to search operations and field investigations, seize all materials connected to the crime (the tools used, cash, or financial securities) to prove and establish the offense by evidence.

88. **C. 30.4:** Under Article 37 of Law No. 94/117 of November 14, 1994 on the reorganization of the financial market, the Financial Market Board (CMF) is empowered to:

“[...] 2- *Block securities and documents suspected to be forged or not conforming to the standards and rules in force, even in the hands of the holder. Blocked documents and assets are left in the care of their holder under the terms of Articles 97, 98 and 100 of the Code of Criminal Procedure;*  
3- *Make all the necessary findings, compel production—on first demand and without the need for an on-site visit—of documents and records, irrespective of the medium on which they are stored, as well as the registers needed to conduct the review and make observations as well as make copies thereof;*  
4. - *Obtain delivery, with acknowledgment of receipt, of documents and records referred to in the preceding paragraph, which are necessary for the performance of its duties or pursuit of the investigation.*”

89. Article 43 of the Law provides that “the President of the First Instance Court in Tunis may, upon request made with supporting reasons by the Chairman of the Financial Market Board (CMF), make an order in summary proceedings for the direct seizure, of monies, assets, securities, or rights of persons indicted by it, affixing a seal thereto, where applicable. The President of the Court may, under the same conditions, order a temporary disqualification from practicing a professional activity.”

90. The Tunisian authorities have not stated that the BCT or the CGA have similar powers.

91. **C. 30.5:** Created by Decree-Law 120 of November 14, 2011, the National Anti-Corruption Agency [*Instance Nationale de Lutte Contre la Corruption* INLCC] is responsible for investigating corruption committed by a public or private legal or natural person or any organization or association, and for verifying the accuracy of the information and documents collected and presented to the Office of the Public Prosecutor. It is authorized to conduct searches and to seize documents and personal property at any location. Moreover, Article 33 of the decree-law allows it to have recourse to any competent authority (CTAF or judicial authorities) to request the freezing of assets.

### ***Weighting and Conclusion***

92. **Tunisia is compliant with Recommendation 30.**

### ***Recommendation 31 – Powers of law enforcement and investigative authorities***

93. The investigative powers are set forth in the Code of Criminal Procedure. The public prosecutor has powers to conduct a preliminary inquiry (Article 26) and on-the-spot investigation (Article 33-35), these being more extensive in the second case because of the urgency and immediacy of the events. The investigating judge has the most extensive powers to carry out investigations (Article 47-111). When these judges appoint criminal investigation officers to perform all or part of the investigation, the latter have powers to take statements from witnesses, carry out seizures, and conduct hearings as set forth in the Code of Criminal Procedure. The public prosecutor carrying out the on-the-spot investigation and the investigating judge have all powers to seize evidence and indicia to be used in establishing the truth but also to seize the proceeds of the crime. They have powers of search that they can delegate to criminal investigation officers. Detention in custody may be used and is strictly defined by the Code of Procedure, as well as evidentiary hearings witnesses.

94. In connection with the fight against corruption and the recovery of ill-gotten gains linked to the Ben Ali regime, a policy of administrative confiscation was introduced in March 2011, with:
- a. The imposition of confiscation measures targeting the personal and real property of the ex-President, his wife Leïla Trabelsi, and their close relatives based on the adoption of the decree-law of March 14, 2011 (Decree-Law 13-2011);
  - b. The creation of a Confiscation Commission (Decree-Law 13-2011, Article 3);
  - c. The creation of a National Committee for the Recovery of Ill-Gotten Gains Held Abroad pursuant to Decree-Law 2011-15 of March 26, 2011;
  - d. The creation of a National Commission for the Management of Confiscated or Recovered Assets and Funds on behalf of the State pursuant to Decree-Law 2011-68 of July 14, 2011.

#### **System established by Decree-Law 13-2011**

95. Decree-Law 13-2011 (Article 1) orders the confiscation, on behalf of the Tunisian State, of all movable and immovable property and rights acquired after November 7, 1987 that benefited (1) the former President of Tunisia Zine El Abidine Ben Haj Hamda Ben Haj Hassan Ben Ali, (2) his wife Leïla Bent Mohamed Ben Rehouma Trabelsi, (3) 112 persons named on the list attached to the Decree-Law, and (4) any other person who obtained real or personal property or rights by virtue of his/her relationship with the persons named in the first three aforementioned provisions.

96. The identification and description of property subject to confiscation measures shall be carried out by the “Confiscation Commission”<sup>49</sup> on the basis of an obligation on the part of all holders, regardless of their status, to report real or personal property, rights, obligations, and agreements for the direct or indirect benefit of persons named by the Decree-Law as well as any debtor of amounts, assets, securities, or property, irrespective of the nature of his debts due to the same persons. The Commission shall then conduct investigations and the Chairman of the Commission by decree shall order the confiscation measure. The Commission shall take the administrative and legal measures necessary to transfer immovable and movable property and rights confiscated for the benefit of the State.

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<sup>49</sup> The Confiscation Commission is established at the Ministry of State Properties and Land Affairs and is made up of the following members: (1) a judge of the Superior Court, Chairman, (2) a judge of the Administrative Court, member, (3) an auditor of the Auditor General’s Department, member, (4) the Landed Property Registrar or his representative, member, (5) the Solicitor General or his representative, member, (6) a representative of the Ministry of Finance, member, (7) a representative of the Tunisian Central Bank, member, (8) a representative of the Ministry of State Properties and Land Affairs, rapporteur member. The members of the Committee are appointed by decree of the Head of Government.

97. In order to conduct its investigations, the Commission has access to a wide range of information. Indeed, the Decree-Law gives it the right to demand any information that enables it to perform its duties and to have right of access to all documents that it has requested from administrative agencies, public or private institutions of whatever nature, and from all courts regardless of hierarchy, and professional secrecy may not be invoked against it.

98. The Commission may also require the administrative authorities or the competent court, as appropriate, to order any inquiry or investigation permitted by legislation in force and the appointment of experts to identify the real and personal property and rights confiscated as provided for by Decree-Law. It may also request the competent court to order any procedure allowing for the preservation of property confiscated pursuant to Decree-Law 13-2011.

### **Recovery of ill-gotten gains held abroad**

99. In parallel with the creation of the Confiscation Commission, the Tunisian authorities have established within the Central Bank of Tunisia a “National Committee for the Recovery of Ill-Gotten Gains Held Abroad”<sup>50</sup> by the Decree-Law of March 26, 2011 (Decree-Law 2011-15). This Committee is responsible for coordinating and, if necessary, bringing proceedings for the recovery of property transferred, purchased, held, or controlled, directly or indirectly abroad and under illegal conditions or conditions that could damage the assets or the financial interests of the State or local authorities or public establishments and enterprises, by Zine El Abidine Ben Haj Hamda Ben Haj Hasssen Ben Ali, the former President of the Republic, his wife, his children, anyone having a family relationship or relationship by marriage with them, and anyone who assisted them or benefited illegally from their actions.

100. To carry out its mission, the Committee may bring proceedings to identify the aforementioned tangible or intangible personal property, real property, regardless of their mode of acquisition, proceeds and profits derived therefrom, as well as documents or securities, whether physical or electronic, transferred, acquired, held, or controlled, directly or indirectly, abroad, by the Ben Ali clan.

101. The Solicitor General of the State represents the Committee to take, on behalf of the Tunisian State before any competent foreign court or agency, any precautionary measures and any proceedings to confiscate and recover for the benefit of the State the property referred to in Article 2 of this Decree-Law, to guarantee and enforce its financial interests.

### **Management of assets and funds confiscated or recovered**

102. The management of movable and immovable property covered by confiscation under Decree-Law 13-2011 and Decree-Law 2011-15 is provided by the “National Commission for the Management of Confiscated or Recovered Assets and Funds on behalf of the State”<sup>51</sup> established at the Ministry of Finance by Decree-Law 2011-68 of July 14, 2011 (Decree-Law 2011-18). The Confiscation Commission and the National Committee for the Recovery of Ill-Gotten Gains Held Abroad are obliged to submit to the management committee a statement of assets and property covered by the confiscation accompanied

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<sup>50</sup> The committee consists of: (1) the Governor of the Central Bank of Tunisia (2) the Finance Minister or his representative, (3) a representative of the Minister of Justice, (4) a representative of the Minister of Foreign Affairs, and (5) and the Solicitor General of Tunisia.

<sup>51</sup> The Management Board consists of: (1) the Minister of Finance or his representative: Chairman, (2) the Minister of Justice or his representative: member, (3) the Minister of State Properties and Land Affairs or his representative: member, (4) a representative of the Prime Minister: member.

by the records and documents related to them. Based on this information, the role of the Commission is to:

- a. Take all measures concerning rights and obligations related to stocks and bonds and units and securities confiscated or recovered,
- b. Manage the portfolio of stocks and bonds and rights attached, shares and securities, and movable and immovable property confiscated or recovered,
- c. Take the necessary measures concerning contracts underway in particular to ensure they are performed; and
- d. Take the necessary measures to ensure the continued normal functioning of companies the capital of which has been affected by the confiscation or recovery.

103. **C. 31.1 (a)**: Professional secrecy is not enforceable against the prosecutor, the investigating judge, and criminal investigation officers in charge of a criminal investigation. Thus, in the case of an investigation, and through legal requisitions, criminal investigation officers can requisition financial institutions to obtain the documents necessary for the investigation such as bank statements, documents opening bank accounts, or wire transfer documentation. They may also seize these documents in case of suspected concealment. In the case of legal requisitions, financial institutions are required to provide all these documents to the applicant.

104. **C. 31.1 (b)**: Articles 93-96 of the Code of Criminal Procedure define the conditions for undertaking searches. They fall under the exclusive jurisdiction of the investigating judge, but criminal investigation officers in cases of flagrant crimes or misdemeanors or if the judge as well as officials and agents authorized by special laws have delegated their power, may conduct searches in all places “*where there are objects which if found could be useful in establishing the truth.*”

105. **C. 31.1 (c)**: Article 59 of the CPP provides that the investigating judge is entitled to hear any person whose testimony the court considers appropriate. The CPP also provides that any person summoned as a witness is required to appear before the court. The penalties vary: a second failure to appear gives the investigating judge the power to issue a warrant to have the person brought before the judge. For financing of terrorism offenses covered by the AML/CFT Law, it is provided that if the witness has failed to meet the requirements for giving testimony, the investigating judge may make an independent report which is sent to the public prosecutor for the latter to assess whether the witness should be brought directly before the competent court for committal proceedings, and without requiring an investigation (Article 42 of the AML/CFT Law).

106. **C. 31.1 (d)**: Seizure is governed by Articles 97-100 of the CPP. Article 97 provides for search and seizure of any papers or effects that may be used for ascertaining the truth. According to the Tunisian authorities, documents are seized from various public administrations and from individuals or corporations following search operations or legal requisitions. Any seizure operation must be the subject of an independent official report and include a description of the item seized, and this must be filed in the court registry.

107. Furthermore, under Article 53 of the CPP, the investigating judge, assisted by the registrar of the court, hears witnesses, interrogates accused persons and carries out on-site investigations, searches of premises, and seizure of documents. He may also order expert opinions be provided and carry out all actions in an effort to uncover exculpatory and incriminatory evidence.

108. In addition, Customs has its own procedural powers contained in the Customs Code, including powers of settlement or compromise. These powers are set forth in Articles 56-64 of the Customs Code. In order to report the existence of the offenses, confiscations and the end result of confiscated property, customs officers have a right to stop and search “*goods, transportation, and people,*” the right to search



houses, carry out inspections treated as searches, the right to have all documents relevant to their duties made available for inspection, and the power to inspect mail and check the identity of people at entry points and throughout the whole country.

109. **C. 31.2 (a)** : The Tunisian authorities stated that a committee bringing together senior judges, lawyers and university professors was formed on the initiative of the Minister of Justice to prepare a draft revision of the Code of Criminal Procedure, with a view to adapting to new forms of crime and special investigative techniques. The inclusion of a new chapter on undercover operations is proposed. The committee apparently started its work by holding weekly meetings at the Ministry of Justice headquarters.

110. **C. 31.2 (b)**: It was pointed out to the assessment team that in the context of judicial investigations written authorization of the public prosecutor can be obtained to wiretap some telephone numbers. The monitoring period must be specified in the written authorization. These measures, the legal status of which is not precisely set out in the Code of Criminal Procedure, must be the subject of reports appended to the files.

111. **C. 31.2 (c)**: Articles 101-103 of the CPP provide that the investigating judge may call on experts to carry out technical checks when required by the circumstances. Moreover, according to the authorities, it is possible, by court order, to require the Technical Telecommunications Agency to identify websites.

112. **C. 31.2 (d)**: Nothing is planned for the moment in the laws as regards controlled deliveries that are being watched and undercover operations.

113. **C. 31.3**: The different resident or nonresident banks in Tunisia, as well as the National Post Office and securities brokers, may be instructed to inform the authorities about the numbers of accounts belonging to natural or legal persons who are the subject of an investigation and about the movements of related funds. According to Article 47 of the CMF Regulations related to the keeping and management of stock and bonds accounts, the licensed intermediary/administrator (securities broker and credit institution) should at all times make available to the Financial Market Board (CMF) the information it has in relation to the stocks and bonds accounts it is charged with managing.

The authorities stated that this information is communicated promptly.

114. **C. 31.4**: Under Article 83 of the AML/CFT Law, the Criminal Investigation Directorate and agents of the criminal investigation services may, in the course of investigations on money laundering and terrorist financing, apply in writing to the CTAF to provide them with all data and information that it is holding in its database that are required for the investigation. In practice, the authorities have indicated that the Subdirectorate for Economic and Financial Investigations asks the CTAF for information related to the investigation. It appears that the CTAF responds to these requests in a timely manner.

### ***Weighting and Conclusion***

115. The investigation and prosecution authorities have wide powers to search for evidence as well as identification, and to seize items liable to confiscation. However, as regards a number of special investigative techniques, the conditions under which they may be employed are not clearly set forth in the law or are not explained in sufficient detail. Such is the case of telephone tapping, controlled deliveries, infiltration, or undercover operations. Pending the adoption of a more comprehensive legislative arsenal with the CPP program redesign, **Tunisia is partially compliant with Recommendation 31.**

### **Recommendation 32 – Cash couriers**

116. **C. 32.1 to C. 32.4:** The control of foreign exchange flows is viewed as a priority by the Tunisian authorities. The Ministry of Finance’s Order of October 17, 2014 states that all imports or exports of foreign exchange in amounts equal to or greater than D10,000 (previously 25,000 dinars), must be declared to the Customs Department upon entry, upon exit, and in the course of transit operations. Moreover, upon arriving in Tunisia, nonresidents must declare the foreign exchange they are importing into the country, if they intend to re-export an amount larger than the equivalent value of D5,000 (Guidance 94-13 of September 7, 1994, as modified by the Guidance to Licensed Intermediaries No. 2007-13 of April 25, 2007). Upon leaving Tunisia, nonresidents cannot take out an amount larger than the equivalent value of D5,000 except as stated on the customs declaration form that was filled out upon entering the country. The controls are especially effective at airports.

117. Furthermore, Article 34 of Decree No. 77-608 of July 27, 1977 (laying down the conditions for application of Law No. 76-18 of January 21, 1976 revising and codifying the laws on foreign exchange and foreign trade governing relations between Tunisia and foreign countries) provides that “*persons leaving Tunisian territory for a foreign country or entering Tunisian territory from a foreign country may be compelled to provide the customs authorities with a written declaration about gold, stocks and bonds, payment instruments and documents incorporating a debt obligation or title deeds in their possession. They must also provide these customs authorities with the import or export license which should have been issued to them, when such license is required.*”

118. The currency control legislation defines payment instruments broadly to include all negotiable instruments. For this reason, the controls described here are applicable to these instruments. The powers available for the Customs Department that derive both from the currency controls and customs legislation, allow for control, seizure, and sanctions as regards goods such as value goods, precious metals and precious stones, which must be specifically declared and are subject to enhanced regulation, notably with respect to the conditions for import and export.

119. Customs is in particular responsible for controlling the border. Nevertheless, the police and security units are also involved, especially as part of targeted operations or because they have information on offenses that are being committed or on criminal networks. Such involvement may also take the form of joint operations with the Customs Department and, at the very least, in cooperation actions in the area of intelligence. These units are authorized under the Customs Code and the Code of Criminal Procedure respectively to seize illegally imported sums and *a fortiori*, if such sums are the result of criminal activities such as money laundering or terrorist financing, to confiscate them. Interagency coordination in this area is strengthened. Consequently, in addition to its internal network for real time coordination among all its operational units, Customs coordinates each day with the Ministry of the Interior and the Central Bank on the subject of foreign exchange flows and sends foreign exchange declarations to those partners on a daily basis. A foreign exchange database is in place at the port of La Goulette. A monthly interagency report is also prepared (Customs, Police, and National Guard).

120. Tunisia’s customs staff, acting in cooperation with the police, provides effective control in airport areas. Scanning is systematic (passengers, freight). In view of the extent of the land borders and the size of migratory transit flows as well as the considerable activity at the port of Tunis in the case of maritime traffic (in season, six to seven boats arrive each day carrying approximately 1,300 people and 700 cars), systematic and comprehensive control remains difficult but is considered a priority.

121. All containers are scanned upon arrival. Although these procedures are aimed essentially at detecting fraud other than “funds transfers,” they nevertheless illustrate the efforts of the Tunisian authorities to control the borders. The fact remains that the transport of cash is more difficult to identify

than is the case with other goods. The policy of strict, regular, and frequent controls presented by the authorities is, however, likely to assist in the detection of fraudulent transport of cash especially by sea, despite border flows that are considerable.

122. **C. 32.5:** Article 99 of the AML/CFT Law provides that “*Anyone who refrains from complying with the obligation to report provided for under the first paragraph of Article 76 of this Law shall be punished by one month to five years of imprisonment and fined three thousand dinars. The fine may be increased to five times the value of the funds to which the offense relates.*”

123. Furthermore, Article 35 of the Foreign Exchange and Foreign Trade Code provides that “*violations or attempted violation of foreign exchange regulations are punishable by imprisonment of one month to five years and a fine of 150 dinars to 300,000 dinars, such fine not being less than five times the value of the amount to which the offense relates. In case of recidivism, the prison sentence may be extended to ten years and Article 53 of the Criminal Code is not applicable.*” It also provides that the movable and immovable assets connected with the offense may be confiscated.

124. **C. 32.6:** The CTAF periodically receives files from the Directorate General of Customs containing the amounts in foreign currency banknotes imported by travelers, and the amounts in foreign currency banknotes imported by travelers in excess of D100,000. In addition, the Directorate General of Customs informs the CTAF of any transaction that it considers suspicious. This information is considered a suspicious transaction report. This practice seems informal because no legislation forwarded to the assessment team mentions it.

125. **C. 32.7:** Faced with the danger of cross-border transport of cash which is increasing, national coordination has been strengthened. Customs authorities and the police are working together and several seizure operations have been carried out with the assistance of these two agencies.

126. In addition and as part of a joint project between the FATF and MENAFATF on the ML/TF risks of cross-border cash transfers, co-piloted by Tunisia and the United Kingdom, Tunisian customs authorities, the police, and the CTAF are conducting an on-the-ground operation to detect and trace the vulnerabilities of the systems introduced.

127. **C. 32.8:** Article 38 of the Foreign Exchange and Foreign Trade Code provides that “*gold, stocks and bonds, payment instruments and documents incorporating a debt obligation or title deeds in the possession of travelers going to or coming from a foreign country when entering or leaving Tunisia and the import or export of which are not authorized either generally under the provisions of this Decree, or under a special authorization, shall be deposited in the Customs Fund of the Collectors of Customs, provided they have been properly declared.*” In addition, the Customs Code provides the general framework for the right of Customs to retain in its possession, when there is a contravention or a customs offense, “*all items subject to confiscation and shipments and all other documents related to the seized items [ ... ] [and the] items set aside as collateral for payment of fines.*”

128. **C. 32.9:** All information on declaring foreign exchange imported and exported are stored in a dedicated database. The information covers the surname, first name, nationality, passport number, nature of the transaction, amount of foreign exchange, customs declaration number, and date and place of entry into or exit from the national territory. The CTAF has direct access to the database.

129. It also appears that Tunisia is very active with its regional partners. Thus, the authorities have emphasized that Customs is continually forming partnerships with counterpart services in other countries such as Italy, France, Germany, Algeria, and Libya in the context of mutual administrative assistance. In

addition, Customs participates actively in the activities of the World Customs Organization. In the region, thematic operational meetings are held quite regularly to promote the rapid circulation of information, especially with Algeria and Libya.<sup>52</sup>

130. Customs is continually forming partnerships with other administrations and with counterpart services in other countries such as Italy, France, Algeria, and Libya in particular because of the volume of trade. Tunisia has a system to control cross-border cash transactions. The means of enforcement are satisfactory in terms of both the penalties incurred and the possibility of confiscation. Finally, the information-sharing system is efficient and statistical and analytical tools are in place, although they need improving.

131. Computerization, which is already well advanced but does not yet cover all border posts, is on schedule and continues apace with the aim of covering the national network within a short time. Tunisia possesses effective tools for recording data on cross-border movements of cash (databases at Customs, the Ministry of the Interior, the Central Bank, which are quickly updated and cross-referenced; interdepartmental coordinated use of data; rapid interagency feedback, particularly through monthly reports). Operational coordination among the government agencies concerned as well as with the Central Bank is in place and is satisfactory. Since 2012 this cooperation has been extended to the CTAF, which now has direct access to the database on foreign currency banknotes imported and exported by travelers. The features of the relevant IT systems are apparently designed with this objective. The coercive powers of customs and the police as well as the control of foreign exchange flows (exchange control) are strict and resolutely applied. Tunisia does coordinate among the competent agencies on an almost daily basis and with its principal partner countries, but cannot yet deal effectively with the challenges posed by sizable flows of people and goods passing through Tunisian territory.

132. **C. 32.10:** Article 1 of Guidance No. 94-13 provides that travelers may import the payment instruments or devices denominated in foreign currency freely and regardless of the amount concerned, subject to the provisions of the foreign exchange regulations and Law No. 75-2003. Freedom is therefore the rule, and restriction the exception.

133. **C. 32.11:** With reference to criterion 32.5, there are penalties for missing or inaccurate reports or any related dishonest conduct intended to deceive, as well as violations or attempted violations of the foreign exchange regulations. Also, cross-border transport in relation to ML/TF or predicate offenses as recognized by the Criminal Code, are not directly targeted. Similarly, Article 76 of the AML/CFT Law targets only the import or export of foreign exchange, regardless of the origin of the sums involved.

### ***Weighting and Conclusion***

134. Tunisia is largely compliant with Recommendation 32.

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<sup>52</sup> Answers to the self-assessment questionnaires - p. 371 / 372

## TERRORIST FINANCING AND FINANCING OF PROLIFERATION

### *Recommendation 5 – Terrorist financing offense*

135. **C. 5.1/5.2/5.3:** Article 19 of the AML/CFT Law defines the perpetrator of terrorist financing as anyone who “provides or collects assets, by any means whatsoever, directly or indirectly, knowing them to be intended for the financing of persons, organizations, or activities related to terrorist offenses regardless of the legitimate or illicit origin of the assets provided or collected.” The criminalization of the financing of terrorism in Tunisian law is consistent with Article 2 of the Convention on the Suppression of the Financing of Terrorism: the definition stipulates the two elements of “providing or collecting” assets for use in an act by a terrorist or a terrorist group. The use of the concept of “assets” constitutes a broad definition that encompasses what is defined as “funds” in the Convention.
136. **C. 5.4:** Use of the term “intended for” clarifies that for the implementation of Article 19, the relevant issue is the objective of the use of the funds in question, not their actual use. This meaning is confirmed by Article 24 of the AML/CFT Law, which introduces the aggravation of complicity even in a case where no terrorist offense was committed.
137. **C. 5.5:** Tunisian law states that the element of intent may be inferred from objective factual circumstances. Tunisian criminal law is based on any kind of evidence and a minimum of accumulated charges and indicia.
138. **C. 5.6:** This offense is punishable with five years to twelve years of imprisonment plus a fine of 5,000 to 50,000 dinars. The amount of the fine may be increased to five times the value of the assets to which the offense relates.
139. **C. 5.7:** Article 21 provides for legal persons to be held liable and subject to fines equal to five times the amount of the fine established for the initial offense. As stipulated above (paragraph 108), Article 3 of the AML/CFT Law provides for enforcement of the ordinary law provisions of the Criminal Code. Furthermore, Article 25 of the Law provides for administrative in addition to criminal sanctions in the form of being placed under administrative monitoring for a period of five to ten years for the perpetrators of terrorist offenses. The authorities have also pointed out that civil penalties are possible simultaneously with criminal penalties when evidence of non-pecuniary damage, physical injury, or damage to property is reported pursuant to Article I of the Code of Criminal Procedure.
140. Sanctions, as defined, are dissuasive and proportionate.
141. **C. 5.8:** As the provisions of the Criminal Code are applicable to offenses governed by the AML/CFT Law, related crimes, attempts, and complicity apply to terrorist financing. Complicity defined in this way satisfies the requirements of Article 2 (5) of the Convention.
142. **C. 5.9:** Terrorist financing is a crime defined by Law 2003-75 and can therefore be a predicate offense for money laundering.
143. **C. 5.10:** The AML/CFT Law does not impose any restrictions regarding territoriality and does not require that the perpetrator of terrorist financing be from the same country as the terrorists or the terrorist organization or that the acts take place in that country.

## ***Weighting and Conclusion***

144. The Tunisian legal system in relation to the offense of terrorist financing has improved with a broad definition of the offense resulting from the combination of the 2003 Law and the Articles of the Criminal Code. **Tunisia is compliant with Recommendation 5.**

### ***Recommendation 6 – Targeted financial sanctions related to terrorism and terrorist financing***

145. **C. 6.1:** No mechanism has been adopted to allow an authority or a competent court to designate persons or entities to the 1267/1989 Committee and to identify the targets of designations based on designation criteria established in United Nations Security Council Resolutions (UNSCR). If the Minister of Finance is the authority designated to implement the freezing mechanisms in accordance with UN resolutions, he has no power to propose the designation of persons or entities to the 1267/1989 Committee and to propose the designation of persons or entities to the 1988 Committee.

146. **C. 6.2:** Similarly, the Tunisian authorities have not made any provision to allow a court or competent authority to designate entities and persons in accordance with UNSCR 1373. In addition, they have not established specific measures for considering a request from another State to this end.

147. **C. 6.3:** The Ministry of Finance has no powers and mechanisms to seek and to obtain information to identify the individuals and businesses that fulfill the criteria for designation on the basis of reasonable grounds and to take ex parte action against them.

148. **C. 6.4:** Tunisia has set up a mechanism to freeze the property of persons or organizations determined by the updated list of the Sanctions Committee established pursuant to Security Council Resolution 1267 (1999) of October 15, 1999. The freeze under Resolution 1373 is covered by Articles 94 et seq. of Law No. 2003-75. This law states that *“The Prosecutor General at the Court of Appeal of Tunis can, notwithstanding the absence of any report on a suspicious operation or transaction, petition the President of the Court of First Instance of Tunis to order the freezing of assets belonging to individuals or legal entities suspected of having ties to persons, organizations, or activities related to the offenses covered by this Law, even if they are not committed on the territory of the Republic.”* In 2014, this mechanism was used several times to freeze 15 accounts attributable to 13 entities suspected of financing terrorism.

149. **C. 6.5 (a) and (b):** Law No. 2009-65 of August 12, 2009 amended the AML/CFT Law and added several Articles related to asset freezing implemented by UN bodies. The new Article 72 bis provides that *“within the framework of Tunisia’s compliance with international commitments, the Minister of Finance may, after consultation with the Governor of the Central Bank, decide to freeze the property of persons or organizations whose ties to terrorist crimes is established by the relevant UN bodies.”* The Minister of Finance has therefore become the competent authority to request freezing pursuant to UN sanctions. Paragraph 3 of Article 72 bis which states that *“those responsible for implementing the decision to freeze should, upon publication thereof in the Official Gazette of the Republic of Tunisia, take the necessary measures to this end and report to the Minister of Finance all freezing operations they carried out and communicate all relevant information required for the effective enforcement of his decision.”* These measures are summarized in an Order issued by the Minister of Finance on January 24, 2014, after consultation with the Governor of the Central Bank. The Judicial mechanism binds institutions and entities subject to the AML/CFT law to freeze without delay funds of designated persons as soon as it is published in the Official Gazette. However, while the mechanism must apply to « every person in the country » (methodology, 6.5.a), this requirement is limited to the entities governed by the AML/CFT law. In any case, there is no general prohibition to make assets and resources, available, or to undertake any transactions with the designated entities or persons (6.5.c). Last, the implementation of these measures

relies, mainly in the case of banks, on a comparison in real time of the customer files with the Orders issued by the Minister of Finance, which does not always seem to be carried out (see report on effectiveness, IO 10). Paragraph 2 of article 72 bis of the AML/CFT law sets forth that « the freezing measure shall apply to movable, corporeal or incorporeal and immovable properties, regardless of the way they were acquired, the revenues and interests made from them, as well as the documents or deeds, whether material or electronic, proving the ownership or the rights related to the said property, without prejudice to bona fide third parties. » The text does not determine as required by the methodology (6.5.b) that the category of relevant property covers the assets that are « controlled » by the designated persons or the property of persons acting « on behalf of » designated persons.

150. As regards Resolution 1373, the legal grounds available to Tunisia are the same. Tunisia has also not taken steps to bring its provisions into conformity with freezing measures adopted by other countries under Resolution 1373 and concerning which Tunisia would be requested, if necessary, to adopt similar freezing measures. Nevertheless, Tunisia uses Articles 94 et seq. of the Law of December 2003 to implement Resolution 1373. Indeed, Article 94 provides that “*the Prosecutor General at the Court of Appeal of Tunis can, notwithstanding the absence of any report on a suspicious operation or transaction, petition the President of the Court of First Instance of Tunis to order the freezing of assets belonging to individuals or legal entities suspected of having ties to persons, organizations, or activities related to the offenses covered by this Law, even if they are not committed in the territory of the Republic.*” Articles 95 and 96 specify the methods of implementing these measures, including the opening of a criminal investigation against the individual or legal entity concerned; the last paragraph of Article 96 stating that “*the assets that are the subject of the order described above remain frozen unless otherwise decided by the judicial authority hearing the case.*”

151. This approach requires a judicial process that does not guarantee that asset freezes will be carried out without delay.

152. **C. 6.5 (c):** Article 68 of the 2003 Law provides for the prohibition of “*any kind of support and financing to individuals, organizations, or activities linked with terrorist offenses and other illicit activities whether they are granted directly or indirectly through individuals or legal entities regardless of their form or purpose, even if they pursue a non-profit objective.*” More specifically, Article 24 of the BCT Guidance 2013-15 states that “*institutions (credit institutions and nonresident banks) are prohibited from providing any form of support and direct and indirect financing through individuals or legal entities to individuals and organizations or activities related to terrorist offenses and other illicit activities.*”

153. **C. 6.5 (d):** Under Article 2 of the Minister of Finance’s Order of January 24, 2014, individuals and institutions listed in Article 74 of Law No. 2003-75 should be aware of the updated list of the Sanctions Committee either directly on the official website of the 1267 Committee or on the official website of the Ministry of Finance. The website of the Ministry of Finance indeed contains a link to the updated list of terrorists and terrorist groups covered by the UNSCR in relation to financial sanctions against the Taliban and Al Qaeda. Moreover, for the banking sector, the Tunisian authorities have informed the assessment team that the lists of persons subject to asset freezes by these resolutions are incorporated into their screening system.

154. **C. 6.5 (e):** Under paragraph 3 of Article 72 bis of the AML/CFT Law, “*persons responsible for implementing the freezing decision should, upon publication of the aforesaid decision in the Official Gazette of the Republic of Tunisia, undertake the necessary measures to that end and report to the Minister of Finance all acts of freezing they have carried out and all relevant information evidencing the implementation of his decision.*” Given that the freezing decision was taken by Order of the Minister of Finance and published in the Official Gazette of the Republic of Tunisia, regulated individuals and entities

should proceed directly to freeze the assets belonging to the individuals and businesses determined by the Sanctions Committee and inform the Minister of Finance accordingly.

155. **C. 6.5 (f)**: Paragraph 2 of article 72 bis of the AML/CFT law stipulates that the rights of bona fide third parties must be protected during the implementation of the freezing measure.

156. **C. 6.6 (a)**: The Tunisian regime does not provide procedures for withdrawal on request from the lists of the UN Sanctions Committee in accordance with procedures adopted by the 1267/1989 Committee or the 1988 Committee.

157. **C. 6.6 (b), (c), (d) et (e)**: Article 72 (c) of the AML/CFT Law provides that the Minister of Finance is empowered to “*order the lifting of the freeze on persons and organizations who the relevant UN bodies determine to be no longer linked to terrorist crimes*” This measure therefore applies to UNSCR 1267 and 1373 and their succeeding resolutions. The Order of January 24, 2014 relates only to the implementation of Articles 72 bis, ter and quater of the AML/CFT Law regarding UNSCR 1267 (Article 1 of the Order).

158. Consequently, the withdrawal of the lists drawn up by the UNSCR 1373 is decided by the Minister of Finance either in cases of error, or upon decision from judiciary authorities in charge of the case. No other criteria is stipulated by law. Regarding the UNSCR 1267 and 1730, no proceedings concerning requests for de-listing have been initiated by the Tunisian authorities. The common regime of Article 72 (quater) seems to apply. If the names of the individuals and entities as determined no longer appear on the UN lists, the unfreezing is done automatically by the regulated persons pursuant to Article 2 of the Order of the Minister of Finance, which states in its second paragraph (“*It is hereby ordered as regards persons and institutions referred to in aforementioned Article 74 of Law No. 2003-75 that the freeze on individuals and organizations whose link to terrorist crimes has not been established by the competent UN bodies be lifted*”).

159. **C. 6.6 (f)**: Article 72 quater of the AML/CFT Law provides that “*any person affected by a decision to freeze [...] may apply to the Minister of Finance to order the lifting of the freeze on his property if he considers that it was made against him by mistake.*” Article 6 of the Order of the Minister of Finance of January 24, 2014 reiterates this same provision in relation to persons and entities covered by UNSCR 1267.

160. **C. 6.6 (g)**: Pursuant to Article 2 of the January 24, 2014 Order of the Minister of Finance, it is hereby ordered subject to the AML/CFT Law that the freeze on persons and organizations whose link to terrorist crimes has not been established by the competent UN bodies be lifted.

To do this, according to Article 3, these persons and organizations must be aware of the updated list of the Sanctions Committee as it appears on the official website of that Committee or on the official website of the Ministry of Finance.

161. **C. 6.7**: Article 72 ter of the AML/CFT Law states that “*the Minister for Finance may, after consultation with the Governor of the Central Bank, allow a person affected by the freezing decision to dispose of some of his assets to satisfy his humanitarian necessities and those of his family, including housing.*” The Minister of Finance’s Order of January 24, 2014 lists in its Article 4 the types of necessities covered by this provision: it reiterates word for word the UNSCR 1452.

162. It should also be noted that “*the Minister of Finance may direct that part of the frozen assets be used to cover the necessary expenses provided the Sanctions Committee referred to in Article I of this Order does not make a decision to the contrary after the expiry of 48 hours from the date on which it was informed immediately of this decision through diplomatic channels.*”



163. The Tunisian legal system is partially compliant with regard to the implementation of UNSCR 1267 because of the lack of mechanisms for sending requests for de-listing to the United Nations Office of the Ombudsman and for identification and designation of terrorist individuals or entities and communicating this information to the UN Sanctions Committee. As regards UNSCR 1373, the mechanism of aforementioned Article 94 of the 2003 Law only allows for identification of terrorist individuals and entities meeting the criteria of this Resolution or analysis of the designations proposed by other States in the context of a judicial investigation.

#### ***Weighting and Conclusion***

164. Regarding Resolution 1267, the mechanism binds the institutions and entities mentioned in the AML/CFT law to freeze without delay the assets of designated persons upon publication in the official gazette. However, while the mechanism must apply to « every person inside the country »(methodology 6.5.a), the requirement only covers the parties subject to the AML/CFT law. Furthermore, the text does not specify as required by the methodology (6.5.b) that the category of the relevant property should cover the assets that are « controlled » by the designated persons, or the property of persons acting « on behalf of » the designated person. Moreover, there is no general prohibition to make assets or resources available or to undertake any transaction with the designated persons or entities (6.5.c).. As for Resolution 1373, the provision, highly dependent on the institution of legal proceedings, can hardly initiate a freeze immediately. The Tunisian authorities have recently enacted Decree 173 of September 29, 2014 creating a “security” and legal division to combat terrorism, in particular to enable individuals or entities to be identified in accordance with United Nations resolutions. However, the process does not appear to be confirmed into law.

165. **Tunisia is partially compliant with Recommendation 6.**

#### ***Recommendation 7 – Targeted financial sanctions related to proliferation***

166. Tunisia has not implemented a system of targeted financial sanctions in response to UNSCRs concerning the proliferation of weapons of mass destruction and their financing (Iran and North Korea).

#### ***Weighting and Conclusion***

167. **Tunisia is noncompliant with Recommendation 7.**

#### ***Recommendation 8 – Non-profit organizations***

168. Decree-Law 2011-88 of September 24, 2011 concerning the organization of associations repeals Organic Law No. 59-154 of November 7, 1959 on associations and sets the legal framework for non-profit organizations. The regime in force, Decree-Law of September 24, 2011, was noted to be consistent with the former Special Recommendation VIII by the 2006 assessment team. However, the assessors observed at the time (Assessment Report 2006 p. 92) that “*the Tunisian system is very rigorous and very demanding, the challenge therefore is its effective implementation, including a focus on nonprofit organizations actually at risk of money laundering and terrorist financing, especially with a view to efficient allocation of resources but also not imposing undue burdens on the sector without appreciating the risk.*”

169. **C. 8.1 (a):** The new system introduced after the Revolution in January 2011 by the Decree-Law of September 24, 2011 establishes a much more flexible reporting regime. In addition, the new Tunisian Constitution of January 26, 2014 proclaims in its Chapter on Rights and Freedoms that the freedom to form political parties, trade unions, and associations is guaranteed. It states, however, that this freedom

should be exercised in accordance with the Constitution, the law, financial transparency, and the rejection of violence. Recognition of the principle of freedom of association in Tunisia has led to the creation of many associations and political parties. This has resulted in a sharp increase in the number of associations: from 2011 to 2014, 8,250 new associations were created (i.e. a 47 percent increase). This sharp increase, normal in the new Tunisian context, needs more resources to address the need to control possible abuses. The Tunisian authorities have announced that the laws on the books are “*being developed and improved given the flaws identified in practice.*”<sup>53</sup>

170. **C. 8.1 (b) and (c):** Associations must send a significant amount of information to the Chief Cabinet Secretary. The Tunisian authorities have not indicated that they conducted a regular review of the nation’s NPO sector or that it possesses updated information on current associations within the country. The Tunisian authorities have stressed that *ad hoc* committees bringing together various AML/CFT stakeholders have been established at the level of the presidency of the Government to periodically make an assessment of the sector. No reports or statistical data have been submitted to the assessment team in this regard. This makes it difficult to assess and periodically reassess the sector’s vulnerability.

171. **C. 8.2:** Several efforts have been made to increase awareness of the problem of terrorist financing including with civil society, and several television shows have been dedicated to the issue. The team is of the opinion that increasing awareness on this issue has not been sufficiently systematic.

172. **C. 8.3:** Decree-Law 2011-88 states in Article 3 that “*acting within the scope of their charter and bylaws, activities, and funding, associations shall comply with the principles of the rule of law, democracy, plurality, transparency, equality, and human rights as defined by international agreements ratified by the Republic of Tunisia.*” The regime in place is declarative. To form an association, the founders must submit to the Chief Cabinet Secretary a report including the name of the association, its purpose, its goals, its headquarters and any headquarters of its subsidiaries, attaching thereto copies of the identity cards of the Tunisian founders and the charter and bylaws of the association. The association is deemed duly constituted when these documents are sent but only acquires legal personality upon publication in the Official Gazette of the Republic of Tunisia, subject to analysis by a court officer of the accuracy of the documents sent (Articles 10, 11 and 12 of the Decree-Law).

173. The *charter and bylaws* of the association must include in particular:

- a. The name of the association
- b. Its headquarters
- c. Its objectives and the means of achieving them
- d. The conditions for becoming a member and under which members may be expelled as well as the rights and obligations of members
- e. Submission of its organization chart
- f. Determination of the decision-making body of the association
- g. The amount of the annual fee

174. Any changes in the persons responsible for the administration or management shall be reported to the Chief Cabinet Secretary.

175. Foreign associations have a similar system, with control of information provided by a court officer. It is stated explicitly that if foreign associations do not comply with transparency and the prohibitions contained in the Decree-Law, they may be denied registration by the Chief Cabinet Secretary.

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<sup>53</sup> Answer to the technical compliance questionnaire - September 2014 (p. 68)

176. **C. 8.4:** Article 34 of the Decree-Law provides that “*an association’s resources consist of membership fees, public subsidies, grants, donations, and bequests of domestic or foreign origin, and revenues resulting from assets, activities, and projects.*” Grants or donations from abroad may in no case come from countries that do not have diplomatic relations with Tunisia or from organizations defending the interests and policies of these countries (Article 35). The income and expenses of the association must be paid by bank or postal transfers or checks if their value exceeds 500 dinars.

177. Chapter VII of the Decree-Law provides for the recording and auditing of the associations’ accounts. They must maintain an accounting system similar to the one proposed for companies (Article 39). In addition, they must maintain a record of financial support, on the basis of whether they are in cash or in kind, domestic or foreign, and public or private. These data should be published by the associations (print media and website of the association if it exists or pursuant to Article 43 paragraph 8 of the Decree-Law). Regarding record keeping, the association must keep its financial documents and registers for a period of ten years (Article 42 of the Decree-Law). In addition to the obligations to employ accountants or even certified public accountants according to the level of their annual resources, associations benefiting from public funding must also present the court with an annual report including a detailed description of their funding sources and expenses (Article 44). No special provisions have been notified by the Tunisian authorities in respect of the implementation of “know your beneficiaries and associate NPOs” rules.

178. **C. 8.5:** Chapter VIII of the Decree-Law deals with penalties for associations that do not comply with their obligations. Three gradual steps are stipulated: administrative notice, then the suspension of business operations and dissolution of the association, both on the order of the court. Moreover, the governor of the region can decide to suspend the association’s business operations provisionally as part of its administrative police powers. Information on the life of associations is already tracked to some extent since the subdirectorate had, at the time of the visit, issued 180 notices for violations regarding foreign grants (out of 564 declarations), 246 notices for violations of the public financing regulations (out of 308 beneficiary associations), and 300 notices for miscellaneous violations. In particular, 157 suspensions of the activities of associations were issued by the governorates in response to reports or investigation by the Ministry of the Interior. However, the effectiveness of this monitoring is limited by the lack of resources. The supervisory departments have insufficient staff to verify compliance with the regulations, analyze the information collected, and check the accuracy of the legal and accounting information reported by the associations. The Directorate has 13 staff in all. Within it, the subdirectorate responsible for monitoring associations consists of six persons and is responsible for monitoring the creation and activities of more than 17,000 associations (including 8,250 created since 2011) throughout the national territory, without the help of local intermediaries.

179. This measure was applied in the case of 157 associations (*cf*: Government website).

180. **C. 8.6:** Apart from traditional investigation services, Tunisia did not report any specific measures to effectively investigate and obtain information on associations in order to combat the financing of terrorism. The Tunisian authorities stated that the supervisory authority, the Chief Cabinet Secretary, stresses the importance of two-way communication, information gathering, and coordination between relevant government bodies such as the Ministry of Finance and the Central Bank. Similarly, a committee has been established within the General Secretariat of the Government. It is chaired by the Chief Cabinet Secretary, which includes representatives of the Ministries of the Interior, Justice, and Finance, the General Directorate of Customs, the National Post Office, the Central Bank of Tunisia, and the CTAF. The Tunisian authorities state that the goal of this *ad hoc* committee is to exchange information on the

activities of associations and detect potential vulnerabilities and propose legislative, regulatory, and administrative measures to address them.<sup>54</sup>

181. **C. 8.7:** According to Tunisian authorities, the CTAF is the focal point to which any request for information on NPOs suspected of financing or supporting terrorism should be addressed by its foreign FIU counterparts. If there are suspicions regarding the financing of terrorism from a foreign FIU with regard to associations in Tunisia, this FIU should contact the CTAF who, under Article 81 of the AML/CFT Law, may seek the assistance of the administrative authorities responsible for enforcement of the law.

### *Weighting and Conclusion*

182. The Law establishes transparency measures to identify those responsible for the administration and management of associations and ensures the integrity of incoming and outgoing funds by publication of the financial statements of the associations. **Tunisia is largely compliant with Recommendation 8.**

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<sup>54</sup> According to the authorities, one of the decisions taken by this committee was that the Ministry of Finance in collaboration with the Central Bank of Tunisia should review the regulations governing the import of foreign banknotes.

## PREVENTIVE MEASURES

### *Recommendation 9 – Financial institution secrecy laws*

#### General framework of the duty of professional secrecy

183. The legislation defining the powers and responsibilities of the various financial supervisors specifies that the institutions monitored by the latter cannot invoke professional secrecy (Article 32 of Law No. 2001-65 of July 10, 2001 for credit institutions, Article 36 of Law No 94-117 of November 14, 1994 for institutions subject to oversight by the Financial Market Board (CMF), and Article 83 of the Insurance Code for insurance companies). Article 61 bis of Law No. 2006-26 of May 15, 2006, amending and supplementing Law No. 58-90 establishing and organizing the BCT specifies that the Central Bank should cooperate with the regulatory authorities of the financial and insurance sectors. This includes in particular the exchange of information and experience, training, and joint execution of inspection operations. Furthermore, Article 61 ter sets out the legal framework within which the Central Bank may conclude bilateral cooperation agreements with the supervisory authorities of foreign countries explicitly including the exchange of information. The Tunisian authorities have stated that a draft cooperation agreement between the three regulatory authorities has been drawn up but not yet signed.<sup>55</sup>

184. The provisions relating to oversight of financial and insurance markets also contain provisions for cooperation between financial oversight authorities. The (new) Article 46 of Law 117-94 states that the CMF is cooperating with the regulatory authorities of the banking and insurance sectors on the basis of agreements that relate in particular to exchange of information, training, and the joint execution of control operations. The CMF is also empowered under the same Article 46 to cooperate with foreign counterparts or authorities performing similar duties regarding information sharing and investigative aspects. The General Insurance Committee has the same powers of cooperation at national and international levels in accordance with Article 180 of the Insurance Code.

185. Professional secrecy may not be invoked as grounds for noncompliance with the CTAF requirements in the context of its work, either by financial institutions or by administrative authorities (Article 81 of Law No. 2003-75).

186. The CTAF is, moreover, able to share the information obtained with foreign counterparts, once the latter are subject to professional secrecy and to the obligation not to forward or use the data and information passed on to them for purposes other than those of combating and punishing offenses as prescribed by Law No. 2003-75 (Article 82 of the Law). Banking and professional secrecy is not an impediment, inasmuch as the CTAF's capacity to access this information without restriction makes it possible to lift the professional and banking secrecy laws where necessary.

#### ***Weighting and Conclusion:***

187. The professional secrecy with which regulated persons and financial supervisors must comply is not an impediment to implementation of the obligations of the Tunisian authorities as regards matters relating to AML/CFT. **Tunisia is compliant with Recommendation 9.**

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<sup>55</sup> Answer to the self-assessment questionnaire - p. 99

## ***Recommendation 10 – Customer due diligence***

188. **C.10.1:** The obligation of credit institutions to not keep anonymous accounts or accounts in fictitious names is set forth in **Article 25 of Guidance 2013-15**. Article 74 bis of Law No. 2003-75 of December 10, 2003 also states that accounts cannot be opened by the persons referred to in Article 74 if they fail to verify the identity data of their customers or if the information is insufficient or manifestly fictitious. However, a Guidance applicable to specific categories of persons subject to regulation (excluding securities brokers and management companies) prohibits the use of anonymous accounts.

189. In addition, the issuance by banks of anonymous cash bonds is no longer authorized since December 2011 under Guidance No. 2011-20 amending Guidance No. 91-22 (Article 14). Now, savings bonds are registered.

190. It is appropriate to consider the scope of the term “*banking and nonbanking financial institutions*” referred to in Article 74 of aforementioned Law No. 2003-75 of December 10, 2003. The Law does not mention the different categories of financial institutions that may be considered “*banking and nonbanking financial institutions*” in particular by reference to the relevant provisions governing the activities of financial institutions. Similarly, insurance companies are not covered by Article 74, which does not list the provision of insurance services.

191. Article 2 of Regulation No 01/2012 on due diligence in the insurance sector prohibits insurance companies from accepting insurance applications from anonymous persons or persons with obviously fictitious names.

192. **C. 10.2 / C. 10.3 / C. 10.4 / C. 10.16:** Law No. 2003-75 requires financial institutions to establish the identity of their customers on the basis of official documents (Article 74 paragraph 2). The Minister of Finance’s Order of September 10, 2004 as amended on December 2, 2009 makes these provisions more precise by requiring that one-time customers be identified when they conduct cash transactions of more than D10,000, (approx. US\$7,500) or foreign exchange transactions exceeding D5,000, (approx. US\$3,800) (Articles 2 and 4). Identification of the customer is also required for life insurance transactions when the single premium paid exceeds D3,000 and when the regular premium is greater than D1,000 (Article 2 para. 2 of the abovementioned Order). Those provisions, however, do not include the situation where the transaction can be performed in a single transaction or in several transactions that appear to be linked.

193. As regards credit institutions, customer identification requirements were largely in place before the enactment of Law No. 2003-75 (cf. 1996 Guidance on checks and the BCT 2001 Note to banks in particular). The obligation to verify the identity of the customer when entering into the business relationship is imposed by Article 74 bis of the 2003 Law (added by the 2009 Law). Furthermore, with regard to credit institutions and the National Post Office (ONP), the CTAF Directive of April 20, 2006 states, in the first place that the complete identity check of a customer must be done “*at the start of the relationship*” (Article 2 para. 1), and in the second place that identification of one-time customers is not required when the transaction amount is below the aforementioned thresholds, except in cases of suspicion or “*repetition of such transactions by the same beneficiary or for his benefit*” (Article 3 para. 2). Moreover Guidance 2013-15 requires credit institutions to take due diligence measures when entering into business relationships. For the insurance sector, Article 2 of Regulation No 01\2012 relating to due diligence measures to be undertaken in AML matters requires insurance companies to take due diligence measures with regard to their customers when underwriting insurance contracts. CTAF Directive No. 3 also states that securities brokers and management companies must, at the start of the relationship, check the full details of the customer’s identity, his business and address, and inquire about the intended purpose and nature of the business relationship.

194. The situations in which a financial institution has doubts about the truthfulness or relevance of the information provided, makes a transfer for a one-time customer, or has suspicion as regards ML/TF concerning one of its regular customers, are covered by aforementioned general obligation (Article 74 bis para. 2 of Law No. 2003-75). Article 9 of the Guidance of November 7, 2013 requires that in case of doubt about the truthfulness or relevance of the information provided on the identity of the customer or when there is suspicion about ML/TF a fresh identification must be submitted. Article 3 of Regulation No 01/2012 concerning the due diligence measures to be taken in the insurance sector requires insurance undertakings to take due diligence measures if they doubt the truthfulness or relevance of previously obtained customer identification data.

195. In situations where a financial institution has suspicions as regards ML/TF, the institutions subject to regulation shall take the necessary due diligence measures (Article 74 bis of Law No. 2003-75), and so shall credit institutions (Article 4 of Guidance 2013-15), the insurance sector (Article 3 of Regulation No 01/2012), securities brokers, and portfolio management companies (Article 14 of Directive No. 3 CTAF).

196. As regards one-time transactions in the form of wire transfers, Article 74 bis of Law No. 2003-75 provides that the regulated institutions shall take due diligence measures as defined in the same Article, especially when they carry out wire transfers. Furthermore, Article 18 of Guidance No. 2013-15 requires credit institutions to exercise special vigilance over any wire transfer transaction received or sent, especially when the transfer order is issued by one-time customers regardless of the amount involved.

197. Guidance 2013-15 requires that when entering into a business relationship with a customer, credit institutions shall verify the latter's identity and area of business. The Annexes to Guidance 2013-15 list the elements of identification, by type of customer (individuals, corporations, associations, and political parties) that CIs must take into account. It covers all relevant elements for effective customer identification. These requirements do not apply to companies listed on the stock exchange, the Tunisian Securities Exchange, and publicly held companies, regardless of the level of said public participation. The abovementioned CTAF directive does not clarify the steps to be taken for legal arrangements with bodies not having the status of legal entities (for example, with foreign trusts or other similar instruments). Article 2 of BCT Guidance No. 1/2012 concerning insurance undertakings (whether involving an individual or a legal entity) also has a similar provision. Furthermore, securities brokers and portfolio management companies must verify the full identity of the customer, his address, and must obtain information about the intended purpose and nature of the business relationship (be it a legal entity or an individual). Regarding trusts (legal arrangements that do not exist under Tunisian law). Article 22 of the CMF Regulations concerning the holding and administration of stocks and bonds accounts does not specifically address the issue. However, if a foreign trust invests in the Tunisian market, the provisions relating to the identification of the account holder are applicable to it.

198. Article 74 bis of the 2003 Law has placed the responsibility on the individuals and entities subject to regulation to verify, by means of official documents and other documents from a reliable and independent source, the identity of the beneficiary of the operation or transaction and the capacity of the person who is acting on his behalf. Furthermore, according to Article 6 of the Guidance dated November 7, 2013 resident and nonresident credit institutions must determine for all of its customers if the customer is acting on behalf of a third party and take all reasonable measures to obtain sufficient identification data. According to Article 5 of the Guidance, institutions must verify the identity of the person, the actual beneficiary, on behalf of whom the operation is performed. Similarly, Article 50 of the brokerage regulations provides that securities brokers must verify the identity and address of the individual and his ability to undertake the transaction prior to opening the account. In the case of a corporation, the securities broker must verify the validity of the powers vested in its legal representative or anyone delegated by the

latter to that end. Thus, the law does not cover the process of identification of the person who claims to act on behalf of the customer and appears to require only verification of the representative's capacity and not his identity.

199. Article 4 of Law No. 2009-65 of August 12, 2009 which amended the 2003 Law provides that persons subject to due diligence obligations must, within a period not exceeding three years from the date of entry into force of this Law, update the records of those persons who were customers prior to the promulgation of this Law, in order to ensure compliance with its provisions. The period of three years is long. Thus, the application of due diligence measures to existing customers does not seem to be satisfied, since Article 4 of Law No. 2009-65 of August 12, 2009 only provides for an obligation to update records related to those persons who were customers before its promulgation. Article 44 of Guidance 2013-15 forced credit institutions to comply with these requirements both for new relationships and for existing accounts, and similarly Article 11 of Regulation No 01/2012 requires insurance companies to apply the necessary due diligence measures for the identification of existing customers depending on the extent of the risks they pose.

200. **C. 10.5 and C. 10.8:** The AML/CFT Law stipulates in Article 74 bis that the regulated individuals and entities shall “*verify by means of official and other documents from reliable and independent sources the identity of the beneficiary of the transaction and the capacity of the person who is acting on his behalf.*” The provisions of that same Article require that the individuals and entities subject to regulation take reasonable measures to identify the individuals who control customers that are legal entities.

201. Guidance No. 2013-15 to credit institutions on the implementation of internal control rules for managing the ML/TF risk sets out in more detail what is meant by beneficial owner and the extent of the obligation imposed on credit institutions. Article 5 defines the beneficial owner as “any natural person who *in fine* owns or effectively controls the customer that is a legal entity or on whose behalf the transaction is carried out without requiring that there be a written power of attorney between the customer and the beneficial owner.” Article 6 of this Guidance sets out in detail the actions required by CIs to effectively identify the beneficial owners, including by verification of official and other documents from a reliable and independent source. Similarly, when the customer is a legal entity or a legal arrangement, credit institutions must determine the individuals that ultimately own or exercise effective control over the customer. This requirement laid down by the BCT Guidance does not cover securities brokers and management companies.

202. Article 2 of Regulation No 01/2012 on due diligence measures in the insurance sector defines the beneficial owner as an individual who has ownership or final power over the policy holder (the persons who hold the real and definitive power). When the contract is entered into insurance companies must identify the beneficial owners. Article 22 of the CMF Regulation concerning the keeping and administration of stocks and bonds accounts, specifies that the account held by the licensed intermediary must specify the rights attached to the stocks and bonds and where applicable, the person who has those rights.

203. In addition, the CTAF Directive of April 20, 2006 provides in Article 5 that: “*If it appears from the circumstances of the implementation of the operation or transaction that it is done or could be done for the benefit of a third party, the actual beneficiary of the operation or transaction, credit institutions, nonresident banks, and the National Post Office must verify the identity of that beneficial owner, his line of business and address, and the powers of the person who is acting on his behalf.*” The beneficial owner is defined as “*any natural person who owns or controls the customer or on whose behalf the transaction is carried out without requiring that there be a written power of attorney between the customer and the beneficial owner.*”



204. Article 74 bis of Law 2003-75 requires that the persons listed in the Article must verify, by means of official documents and other documents from a reliable and independent source, the articles of incorporation of the legal entity, its legal form of organization, its registered office, the division of its authorized capital, and the identity of its directors and those who have the power to undertake commitments on its behalf, while at the same time taking reasonable steps to identify the individuals who control it. In addition, Article 6 of Guidance 2013-15 provides that institutions should take all reasonable measures to understand the ownership and control structure of the customer and determine the individuals who ultimately have effective control over the customer, when the latter is a legal entity or legal arrangement. Article 5 of said Guidance also provides that institutions must verify the identity of the major shareholders of their corporate customers and the beneficial owners. As regards the insurance sector, Article 2 of Regulation No. 01/2012 requires insurance companies to understand the nature of the business of corporations and their ownership and control structures.

205. **C. 10.6:** The Tunisian system encompasses a general duty to inquire systematically about the purpose and nature of the business relationship. Article 74 bis of the AML/CFT Law provides that all individuals and entities subject to its regulation defined in Article 74 must take due diligence measures to “*obtain information on the purpose and nature of the business relationship.*” The following paragraph states that these measures must be taken when these individuals and entities are establishing business relationships. This obligation is also highlighted by Guidance No. 2013-15 to credit institutions on the implementation of internal control rules for managing ML/TF risks. Article 3 paragraph 2 states that “*institutions must conduct an interview upon first contact that will make it possible in general to understand and obtain information on the purpose and intended nature of the relationship.*” These institutions must also and “*when entering into a business relationship with a customer and/or, where applicable, the customer’s representative, verify the customer’s identity, the line of business, and its banking and financial situation.*” Furthermore, Article 2 of Regulation No. 01/2012 relating to due diligence measures in the insurance sector requires that insurance companies learn about the purpose of the professional relationship between the policyholder and the persons insured.

206. **C. 10.7:** The AML/CFT Law expressly prescribes that persons subject to regulation take ongoing due diligence measures with regard to their business relationships and conduct a careful scrutiny of transactions carried out. Article 74b specifies that “*the persons referred to in Article 74 of this Law must update the data on the identity of their customers, conduct ongoing due diligence throughout the course of the business relationship and scrutinize the operations and transactions of their customers to ensure they are consistent with the data they have on these customers, given the nature of their activities, the risks they incur and, where appropriate, the origin of the funds.*” Nevertheless, as it is not specifically named in the legislation, there is doubt as to whether insurance companies are subject to the requirements of this Law. Article 3 of Regulation No 01/2012 requires only that insurance companies periodically update the data and documents received by customers. Similarly, Article 2 of CTAF Directive No. 3 requires that securities brokers and management companies conduct ongoing due diligence with regard to their business relationships and scrutinize transactions undertaken throughout the entire course of the relationship.

#### **Specific due diligence measures required for legal entities and legal arrangements**

207. **C. 10.9/C. 10.10/C. 10.11:** Guidance 2013-15 provides that “*institutions must identify the beneficial owner and take reasonable measures to verify his identity by means of official and other documents from a reliable and independent source, so that they are satisfied that they know who the beneficial owner is.*” To this end, it is required that they “*determine, for all customers, whether that customer is acting on behalf of another person and take, if this is the case, all reasonable measures to obtain sufficient identification data to verify the identity of the third person; take, when the customer is a legal entity or legal arrangement, all reasonable measures to (a) understand the ownership and control*

*structure of the customer; (b) determine who are the individuals that ultimately own or exercise effective control over the customer; and ensure that the customer is not a nominee or a shell company.”*

208. Article 5 of Guidance 2013-15, requires that credit institutions “*know the identity of the major shareholders and partners of their customers that are legal entities and the beneficial owners.*” The definitions of major shareholder, or partner, and beneficial owner were introduced by the provisions of the second paragraph of that Article.

209. In the case of CIs relying on third parties to satisfy the KYC obligation, they must “*take appropriate measures to ensure that the third party is able to provide, upon request and as soon as possible, copies of customer identification data and other documents related to the obligation of customer due diligence; ensure that the third party is subject to AML/CFT regulation and supervision; and ensure that the third party is a legal arrangement the identity of which is clear and can be easily identifiable*” (Article 7 of the Guidance).

210. Annex II-1 of Guidance 2013-15 states the information required to identify customers that are legal entities, including, address, name, mandates and powers, and trading certificate number.

211. Article 74 bis of the AML/CFT Law stipulates the necessary measures to be taken to permit a complete identification of legal entities. Thus, the individuals and entities subject to regulation must verify, by means of official documents and other documents from reliable and independent sources:

- The identity of the beneficiary of the operation or transaction and the capacity of the person acting on his behalf,
- The incorporation of the legal entity, its legal form of organization, its registered office, the division of its authorized capital and the identity of its directors and those who have the power to undertake commitments on its behalf, while at the same time taking reasonable steps to identify the individuals who control it.

212. Article 2 of Regulation No 01/2012 requires insurance companies to understand the nature of the business of the legal entities and its ownership and control structure. This Article requires companies to learn the identity of the person having the power to manage the company, his address, and the written instrument granting management authority.

213. Pursuant to Article 2 of CTAF Directive No. 3, verification of information on customers that are legal entities is done by securities brokers and management companies on the basis of official documents certifying: (1) - the incorporation, company name, legal form of organization, registered office, and line of business, (2) - the identity and address for service of the directors and those who have the power to act in its name and on its behalf, (3) - the identity and address for service of the major shareholders or members. Article 3 of the Directive provides that if the circumstances of the implementation of the operation or transaction so require, securities brokers and management companies must verify the identity of the beneficial owner, his line of business, his address, and the powers of the person that is acting on his behalf.

#### **Due diligence for beneficiaries of trusts**

214. With regard to legal persons and legal arrangements having no legal personality, no details are given on the reasonable measures that individuals and entities subject to regulation should take to verify the identity of the beneficial owners.

#### **Due diligence for beneficiaries of life insurance policies**

215. **C. 10.12:** Article 2 of Regulation No. 01\2012 on AML/CFT due diligence measures to be taken in the insurance sector requires companies to verify the identity of the policy holder, the insured, and the beneficial owners at the time policies (including life insurance policies) are being taken out. It lists the mandatory particulars for individuals and legal entities:
- For individuals: first name, surname, date, and place of birth, with the obligation to ensure that the identification data truly match those on the official documents (national identity card, passport, etc.);
  - For legal entities: all official documents that prove the existence of the company, including registration in the Commercial Register, or even the type of company, and its name.
216. **C. 10.13:** Article 3 of Regulation 01\2012 requires insurance companies to regularly update the data and documents received from customers and double check the client's identity in case of doubt. Furthermore, Article 9 requires insurance companies to pay particular attention to transactions having a suspicious or unusual nature. The Regulation also provides examples of what should be understood as a suspicious transaction or an unusual transaction. Yet, there is a discrepancy between the percentage adopted by Guidance 15-2013 (10 percent) and Regulation 2012-01 (33 percent) for one to be considered a major shareholder in the capital of a customer that is a legal entity.
217. **C. 10.14 and C. 10.15:** According to Article 4 of Guidance 2013-15, credit institutions shall establish the procedures regarding customer identity in particular where:
- The customer wishes to open any kind of account or rent a safe deposit box;
  - The customer carries out occasional cash transactions, with a value equal to or exceeding 10,000 dinars or the equivalent of 5,000 dinars in foreign currency banknotes [...], and
  - The customer carries out wire transfer transactions [...].
218. However, according to Article 21 paragraph 2 of the Guidance, it is possible for CIs, if the data are insufficient, to “*complete verification of the identity of the customer and the beneficiary after the business relationship has been established provided that:*
- *Verification takes place within a reasonable time and in all cases according to the internal procedures established by the institution;*
  - *The risks of money laundering are managed effectively, including by:*
    - (a) *Setting threshold limits for transactions to be carried out (amount, number, and type of transaction); and*
    - (b) *Monitoring transactions that are complex or involve abnormally high amounts given the risk profile of the relevant business relationship.”*
219. Regarding the insurance sector, Article 2 of Regulation No. 01\2012 on AML/CFT, due diligence measures to be taken requires insurance companies to carry out due diligence with regard to their customer at the time insurance policies are taken out.
220. Furthermore, under Article 2 §1 of CTAF Directive No. 3, securities brokers and management companies must, at the start of the relationship, verify the full identity of the customer, the customer's line of business and address, and inquire about the purpose and nature of the proposed business relationship. Article 50 of Decree No. 99-2478 of November 1, 1999 on the status of securities brokers provides that prior to opening an account in the case of an individual, securities brokers must verify the identity and address of that individual and that he has the power to undertake commitments. In the case of a corporation, the securities broker must verify the validity of the powers enjoyed by the customer's legal representative or the person delegated for this purpose. CMF General Decision No. 5 of February 24, 2000 specifies the content of the account opening forms that the securities brokers must use.

221. Unlike credit institutions, insurance companies and securities brokers cannot sign a contract or carry out a transaction until the customer's identification has been established. The risk management procedures under criteria 10.14 and 10.15 are only intended, under Tunisian regulations, for credit institutions. However, they must collect a large amount of data elements for customer identification before entering into a business relationship with their customers.

### Existing Customers

222. **C. 10.16:** Law No. 2009-65 of August 12, 2009 which amended the AML/CFT Law provides that *“persons subject to due diligence obligations must, within a period not exceeding three years from the date of entry into force of this Law, update the records related to those persons who were customers before the promulgation of this Law, in order to ensure compliance with its provisions.”* The period of three years appears to be long. Although Article 44 of Guidance 2013-15 compelled credit institutions to comply with these requirements both for new business relationships and for accounts existing at the time of the new provisions of the Guidance, Article 11 of Regulation No. 01/2012 requires insurance companies to apply the necessary due diligence measures solely for the identification of customers as opposed to customers existing before the promulgation of this regulation and depending on the extent of the risks they pose. Furthermore, Article 2 of CTAF Directive No. 33 requires that when there is suspicion of money laundering or terrorism financing, a fresh identification shall be required.

### Risk-based approach

223. **C. 10.17:** According to Article 27 of Guidance No. 2013-15 *“The risks committee should use a risk mapping tool in its anti-money laundering efforts to assist the Board of Directors or the Supervisory Board in designing and implementing an appropriate updated management strategy and establishing management and supervisory rules.”* Furthermore, Article 14 states that *“institutions must submit their business relationships to enhanced due diligence when they are dealing with (i) political parties, associations, customers residing in countries considered by FATF to be non-cooperative countries, and (ii) customers with a high risk profile in the context of profiling-filtering.”*

224. According to the authorities, Article 3 of Regulation 01\2012 CGA addresses the risk-based approach. It appears that this Article requires insurance companies to pay particular attention to contractual relationships with, on the one hand, customers living in non-cooperative countries and regions included in FATF's list and, on the other hand, the PEPs. This reflects the FATF conditions but cannot be equated with the implementation of a risk-based approach.

225. Article 13 of CMF General Decision No. 17 provides that *“the internal control and compliance assessment manager must draw up a mapping of the risk exposure by portfolio management line of business at least once a year. This analysis shall include an assessment for each risk, its potential impact, and its likely occurrence;”* however, the provisions of this Article shall not oblige individuals and entities subject to the supervision of the CMF to implement enhanced due diligence measures if money laundering and terrorist financing risks are high.

226. Although the provisions of Law No. 2009-65 and regulations enacted by the aforementioned authorities refer to some aspects linked to the management of money laundering risks by individuals and entities subject to regulation in the finance sector, there is no mention of the risk of financing terrorism.

227. **C. 10.18:** Article 3 of the BCT Guidance lists cases in which the procedures are simplified when the customer is one of the entities contemplated (entity subject to close control or public entity). It includes companies listed on the Tunis Securities Exchange, credit institutions, insurance and reinsurance companies, mutual funds, securities brokers and portfolio management companies, companies whose

capital is wholly owned by the State, companies whose capital is owned by the State, local governments, public institutions, and companies in which more than 50 percent of the capital is owned entirely by the State individually or jointly, public institutions of a non-administrative nature, the list of which is established by Decree No. 2006-2579 of October 2, 2006, and microfinance companies approved under Decree-Law 2011-117. However, under Article 4 of the same Guidance, identification is mandatory “when (...) there is suspicion of money laundering (4th indent). This approach seems acceptable given the need to focus identity checks on customers whose business is by definition much less controlled than the businesses of individuals and entities referred to in the legislation above.

228. **C. 10.19:** Article 74 of Law 2003-75 provides that when the identity of a customer is incomplete or unclear, institutions must “refrain from opening the account, establishing or continuing the business relationship, or carrying out the operation or transaction.” The same Law stipulates that in the event of failure to comply with the customer identification obligation, individuals and entities subject to regulation “should consider making a suspicious transaction report.”

229. Furthermore, Article 21 of the BCT Guidance of November 7, 2013 provides that “when the customer identification data are insufficient or clearly fictitious, institutions must refrain from opening the account, establishing or continuing the business relationship or carrying out the operation or transaction and consider making a suspicious transaction report.”

230. As for insurance companies, Article 3 of Regulation 01\2012 requires that they not underwrite the insurance policy in the event they cannot comply with the due diligence obligations.

231. **C. 10.20:** According to the Tunisian authorities, in practice and in cases where banks are unable to do their due diligence in such a way as to avoid alerting the customer, arrangements are made to alert the CTAF of this difficulty and they send a report of suspicion. Beyond the implementation in practice—and only by banks—of this requirement, there is no reporting obligation to make a STR instead of complying with due diligence requirements that can alert the customer in the event of suspicion of money laundering or terrorist financing.

### ***Weighting and Conclusion***

232. The shortcomings specific to this recommendation seem moderate. The following criteria are not satisfied or partially satisfied (10.1, 10.2, 10.5, 10.7, 10.11, 10.13, 10.16, and 10.17). The risk-based approach is lacking. Most specific rules on securities brokers and portfolio management companies are contained in a single Directive; the prohibition of anonymous accounts is not provided for by law but in a Guidance; in both cases, the legal force of the provision imposing the obligation is debatable. Insurance is not specifically cited as being a regulated sector; the splitting rule is not established. Finally, due diligence rules specific to trusts are nonexistent.

233. **Tunisia is partially compliant with Recommendation 10.**

### ***Recommendation 11 – Record keeping***

234. **C. 11.1 / C. 11.2:** Article 75 of Law No. 2003-75 requires that persons subject to regulation keep the registers, business records, and other documents held in hard copy or in electronic form for a period of not less than ten years, starting from the date on which an operation is carried out or an account is closed, for purposes of consultation, where applicable, of the various phases of financial transactions and operations undertaken by them or their intermediaries, and to identify all those involved and ensure their authenticity (these provisions do not cover attempted transactions). The CTAF directives addressed to

the attention of CIs, nonresident banks and the National Post Office (02-2006), and financial market players (2007-03) confirm these provisions.

235. Article 33 of Guidance 2013-15 reiterates these elements and requires credit institutions to keep records of their permanent or one-time customers and documents relating to their identities for at least ten years from the date on which the relationship ended.

236. Article 10 of Regulation 01/2012 requires insurance companies to keep all documents relating to the insurance business for ten years after the occurrence of the risk or the expiry of the insurance policy.

237. Article 16 of CTAF Directive No. 3 requires securities brokers and management companies to keep the customer's file and documents relating to his identity for at least ten years from the date on which the relationship ended.

238. Generally speaking (see other sections of the report), the competent authorities have access to the necessary information within a reasonable time.

239. **C. 11.3:** The AML/CFT Law does not expressly state the transaction-related information to be kept, but insists that this process must allow the various phases of the transactions and financial operations to be traceable (cf. Cr. 11.1).

240. **C. 11.4:** Guidance 2013-15 provides in Article 34 that the organization of record keeping must specifically enable all transactions to be reconstructed and information requested by any authority empowered to do so, to be communicated within the required period. In addition, Article 32 of Law 2001-65 of July 10, 2001 on CIs indicates that the BCT is empowered to carry out on-site inspection of credit institutions, and that CIs incorporated under Tunisian law, as well as branches or agencies of credit institutions with registered offices abroad and authorized to carry out their business in Tunisia, must *“provide to the BCT any documents, information, clarifications and explanations needed to review their situation and ensure proper application of regulations with respect to credit and foreign exchange controls and supervision of credit institutions.”*

241. According to Article 81 of the AML/CFT Law, the CTAF, in the exercise of its duties, may seek the assistance of the persons referred to in Article 74 of the AML/CFT Law, which means all persons subject to its regulation. These entities are required to forward to the CTAF reports necessary for the analysis of operations and transactions that were the subject matter of reports obtained within the legal timeframe. It also stipulates that in this case professional secrecy may not be enforced against the CTAF. The CTAF is also obliged to retain the documents and information explaining the follow-up given to the reports it obtained (Article 83 para. 2 of the AML/CFT Law). However, there is no provision requiring that persons subject to its regulation must ensure that they are able to make the information or documents available to the competent national authorities in a timely manner.

### ***Weighting and Conclusion***

242. The obligation to retain documents and records is explicit. It would be desirable to provide further details on the information to be kept. **Tunisia is compliant with Recommendation 11.**

### ***Recommendation 12 – Obligation to identify Politically Exposed Persons***

243. **C. 12.1 / C. 12.2 / C. 12.3:** Article 74 quater of the AML/CFT Law states that the regulated persons referred to in Article 74 must *“have appropriate risk management systems in their relationships with persons carrying out or who have carried out prominent public functions in a foreign country, or their relatives or persons having relationships with them, obtain the approval of the manager of the legal*

entity before establishing or continuing the business relationship with them, conduct enhanced ongoing monitoring of this business relationship, and take reasonable measures to identify the source of their funds.” This Article applies only to foreign PEPs and the extent of its application is therefore very limited. Whatever regulatory power can be attributed to the BCT, it seems unlikely that the latter can extend the scope of the anti-money laundering law by creating new obligations for a new class of customer (national PEPs). In the absence of an express power under the law, the BCT Guidance cannot extend this definition to include national PEPs.

244. Article 13 of Guidance 2013-15 on CIs sets out these obligations in detail and deals more broadly with national and foreign politically exposed persons, focusing on “*natural persons who are or have been entrusted during the business relationship with prominent public functions in Tunisia or in a foreign country and their relatives or persons having a close relationship with them.*” Appendix 4 of this Guidance lists the profiles of these individuals<sup>56</sup> Article 13 extends the application of enhanced due diligence measures “*to persons who have carried out prominent public functions in Tunisia or in a foreign country over the last two years prior to the effective date of the business relationship*” and defines what is meant by relatives and persons having a close relationship.

245. If institutions determine that the customer is a PEP, they must under Article 13 of the Guidance:

- Obtain permission, from the Board of Directors or Management or any person authorized for this purpose to build or continue, as appropriate, a business relationship with such a person;
- Take appropriate measures to establish the source of the assets that are involved in the business relationship; and
- Ensure enhanced and ongoing monitoring of that business relationship.

246. Article 77 bis of the AML Law limits the disciplinary sanctions to breaches of obligations under Articles 74 bis, ter, quater (specific to foreign PEPs), quinquies, and sexis. Therefore non-compliance with obligations related to foreign PEPs would not be subject to a penalty.

247. Furthermore, as regards the insurance sector, the Tunisian authorities have indicated that Article 3 of Regulation No. 01\2012 requires insurance companies to implement risk management systems to determine whether the customer or the beneficial owner is a PEP. Similarly, they must also obtain approval from senior management before establishing (or continuing, if it is an existing customer) such business relationships and take reasonable measures to establish the source of the assets and funds of customers and beneficial owners identified as PEPs.

248. The Tunisian system for detection of PEPs and implementation of enhanced measures by banks and financial institutions is in place. However, the rules provided for in Article 74 quater of the AML/CFT Law have not been described in detail as regards securities brokers and portfolio management companies.

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<sup>56</sup> a) Heads of State, Heads of Government, members of governments; b) parliamentarians; c) members of courts and other national or international tribunals; d) members of constitutional courts; e) senior officers of the armed forces; f) members of administrative or oversight bodies and of the Board of Directors of public enterprises; g) members of administrative and oversight bodies, and of the Board of Directors of supervisory and regulatory authorities; h) agents of the State, public institutions and supervisory or regulatory authorities being at least at the level of Chief Executive Officer; i) the management of employees’ and employers’ organizations; j) Directors, Deputy Directors and members of Boards of Directors and all persons exercising equivalent functions in international organizations.

249. **C. 12.4:** As described for the other criteria, Article 3 of Regulation No. 01\2012 on AML/CFT due diligence measures to be taken in combating money laundering in the insurance sector obliges insurance companies to implement risk management systems to determine whether the customer or the beneficial owner is a politically exposed person and to ensure special due diligence in those operations.

### ***Weighting and Conclusion***

250. The Tunisian financial system (banking and insurance) has been strengthened by Law 2009-65 of August 12, 2009 amending the AML/CFT Law. Even though the AML/CFT Law deals only with cases of foreign PEPs, an extension was made by the BCT Guidance in the case of domestic PEPs without express authority. No rules clarifying the legal provisions concerning PEPs were provided for the other regulated individuals and entities in the finance sector (securities brokers and portfolio management companies). The Tunisian authorities contend on this point that Article 77 of Law No. 2003-75 did not limit the powers of the supervisory authorities to issue standards for AML/CFT, and this regulatory power includes in particular the establishment of a system for the detection of suspicious transactions and operations and internal control rules. The BCT is also empowered to issue prudential regulations in relation to risk in accordance with Law 2001-65. The integration, under Guidance No. 2013-15, of due diligence rules specific to PEPs therefore complies with the above legal provisions where the nature of the transactions or the profile of the customers present a high risk as politically exposed persons carrying out or who have carried prominent public functions in Tunisia or in a foreign country. Finally, the provisions of Article 74 quater of the Law do not involve, for the BCT, any restriction of the concept of PEPs to only those “persons carrying out or who have carried out prominent public functions in a foreign country.” These provisions operate in a sphere separate from that of Article 77 (Article dealing with foreign PEPs) and therefore cannot prevail over the latter.

251. However, whatever the regulatory power granted to the BCT, it cannot legally extend the scope of the anti-money laundering law by creating obligations for a new class of customer (national PEPs) as the AML Law was exhaustive and specified that due diligence measures or the risk-based approach apply to foreign PEPs (Article 74 quater). Article 77 bis of the AML Law limits the disciplinary sanctions to breaches of obligations under Articles 74 bis, ter, quater (specific to foreign PEPs), quinquies and sexis. Noncompliance with obligations related to foreign PEPs would therefore not be subject to a penalty.

252. **Tunisia is partially compliant with Recommendation 12.**

### ***Recommendation 13 –Correspondent banking***

253. **C. 13.1:** The AML/CFT Law specifies in Article 74 quinquies that “*the persons referred to in Article 74 of this Law shall, when establishing cross-border banking correspondent relationships and other similar relationships:*

- *Collect enough information on the cross-border correspondent to know the nature of its activities and assess, on the basis of available information, its reputation and the effectiveness of the control system to which it is subject and check if it was subject to an investigation or action by the supervisory authority relating to money laundering or terrorist financing.*
- *Obtain permission from the director of the corporation before establishing relationships with the foreign correspondent and set out in writing the respective obligations of both parties.*
- *Avoid entering into or continuing a correspondent banking relationship with a shell foreign bank and building relationships with foreign institutions that permit shell banks to use their accounts.”*



254. Moreover, it is noteworthy that the above model questionnaire joined to the BCT Guidance n°2013-15 (which could be further refined by the banks) can provide information about the controls put in place by the correspondent especially as it deals with:

- Procedures implemented by the correspondent for identification and verification of the source of the funds when there is an international transfer of funds;
- The existence of a system for detecting the accounts and funds of persons and entities sanctioned;
- The existence of a system for auditing the AML/CFT-related rules and procedures;
- Verifying compliance with national legislation;
- Keeping customer identification records;
- The existence of an accounts and transactions monitoring system;
- The reporting of suspicious transactions to a competent local authority;
- The establishment of a system to check, in the context of relations with correspondent banks, that the latter are applying AML/CFT procedures;
- The existence or nonexistence of subsidiaries or branches established under the correspondent in a country or countries or territories designated “non-cooperative” by FATF.

255. Furthermore, the second indent of Article 11 of the BCT Guidance provides for the obligation of credit institutions and non-resident banks to “assess measures for combating money laundering and terrorist financing established by the (correspondent) institution including through a questionnaire, a model of which is attached.”

256. The last paragraph of Article 4 of the CTAF Directive states that “*the authorities responsible for supervision of credit institutions, nonresident banks, and the National Post Office set out the practical arrangements for this Article.*” Article 11 of Guidance 2013 sets forth the measures to be taken by CIs when concluding agreements with correspondent banks and other similar relationships. These measures are a reiteration of the law and the CTAF Directive, to which the Guidance’s Annex adds a questionnaire allowing credit institutions to assess the correspondent institution’s AML/CFT system. This questionnaire echoes the obligations under the FATF Recommendations.

**257.C. 13.2:** There is no provision dealing directly with PTA Banks. However, both parties (the bank and the correspondent institution) are obliged to determine all the respective requirements)

258. **C. 13.3:** : The last paragraph of Article 74-5 of the AML Law strictly prohibits credit institutions from entering into or continuing a correspondent banking relationship with a foreign shell bank and building relationships with foreign institutions authorizing shell banks to use their accounts.

259. This obligation is also covered in Article 22 of Guidance 2013-15, which emphasizes that the CIs should refuse to enter into or continue a cross-border correspondent banking relationship with a shell bank. A shell bank is defined as a bank that “*has no fixed head office where it can host the customer; does not use one or more persons to carry on the business and ensure effective management; does not keep records relating to its operations; and is not subject to supervision by a competent supervisory authority in the jurisdiction where it was created, or in any other jurisdiction.*” Moreover, Article 23 prohibits CIs from

building relationships with foreign financial institutions, such as correspondent banks, that authorize shell banks to use accounts opened in their books.

***Weighting and Conclusion***

260. The requirements of criteria 13.1.b and 13.2 are generally covered. Further details regarding sweep accounts are required. **Tunisia is largely compliant with Recommendation 13.**

***Recommendation 14 – Money or value transfer services***

261. **C. 14.1:** Pursuant to the provisions of Article 2 of Law No. 2001-65 of July 10, 2001 on credit institutions, the activity of making funds available to customers and managing payment instruments requires a license to operate as a credit institution. The National Post Office (ONP) is also authorized to offer money and value transfer service. MVTS are only permitted to receive funds (incoming transfers), outgoing transfers are not permitted.

262. Article 14 of Law 2001-65 sets out the BCT's powers to ensure compliance with the provisions related to banking monopoly. Also, Chapter III of Law 2003-75 contains provisions for combating illicit financial channels. The Tunisian authorities stated that MoneyGram and Western Union do not have establishments in Tunisia. However, when the money transfer activity (only incoming from a foreign country) is conducted through these companies, licensed intermediary banks or the ONP must enter into an agreement and only require the authorization of the BCT to enter into business with these companies.

263. **C. 14.2:** Tunisian authorities do not seem to take measures to identify persons or entities that provide money or value transfer services without being licensed and apply proportionate and dissuasive sanctions to them.

264. Regarding penalties for the unauthorized practice of banking, under Article 14 of Law 2001-65, it is forbidden for any person not licensed as a credit institution to carry out banking activities on a regular basis, and it is also prohibited for any licensed credit institution to use procedures so as to create a doubt in the minds of third parties concerning the category of credit institution to which it belongs. Furthermore, under Article 51 of the same law, carrying out the business of banking without a license is punished with imprisonment which can go up to three years and a fine of up to 50,000 dinars, or one of these two penalties. The penalty is doubled for repeat offenses.

265. **C. 14.3:** Since money transfer services are monopolized by banks, the Central Bank of Tunisia must ensure compliance with the AML/CFT requirements based on requirements stipulated in the AML law forming a set monitoring framework.

266. **C. 14.4 / C. 14.5:** Money transfers are only implemented by banks and these are already subject to CDD requirements.

***Weighting and Conclusion:***

267. The banking system exclusively carries out the transfer of funds and there is a set framework to ensure the implementation of CDD requirements. **The mechanism is largely compliant with Recommendation 14.**

### **Recommendation 15 – New technologies**

268. **C. 15.1:** Article 74 sexis of the AML/CFT Law provides that individuals or entities subject to the law “*must [...]*”

- *Pay particular attention to the risks of money laundering and terrorist financing inherent in the use of new technologies and take, if necessary, additional measures to protect themselves in order to avoid them,*

- *Implement risk management systems for those business relationships that do not involve the physical presence of the parties.”* Article 9 of CTAF Decision 2006-02 applying to CIs, nonresident banks and the ONP reiterate the same provisions.

269. The Guidance to the CIs also raises the need to apply additional due diligence measures for customers that act in the capacity of originator or beneficiary when “*the transaction is performed by new information and communication technologies.*” It specifies that it is also appropriate to “*obtain supporting documentation to confirm the identity of the person with whom it intends to establish a business relationship; implement measures for the verification and certification of the copy of the official document or extract from the official register by a third party that is independent of the person to be identified; and obtain confirmation of the identity of the customer from a credit institution.*”

270. Furthermore, CMF General Decision No. 13 on the conditions for processing of stock exchange orders and minimum standards for records maintained on computer media provides in Article 6 that the securities broker that offers services for receiving and executing trading orders via a website dedicated to this purpose must comply with all laws and regulations related to AML/CFT. In accordance with Article 8 of CTAF Directive No. 3, the securities brokers and portfolio management companies shall:

- Establish procedures and take other necessary measures to prevent the use of new technologies for the purpose of money laundering or terrorist financing.

- Establish enhanced identification and due diligence procedures for customers with whom they have only non-face-to-face relationships.

271. CMF General Decision No. 13 makes the obligations concerning the processing of trading orders via the Internet the responsibility of the securities brokers and credit institutions that engage in the business of receiving and transmitting orders for investment. Thus, Article 6 provides that the securities broker that offers services for receiving and executing trading orders including receiving trading orders via a website dedicated to this purpose must comply with all laws and regulations related to the account opening process and to combating money laundering and terrorist financing.

272. Furthermore, Article 10 states that when a stocks and bonds transaction does not fit within the framework of transactions usually conducted by the customer whether because of the stocks and bonds concerned or because of the amounts involved, the securities broker must contact his customer to inquire about the purpose of the transaction in question before the order is executed.

273. Article 12 of the same General Decision provides that the securities broker that offers services for receiving and executing trading orders including receiving trading orders via a website dedicated to this purpose must implement an automated system for checking the consistency of the order sent by the customer via the website. In case of inconsistency, the system must automatically block the order from entering the trading system and notify the relevant customer of the reasons for the blocking. Thus, in accordance with Article 15 of CMF Decision No. 13, the securities broker that plans to receive orders via a website dedicated to this purpose must have an electronic certification system obtained from an electronic certification service provider accredited by the National Electronic Certification Agency.

274. This electronic certification system should include:

- “a personal certificate” that identifies the securities broker and his connection with the signature verification system,
- “A Web server certificate” that allows the securities broker’s server to be identified and its contents certified.

275. The securities broker must also provide the client, who has opted for order transmission via a website dedicated to this purpose, a private “username” key and a password in order to guarantee security and confidentiality of the data transmitted.

276. The securities broker must ensure that the customer has a personal certificate obtained from a certification services provider that provides for identification only in the following cases:

- When the customer carries out transactions involving the transfer of money or stocks and bonds from his account to another account with the securities broker himself via the Internet;
- When the customer carries out transactions involving the transfer of money or stocks and bonds from his account to an account with another securities broker via the Internet.

277. Furthermore, according to Article 16 of the same General Decision, the electronic certification system obtained by the securities broker must ensure data integrity, authentication of data origin, and protection of confidential messages in accordance with current regulations on the matter.

278. Finally, Article 18 of the same Decision states that the securities broker offering to receive orders via a website dedicated to this purpose must periodically conduct a compulsory audit of its computer systems.

279. **C. 15.2:** There is no general law requiring financial institutions to have policies or take the necessary measures to identify and assess ML and FT risks that may result from the development of new products and new business practices. Financial institutions are not required to assess risks before launching or using new products, practices or technologies, or to take appropriate measures in their systems for countering ML/TF in order to prevent misuse of new technologies.

280. It should be noted, however, that the concerns related to the prevention of illicit financial channels have been taken into account by the Tunisian authorities during the introduction of certain technologies in the country, such as electronic money. Regarding the latter product that only the ONP offers since 2000, the “e-dinar,” the maximum amount of an electronic wallet is limited (D500, or about US\$380), the identity of any holder of an electronic wallet must be checked, and the latter can only be used for the payment of a limited number of remote services offered by websites approved by the ONP.

### ***Weighting and Conclusion***

281. The AML/CFT Law only obliges persons subject to regulation to pay special attention to the risks of money laundering and terrorist financing inherent in the use of new technologies and to take the necessary additional measures. Guidelines could be proposed to CIs to assist them in the implementation of such measures. Risk assessment related to the launch of new products, technologies, and practices and taking appropriate measures in response are not provided for in the Tunisian legal framework. **Tunisia is partially compliant with Recommendation 15.**

### ***Recommendation 16 – Wire transfers***

282. Article 74 bis contains a general provision regarding wire transfers, stipulating that due diligence measures must be taken especially when the persons or entities subject to the AML/CFT Law carries out

one-time transactions in the form of wire transfers. This obligation is included in Article 4 of Guidance 2013-15 to CIs.

283. Article 17 of this Guidance also defines a wire transfer of funds as “*any transaction carried out on behalf of an originator through a foreign or national financial institution by electronic means, with a view to making a sum of money from another financial institution available to a beneficiary.*”

### **Financial Institutions of the Originator**

284. **C. 16.1.a:** Article 17 of Guidance 2013-15 obliges CIs to implement the identification requirements prescribed under Chapter 1 of Title 1 with regard to wire transfers of funds, which generally relate in principle to customer identification.

285. Article 18 of the same Guidance imposes on CIs the obligation to incorporate into any wire transfer transaction including those issued by one-time customers as well as in bulk transfers related to non-routine transactions, accurate and useful information related to the originator and the beneficiary. These provisions do not specify the types of information to be included in these transfers.

286. **C. 16.1.b:** There are no laws or regulations as regards information required on the beneficiaries of wire transfers.

287. Pursuant to Guidance No. 2013-15, CIs must apply identification measures provided for in Chapter I of Title I (CDD measures and procedures with regard to customers and transactions) to wire transfer transactions (Art. 17).

To this end, they must verify in particular the identity of the beneficial owners (Article 5) and take reasonable measures to verify their identity by means of official documents and other documents from a reliable and independent source, so that they are satisfied that they know who the beneficial owner is.

They must in particular (Article 6):

- Determine, for all customers, whether the customer is acting on behalf of a third party and take, if this is the case, all reasonable steps to obtain sufficient identification data to verify the identity of this third party;
- Take, when the customer is a legal person or a legal arrangement, all reasonable measures to understand the ownership and control structure of the customer;
- Determine who are the individuals that ultimately own or exercise effective control over the customer; and
- Verify that the customer is not a nominee or a shell company.

288. Moreover, Article 18 of Guidance 2013-15 requires that CIs incorporate into any wire transfer transaction and messages relating thereto accurate and meaningful information on the originator and the beneficiary of the transaction. CIs should conduct regular checks regarding the updating and relevance of documents, data, or information collected while carrying out due diligence measures in terms of information about the customer (Article 9).

289. However, Guidance 2013-15 does not mention any of the information required regarding the accounts of the beneficiaries, their names, or the unique transaction reference number ensuring the traceability of the transaction.

290. **C. 16.2:** Article 18 of Guidance 2013-15 requires that individuals and entities subject to regulation pay special attention when processing transfer transactions by batch or bulk, but this obligation is provided specifically for transfers relating to non-routine transactions. As such, financial institutions must

incorporate into any wire transfer transaction and messages relating thereto accurate and meaningful information on the originator and the beneficiary of the transaction. However, there is no obligation requiring Cis to include the account number of the originator or a unique transaction reference number.

291. **C. 16.3 / 16.4:** Tunisian legislation does not link the implementation of the obligation to verify the existence of all necessary and accurate information to a minimum threshold as regards the originator and beneficiary of cross-border transfers. As regards the identification of the originator, the Guidance has not provided a specific minimum threshold (below US\$1,000/EUR1,000)—the obligations apply to all transfers of funds. Furthermore, Article 21, which deals with prohibitions in the general sense, provides in its second indent: “If the identification data are insufficient, the CIs can carry out customer and beneficiary identity verification after the business relationship has been established provided the money laundering risks are managed effectively, including by: (a) determination of threshold limits for transactions to be carried out (amount, number, and type of transaction), and (b) monitoring complex transactions or those involving abnormally high amounts compared to the risk profile of the relevant business relationship. All Tunisian financial institutions are members of the international “SWIFT” network. This code allows the issuer of the international payment and the beneficiary to improve the traceability of the payment and thus increase its reliability.

292. **C. 16.5:** According to the Tunisian authorities, the Tunisian standard NT 112.15 approved by the Minister of Industry’s Order of May 8, 1999 defines the provisions applicable in Tunisia to bank and post office transfers. Regarding identification of the originator, this standard requires that mention must be made of the bank account identity (RIB) or post office account identity (RIP) of the originator. The RIB as a reference of the transaction, however, does not provide for the originator’s name, address, or national ID. Also this standard does not address the case of transfers carried out in the absence of an account for which a unique transaction reference number must be quoted.

293. **C. 16.6:** In principle, the RIB can recreate the entire account of the national electronic transfer. However, for transfers not backed by accounts, there is no rule requiring the existence of a unique transaction reference number. There is also no provision for rules setting time-limits for making information available to the beneficiary’s bank, the competent authorities, and the criminal prosecution authorities, which should be three working days for the first two above-mentioned requisitioning institutions and immediately for the last-mentioned authorities.

294. The Tunisian authorities should provide additional information on the rules for the beneficiary bank, the competent authorities, and the prosecution authorities to gain access to data from the originator’s bank and the timing for this access.

295. **C. 16.7:** All individuals and entities subject to the AML/CFT Law are obliged to keep the documents held in hard copy or in electronic form for purposes of consultation, where applicable, of the various phases of financial transactions and operations undertaken by them or their intermediaries (see Rec. 11). This general obligation under Article 75 of the AML/CFT Law in principle covers wire transfers. Furthermore, according to Article 18 of Guidance 2013-15, the provisions relating to the duty to retain documents set forth by the Guidance are applicable to wire transfer transactions. However, Article 33 of the Guidance, which sets out the conditions and retention periods, imposes an obligation to retain documents and information specific to the transactions and does not specify the nature of such documents and information (see analysis of rec. 11).

296. **C. 16.8:** According to Article 19 of Guidance 2013-15, if there is a breach of the regulations in force regarding electronic transfers, banking institutions acting on behalf of the originator must refuse to complete the transaction, given that the Tunisian system does not cover all the requirements set forth in criteria 16.1 to 16.7 (see previous paragraphs).

### Intermediary financial institutions

297. **C. 16.9:** There are no provisions requiring that financial institutions acting as intermediaries in the payment chain must ensure that all originator and beneficiary information accompanying a cross-border wire transfers be kept with the transfer.

298. **C. 16.10:** Article 76 of the AML/CFT Law requires that, for a period of at least ten years, individuals and entities subject to regulation retain any documents necessary to ensure the traceability of the various phases of financial operations and transactions carried out by their intermediaries, identify those involved, and ensure their authenticity. This requirement is set forth in Article 33 of Guidance 2013-15 to credit institutions, which does not specify the exact nature of the data to be kept, namely, in the case at hand, data that are complete, or incomplete data, given technical constraints, sent to other financial institutions through the payment chain.

299. **C. 16.11:** There is no provision requiring intermediary financial institutions to take steps to identify cross-border wire transfers when the required information about the originator or beneficiary is lacking.

300. **C. 16.12:** There is no provision requiring intermediary financial institutions to establish policies and procedures based on risk assessment in order to decide what they want to do with cross-border wire transfers when the required information about the originator or beneficiary is lacking.

### Financial institutions of the beneficiary

301. **C. 16.13 to C. 16.15:** Article 20 of Guidance 2013-15 states that “institutions, when acting on behalf of a beneficiary, must take the necessary measures to identify wire transfers concerning which the required information about the originator and the beneficiary is missing or incomplete.

302. They must decide, based on risk, whether to carry out, suspend, or reject the wire transfers concerning which the required information on the originator and the beneficiary is missing or incomplete. However, there is no provision specifically requiring that procedures or policies based on a ML/TF risk assessment be put in place.

### Operators of money or value transfer services

303. **C. 16.16:** According to the Tunisian authorities, money transfer service providers do operate in Tunisia (e.g. MoneyGram, Western Union) in partnership with banks and the ONP. Due diligence as regards the identification of beneficiaries and originators thus remains the responsibility of the service providers and partner banks. However, no legislative provision on the obligations of service providers has been enacted by the authorities.

304. **C. 16.17:** The assessment team is not aware of legislative provisions that apply to operators of money or value transfer services.

305. **C. 16.18:** Notwithstanding the freeze provided for in Article 72 bis of the AML/CFT Law, which only concerns the implementation of UNSCR 1267, no provision has been made and no specific measures have been taken by the Tunisian authorities to ensure that in the course of processing wire transfers, financial institutions have taken measures to freeze funds and comply with prohibitions against entering into transactions with the individuals and businesses designated, pursuant to the obligations set out in the relevant UNSCRs relating to the prevention and suppression of terrorism and terrorist financing, such as Resolutions 1267 and 1373 and subsequent Resolutions.

### ***Weighting and Conclusion***

306. Even though the anti-money laundering law and the Guidance to credit institutions provide basic rules applicable to the obligations of financial institutions regarding wire transfers, in the absence of provisions governing such transactions several aspects are not covered and these relate mainly to the obligations of intermediary institutions and beneficiaries, record keeping, the rules applicable to operators of money transfer services, and implementation of targeted financial sanctions. **Tunisia is noncompliant with Recommendation 16.**

### ***Recommendation 17 – Reliance on third parties***

307. The AML/CFT Law establishes the conditions under which third parties can be relied on when business relationships are being established between individuals and entities subject to regulation and their customers.

308. **C. 17.1:** Article 74 bis states that institutions subject to regulation must “*obtain, in case of relying on a third party, the necessary data to identify the customer and ensure that the third party is subject to AML/CFT regulation and supervision, that it has taken the necessary steps to this end, and that it is able to provide, as soon as possible, copies of customer identification data and other related documents on condition that they assume in all cases, the responsibility for customer identification.*” If credit institutions fail to verify the data or when there are insufficient or clearly fictitious data, they must refrain from opening the account, establishing or continuing the business relationship, or carrying out the operation or transaction, and consider making a suspicious transaction report. The same Article stipulates that this must be done especially when the persons subject to regulation are establishing a business relationship or when there are suspicions concerning ML/TF. However, there is as yet no obligation on the part of the authorized institutions to rely on third parties to ensure that they comply with the record keeping requirements under Recommendation 11.

309. **Article 7 of Guidance 2013-15** provides that when institutions rely on third parties to satisfy the KYC obligation: they must “*take appropriate measures to ensure that the third party is able to provide, upon request and as soon as possible, copies of customer identification data and other documents related to the customer, to also ensure that the third party is subject to AML/CFT regulation and supervision and that the third party is a legal arrangement the identity of which is clear and can be easily identifiable.* In all cases, relying on a third party does not exempt the credit institution from its responsibility for customer identification.

310. In addition, Article 4 of CTAF Decision 2007-03 of March 22, 2007 laying down general guidelines to the financial markets related to the detection and reporting of suspicious transactions or operations reiterates the same obligations when securities brokers and companies managing their portfolio of stocks and bonds on behalf of other persons rely on an intermediary or a third party (Article 4 of the decision).

311. **Cr. 17.2:** The system set up by the AML/CFT Law emphasizes that persons subject to regulation must “*pay special attention to business relationships with persons resident in countries that do not or insufficiently apply AML/CFT international standards*” (Article 74 sexis). This Article does not expressly refer to third parties and business agents, but more generally to the need for any regulated person to consider the vulnerability of the countries of origin of the customers with whom they have established, developed, and maintained business relationships. Guidance 2013-15 reiterates this obligation in Article 15, explicitly mentioning the high-risk countries identified by the FATF’s public statements as countries that do not or



insufficiently apply AML/CFT international standards. In addition, the CTAF publishes on its website the FATF press releases on non-cooperative countries.

312. **Regulation of subcontracting:** Guidance No. 2006-01 regulating outsourcing operations has established certain principles to be observed by credit institutions in the outsourcing of certain operations related to its activity, except for the banking operations listed in Article 2 of the Banking Law.

- Prior authorization of the BCT is required for outsourcing operations of a credit institution to a nonresident service provider;
- Operations and services provided by all credit institutions headquartered abroad on behalf of its branches or agencies established in Tunisia are subject to the reporting obligations of the BCT;
- The contract for the provision of service must expressly mention the commitment of the service provider to furnish the BCT with all documents and information requested by it, to accept the supervision of the outsourced operations at its headquarters, and to refrain from subcontracting transactions that have been outsourced to it by the credit institution.

313. **Cr. 17.3:** Article 74 bis indent 4 of the 2003 Law as amended in 2009 states: *“The persons mentioned by Article 74 of this Law shall take the following due diligence measures (.....)*

*4) obtain, in case of relying on a third party, the necessary data to identify the customer and ensure that the third party is subject to AML/CFT regulation and supervision, that it has taken the necessary steps to this end, and that it is able to provide, as soon as possible, copies of customer identification data and other related documents on condition that they assume in all cases, the responsibility for customer identification.”*

314. BCT Guidance Article 7 provides identical provisions, which state: *“Where institutions are relying on third parties to satisfy the KYC obligation, they must:*

- *Take appropriate measures to ensure that the third party is able to provide upon request and as soon as possible, copies of customer identification data and other documents related to the obligation of customer due diligence;*
- *Ensure that the third party is subject to AML/CFT regulation and supervision; and*
- *Ensure that the third party is a legal arrangement, the identity of which is clear, and that it can be easy to identify.*

*In all cases, relying on a third party does not exempt the institution from its responsibility for customer identification.”*

### ***Weighting and Conclusion***

315. The legislative provisions do not contemplate the monitoring of third parties' compliance with record keeping rules and do not specifically address the situation in which the third party is located in a country not complying with the FATF Recommendations. Similarly no legislative provision has been communicated concerning the situation in which the financial institution relies on a third party of the same financial group. **Tunisia is partially compliant with Recommendation 17.**

### ***Recommendation 18 – Internal controls and foreign branches and subsidiaries***

316. Article 77 of the AML/CFT Law provides that *“the authorities empowered to supervise the [persons subject to] this Law, are responsible for developing programs and practices that are appropriate for combating money laundering and terrorist financing offenses and for ensuring that they are implemented. These programs and practices should include:*

- *A system for detecting suspicious transactions and operations, including the appointment of persons selected from among their executives and employees for ensuring compliance with the reporting obligation;*
- *Internal control rules to ensure the effectiveness of the system established; and*
- *Ongoing training programs for the benefit of their staff.”*

317. Guidance 2011-06 on strengthening the rules of good governance in credit institutions and Guidance 2013-15 on the implementation of internal control rules for management of the ML/TF risk set out the existing measures. Chapter I of Title II of Guidance 2013-15 deal with the internal control rules for managing the money laundering risk.

318. **C. 18.1.a:** Article 26 of Guidance 2013-15 states that “*institutions must develop an organization with human and logistical resources and clear and precise internal procedures to ensure proper implementation and enforcement of the laws and regulations on combating money laundering and terrorist financing.*” These procedures are, according to the Guidance, part of the internal control system as defined by Article 3 of Guidance No. 2006-19 relating to internal control of CIs. This Article 3 reads as follows:

*“The internal control system means the set of processes, methods, and measures to ensure the continued safety, effectiveness, and efficiency of operations, the protection of assets of the credit institution or nonresident bank, the reliability of financial reporting, and the compliance of these operations with the laws and regulations. This internal control system includes:*

- a) A system of control of internal operations and procedures;*
- b) The organization of accounting procedures and information processing;*
- c) Systems for measuring, monitoring and controlling risks;*
- d) An information and documentation system.*

*Credit institutions and nonresident banks shall ensure that the internal control system is adapted to the nature and volume of their activities, their size, and the risks to which they are exposed.”*

319. Article 7 of Guidance 2006-19 on internal control of CIs and nonresident banks distinguishes ongoing monitoring and periodic monitoring of compliance. It is thus clear that the ongoing monitoring of compliance, security, validation of completed transactions, and compliance with other procedures related to risk monitoring should be provided with a range of suitable measures by agents dedicated exclusively to this function. In contrast the job of periodic monitoring, if the size of the CI requires it, must be performed by different officers. The CIs and nonresident banks must ensure that these officers are sufficient, qualified, and have the resources, especially the tools and risk analysis methods tailored to the activities and size of the institution. According to Article 8 of the Guidance, when the size of the credit institution does not warrant entrusting the responsibilities of ongoing monitoring and periodic monitoring to different persons, these responsibilities may be assigned either to a single person or to the management body that shall **ensure, under the control of the Board of Directors or the Supervisory Board**, that there is coordination of all the arrangements contributing to the performance of this mission. According to Article 9 of Guidance 2006-19, the Board of Directors or the Supervisory Board shall be kept informed by the management body of the appointment of persons responsible for the ongoing and periodic monitoring referred to in Article 8 of this Guidance.

320. Consequently, CIs must establish a compliance monitoring system. [Under] Article 34 quater of Law 2001-65 on credit institutions, CIs must establish a compliance monitoring system, approved by the Board of Directors or the Supervisory Board and reviewed annually. To this end, the CIs should establish in their organization chart a body for the ongoing monitoring of compliance, which shall operate under the authority of the Board of Directors or the Supervisory Board. It shall be responsible in particular for identifying and assessing the risks of noncompliance with laws and regulations in force, with rules to ensure the effective functioning of the profession, and good practices.

321. The Central Bank of Tunisia issued Guidance No. 2006-6 on the establishment of a compliance monitoring system in the CIs which defines its mission, the reporting to the Board, and procedures to be followed with regard to the monitoring of compliance.

322. As regards AML/CFT, the manager appointed as the CTAF correspondent in accordance with Article 12 of Directive 2 and the latter's deputies must be part of the body for ongoing monitoring of compliance.

323. **C.18.1.b/c:** All regulated financial institutions are required to establish procedures for the hiring of employees (see in particular Article 83 of Decree No. 99-2478 for securities brokers' operations), with a view to maintaining high standards in such hiring.

324. The AML/CFT Law in Article 77 states that the authorities [are] responsible for developing programs and practices suited to combating ML/TF offenses and ensuring that they are implemented and that *“these programs and practices should include establishing [...] ongoing training programs for the benefit of their staff.”*

325. Article 26 of Guidance 2013-15 states in the introductory remarks that the CIs should have the human resources to ensure proper enforcement of, and compliance with, the provisions relating to AML/CFT. In addition, Articles 37, 38, and 39 reiterate the need to bring internal procedures relating to AML/CFT to the attention of the staff members of CIs and to develop ongoing training programs for their benefit on the techniques, methods, and trends with regard to AML/CFT. Similarly, Article 39 requires that CIs comply with their obligations under the legal and regulatory framework when they outsource all or part of their internal control systems for management of the ML risk. However, the possibility of outsourcing the internal control system for managing the ML risk needs to be clarified as regards compliance with FATF standards which require that regulated persons directly manage AML/CFT obligations and only rely on third parties to perform specific due diligence obligations (RC17).

326. Article 14 of CTAF Directive 02-2006 requires that credit institutions and offshore banks and the ONP *“implement ongoing training programs.”* Several training programs are provided by the CIs either for their own staff internally or in partnership with the CTAF. Furthermore, it should be noted that Article 38 of Guidance 2013-15 required credit institutions to establish an ongoing training program for the benefit of employees that includes information on the techniques, methods and trends in combating money laundering and terrorist financing. This training should cover all aspects of regulation in this area and in particular the obligations relating to due diligence in respect of customers and transactions and reporting suspicious operations and transactions. Regarding the effort made by banks in the training of their staff in relation to AML/CFT, it should be pointed out that all banks have made significant advances as evidenced by the response to the annual AML/CFT questionnaire. Indeed, more than 700 persons benefited from a training program in 2013.

327. **C. 18.1.d:** Section 32 of Guidance 2013-15 provides that *“the internal control system to manage the money laundering risk must be audited with a frequency that takes account of the nature, volume, and complexity of the institution's operations and in any event at least once every two years.*

*The terms of reference for audits of the internal monitoring system for managing the money laundering risk need to be approved by the standing internal audit committee.*

*The findings of the audits shall be documented in a report that must be approved by the standing internal audit committee and forwarded to the Board of Directors or the Supervisory Board, which shall take the measures necessary to ensure strict monitoring.”* Article 8 of the Guidance states that internal audit departments must be legally independent of the entities they audit.

328. Article 12 of CTAF Directive No. 3 requires that brokers and portfolio management companies establish internal control rules to assess the effectiveness of the system established under the conditions laid down by the supervisory authorities. Furthermore, they must ensure that their foreign branches and subsidiaries have identification and due diligence procedures at least equivalent to their own. They must also inform their supervisors when their subsidiaries and branches abroad are not able to enforce appropriate AML/CFT measures.

329. Also, Article 82 of the Regulations of the Financial Market Board on Mutual Funds and the management of portfolios of stocks and bonds for third parties provides that the manager (securities broker, credit institution, or management company) shall establish an effective internal compliance monitoring function to be carried out in an independent manner. The manager must also assess the adequacy and effectiveness of measures and procedures in place to detect any risk of noncompliance with professional obligations and associated risks and minimize these risks, and lastly, assess internal control mechanisms and other systems introduced pursuant to the regulatory provisions, as well as measures taken to remedy any shortcomings.

330. According to Article 65 bis of the Rights and Duties of securities brokers, the latter must draw up a procedures manual that includes:

- A description of its organizational structure, its various functional and operational bodies, and job descriptions, specifying the delegation of powers and responsibilities;
- Procedures describing the workflow process of the different transactions including computerized processing procedures, identifying the necessary controls for transactions at the stages of authorization, execution, and recording for internal control purposes; and
- Procedures, the accounting organization, and transaction processing rules.

331. **C. 18.2:** Article 3 of Guidance 2006-19 on the internal control of CIs (cf. Cr 18.1.a) should be implemented so that both CIs and nonresident banks “*shall ensure that the internal control system is adapted to the nature and volume of their activities, their size, and the risks to which they are exposed.*” This requires that all mandatory AML/CFT-related actions provided for by law be included at the level of group strategy.

332. Article 26 of Guidance 2013-15 lists the due diligence duties to be performed as part of the internal control procedures:

- Identifying and knowing customers;
- Creating and updating customer files;
- Setting time-limits for verifying the identity of customers and updating information relating to them. These time-limits have to be more frequent for customers subject to additional due diligence measures;
- Building cross-border correspondent bank relationships;
- Monitoring and reviewing unusual transactions and operations the results of which must be recorded in writing and made available to the Central Bank of Tunisia and the auditors;
- Analyzing operations or transactions that may be the subject matter of a suspicious transaction report pursuant to Article 85 of the Law;
- Keeping records; and
- Creating and storing databases.

However, there is no provision requiring financial groups to develop an AML/CFT program that should apply to the entire group.

333. Moreover, there is no provision covering the requirements pertaining to policies and procedures for sharing information needed for the purposes of due diligence, requirements concerning making the

information from branches and subsidiaries available to compliance and audit departments, and requirements specific to guaranteeing confidentiality in the use of such information.

334. It appears that the requirements relating to the existence of policies and procedures for information-sharing in financial groups, the confidentiality of data to be exchanged, and the use that is made of them, are not discussed in the wording of the implementing rules.

335. **Cr. 18.3:** According to Article 74c of the AML/CFT Law, persons referred to in Article 74 of this Law shall [...] “ensure that their foreign subsidiaries and companies in which they hold the majority of share capital apply due diligence measures in relation to combating money laundering and terrorist financing and inform the supervisory authorities when laws of the country where these subsidiaries and companies are established oppose the implementation of these measures.”

336. Paragraph 3 of Guidance 2013-15 has set forth the measures to be taken in the event the laws and regulations governing the CI’s Tunisian subsidiaries established abroad do not allow them to apply customer due diligence (CDD) measures for combating ML/TF. Indeed, “when the obligations in combating money laundering and terrorist financing in the host country are less strict than those in force in Tunisia, institutions must ensure that their branches and subsidiaries apply the strictest obligations insofar as the laws and regulations of the host country allow.” The wording does not obligate regulated institutions to ensure that their subsidiaries apply the rules of the country to which they belong where those of the host country are less stringent and does not specify what kind of measures these institutions must take in the event the host country does not permit the implementation of AML/CFT measures at the level at which they are applied in Tunisia.

337. Section 8 of Guidance 2013-15 specifies that credit institutions with subsidiaries or branches located abroad should ensure that they protect themselves, in appropriate forms, against the risk of being used for ML/TF purposes and that they provide for due diligence measures at least equivalent to those set forth in the Guidance. In addition, subsidiaries and branches must notify the parent company of the local provisions applicable in the host country that oppose the implementation of all or part of the requirements of this Guidance. Finally, it emphasizes that when obligations in relation to combating money laundering and terrorist financing in the host country are less strict than those in force in Tunisia, institutions must ensure that their branches and subsidiaries comply with the strictest obligations whenever the laws and regulations of the host country so allow.

### ***Weighting and Conclusion***

338. The current provisions are partially complete and do not cover all the requirements of the criteria of Recommendation 18 (aspects related to the existence of an AML/CFT program suitable for all subsidiaries and branches, protection of confidentiality, use of information exchanged within a group, data transmission to the compliance and audit departments, measures applicable in relation to the variations in legislation of the host country, etc.) and in relation to all individuals and entities subject to regulation (including insurance companies). **Tunisia is partially compliant with Recommendation 18.**

### ***Recommendation 19 – Higher-risk countries***

339. **Cr. 19.1:** Article 74 sexis states that persons subject to regulation should, inter alia, “give special attention to business relationships with persons resident in countries that do not or insufficiently apply AML/CFT international standards.” This obligation is included in Guidance 2013-15 in Article 15, in the Chapter relating to enhanced due diligence measures. Indeed, in addition to regular measures provided for customers that act in the capacity of originator or beneficiary, it requires that institutions apply enhanced

measures when the customer is resident in the countries reported by FATF (Financial Action Task Force) public statements as countries that do not or insufficiently apply AML/CFT international standards.

340. The provisions of the law and the Guidance to the CIs do not refer to cases involving customers who are “financial institutions” and do not obligate the persons subject to regulation to make the measures proportionate to the risks of ML and FT involved.

341. The provisions give some examples of enhanced measures, including obtaining supporting documents to confirm the identity of the person with whom the CI intends to establish a business relationship; implementing measures for the verification and certification of the copy of the official document or extract from the official register by a third party that is independent of the person to be identified; and obtaining confirmation of the identity of the customer from a credit institution.

342. Regulation 2012-01 relating to AML due diligence measures in the insurance sector reiterates the obligation to pay special attention to contractual relationships with customers residing in non-cooperative countries and regions included in the FATF’s list.

343. Regardless of the lists drawn up by the FATF, financial institutions must also pay special attention where there is any doubt about money laundering.

344. **Cr. 19.2:** The legislative provisions do not obligate financial institutions to implement counter-measures proportionate to the risks whether or not these are required by the FATF. Similarly, the Guidance to the CIs does not give examples of these counter-measures, such as the introduction of systematic reporting mechanisms as regards financial transactions; the refusal of subsidiaries or branches to introduce these; and the examination, and possibly modification, of correspondent bank relationships.

345. **Cr. 19.3:** The CTAF website provides an update of the countries at risk on the FATF list. No measures have been taken, however, to facilitate direct communication with financial institutions on concerns raised about the deficiencies in the AML/CFT arrangements in the countries at risk.

346. Article 15 of Guidance 2013-15 stipulates that, in addition to those provided for in Chapter I of Title I as regards customers that act in the capacity of originator or beneficiary, institutions must apply special measures when the customer is resident in countries reported by the FATF’s public statements as countries that do not or insufficiently apply AML/CFT international standards and the operation is carried out by means of new information and communication technologies.

### ***Weighting and Conclusion***

347. The possibility of applying appropriate measures against a country if it persists in not implementing satisfactorily the FATF Recommendations is not provided for in the legislation or regulations. Although the CTAF communicates on its website the various decisions taken by the FATF against countries at risk, there are no specific measures taken to facilitate communication of information to persons subject to regulation working in the finance sector and financial institutions about concerns arising because of deficiencies in the arrangements of at-risk countries. **Tunisia is partially compliant with Recommendation 19.**

### ***Recommendation 20 – Reporting of suspicious transactions***

348. According to the Tunisian authorities, Law No. 2009-65 of August 12, 2009 supplementing and amending the AML/CFT Law has made the necessary modifications in view of the REM’s 2006 recommendations. In fact, the Law:

- Deletes the provisions of former Article 86 of the Law which systematically provided for suspension of the operations that were the subject of a suspicious transaction report;
- Draws a distinction between a suspicious operation or transaction and an unusual operation or transaction, with two separate schemes being established for each type of operation. Thus, only suspicious operations or transactions are to be the subject of a suspicious transaction report under Article 85 of the Law, while special scrutiny must be given to unusual transactions, the results of which are recorded in writing and made available to the supervisory authorities and auditors, in accordance with new Article 86 of the Law.
- Extends the obligation to make a suspicious transaction report even after the carrying out of the operation or transaction *“if any new information is likely to link said operation or transaction directly or indirectly to the proceeds of an illicit act qualified by law as a misdemeanor or a crime, or to the financing of persons, organizations or activities related to terrorist offenses,”* under the second paragraph of Article 85 as amended by the 2009 Law.
- Annual reports published by the CTAF contain categories in relation to ML/TF drawn from STRs received by the CTAF.

349. **C. 20.1** - Article 85 of the AML/CFT Law stipulates that *“the regulated professions are required to report promptly to the CTAF in writing any suspicious or unusual operation or transaction likely to be related directly or indirectly to the proceeds of an illicit act qualified by the law as a misdemeanor or a crime, or to the financing of persons, organizations, or activities related to terrorist offenses, as well as any attempt to carry out these operations or transactions. The obligation to report also applies even after the carrying out of the operation or transaction if any new information is likely to link said operation or transaction directly or indirectly to the proceeds of unlawful acts qualified by law as a misdemeanor or a crime, or to the financing of persons, organizations, or activities related to terrorist offenses.”* Failure to comply with this obligation is punishable as a crime. Indeed, Article 97 of the Law provides that *“Any person who willfully fails to comply with the reporting obligation under the provisions of Article 85 of this Law shall be punished by one to five years imprisonment and fined five thousand dinars to fifty thousand dinars.”*

350. Article 15 of CTAF Directive No. 3 provides also that if the examination reveals a suspicion about the operation or transaction, the brokers and management companies must immediately report the operation or transaction to the CTAF.

351. Article 2 of the CTAF Directive No. 2006-01 provides: *“The report must be sent to the General Secretary of the Tunisian Financial Analysis Commission, at the registered office of the Central Bank of Tunisia in closed envelope marked “confidential” and accompanied by a cover letter in duplicate.”* The banks shall send the STR files in a sealed envelope by bearer to the registered office. The CTAF registry stamps a receipt on the two copies of the cover letter, one copy is kept on file and the other given to the bank.

352. In the insurance sector, in addition to the general obligation of persons subject to the AML/CFT Law (including banking and non-banking financial institutions), Article 9 of Regulation 2012/01 requires insurance companies to make a STR immediately, if they have reasonable grounds to suspect that the funds are the proceeds of criminal activity.

353. Finally, the microfinance sector is also affected by these reporting requirements pursuant to Article 4 of Decree-Law 2011-117 of November 5, 2011 organizing the activities of microfinance institutions.

354. **Cr. 20.2:** From Article 85 para 1, it appears that an attempted operation or transaction is also covered and a STR must be made in that situation. In addition, legislation provides for the possibility of sending a STR after new information is obtained, which leads to suspicion.

### *Weighting and Conclusion*

355. **Tunisia is compliant with Recommendation 20.**

### *Recommendation 21 – Tipping-off and confidentiality*

356. **C. 21.1:** Article 97 of the AML/CFT Law provides what “*Any person who willfully fails to comply with the reporting obligation under the provisions of Article 85 of this Law shall be punished by one to five years imprisonment and fined five thousand dinars to fifty thousand dinars.*” Article 85 concerns the obligation to report suspicious operations or transactions to the CTAF. In parallel, Article 98 of the AML/CFT Law states that “*no action for damages or criminal liability can be taken against any individual or legal entity that has performed, in good faith, the duty to report stipulated in Article 85 of this Law. No action for damages or criminal liability can be taken against the Tunisian Financial Analysis Commission for carrying out the duties assigned to it.*”

357. **C. 21.2:** Article 87 of the AML/CFT Law prohibits all regulated individuals and entities (and therefore financial institutions) from disclosing to the person concerned the fact that a suspicious transaction report has been made. The penalty for noncompliance with this obligation is laid down in Article 101 of the Law and applies to any director, agent, or representative of legal entities whose personal liability is established. These two Articles are consistent with criterion 21.2.

358. Specifically, Article 9 of Regulation 2012/01 prohibits insurance companies from disclosing the fact that a STR has been communicated to the CTAF and Article 15 of CTAF Directive No. 3 provides that securities brokers and management companies must refrain from informing the person concerned about the report of which the latter has been the subject and measures that have resulted therefrom.

### *Weighting and Conclusion*

359. **Tunisia is compliant with Recommendation 21.**

### *Recommendation 22: DNFBP – Customer due diligence*

360. Article 74 of the AML/CFT Law identifies a number of areas as subject to regulation. It reads:

*“The banking and nonbanking financial institutions and any person who in the exercise of his or her profession prepares or carries out, on behalf of his or her customer, financial operations or transactions for the purchase or sale of real estate or goodwill, manages customer’s capital and accounts, organizes contributions for the creation of companies or other persons, operates or manages them, controls such operations or transactions, or provides advice in their regard, shall take the required customer due diligence measures.*

*The provisions of the preceding paragraph apply to dealers in jewelry, precious stones, and any other precious objects, and directors of casinos with their customers, the value of which is equal to or higher than an amount to be established by order of the minister responsible for Finance.”*

361. Apart from banking and nonbanking financial institutions, the following are included among the persons subject to the AML/CFT Law: real estate agents, lawyers, notaries and other independent legal professionals and accountants, service providers to companies, (cf. “any person who prepares or carries out,



on behalf of his or her customer, financial operations or transactions for the purchase or sale of real estate or goodwill, manages customer's capital and accounts, organizes contributions for the creation of companies or other persons, operates or manages them, controls such operations or transactions, or provides advice in their regard"), dealers in precious metals and precious stones, and managers of casinos.

362. **Lawyers:** The activities of the profession are governed by Decree 2011-79 of August 20, 2011 on organization of the legal profession, which defines the profession as the act of representing parties, regardless of their legal status, defending, assisting, and advising them and carrying out on their behalf all proceedings before the courts and all judicial, administrative, disciplinary, and regulatory authorities (Article 2). The conditions for gaining admission to the profession of lawyer are: must have held Tunisian nationality for at least five years, be resident in Tunisia, be twenty-three years of age at least and forty years of age maximum, hold the legal practicing certificate, not have any work or professional relationship with private or public individuals or legal entities and not carry out any activity contrary to the legal profession, must not have a criminal record for *mens rea* offenses, and must be in a lawful situation as regards national service (Article 3). There is a National Bar Association, with headquarters in Tunis, of which all lawyers in Tunisia must be a member. It is chaired by the President of the Bar representing the Association before all central authorities. All lawyers are subject to disciplinary sanctions if they fail in their duties, or if, because of their behavior in the context of their profession or through their conduct outside it, they commit any act that is damaging to the honor or reputation of the profession (Article 67). The disciplinary actions to which lawyers may be subject are warning, reprimand, demotion, temporary suspension of practice, temporary or permanent disbarment. A special proceeding is prescribed by law, which includes the adversarial principle, and appeals before the ordinary law courts.

363. This system therefore subjects lawyers to possible disciplinary supervision if they do not comply with their AML/CFT obligations. Lawyers in Tunisia are currently active in AML/CFT-related activities considered risky. Lawyers have exclusive jurisdiction in the preparation of the articles of association of companies and in the drafting of contracts and instruments for the transfer of real property and contracts for real estate contributions to the capital of commercial companies (while not impinging on the purview, reserved by law, of notaries and land property preservation deed writers property registry). In practice, these documents represent considerable competition for notaries, who are subject to stricter requirements regarding officially recorded instruments and the organization of their activities. In this context, verification of the origin of the funds and identification of the parties concerned are minimal.

364. **Notaries:** There are now 1,049 notaries practicing in Tunisia. Law No. 94-60 of May 23, 1994 organizes these members of the legal profession. Notaries fall under the jurisdiction of the Attorney General of the Court of Appeal and are under the direct supervision of the public prosecutor for the district in which he serves. The roll of notaries is established by Order of the Minister of Justice. Notaries are subject to strict supervision by the public prosecutor, who inspects them every three months and by the tax authorities. Notaries are subject to disciplinary sanctions ranging from a warning to dismissal. These sanctions are imposed by a disciplinary board attached to each Court of Appeal. The controls to which notaries are subject make fraud inherently difficult. A Chamber of Notaries is located at the seat of each Court of Appeal as well as a National Association of Chambers of Notaries. It seems that the different Chambers and the National Association are content to have only an informative and representative role. As regards the functions of Tunisian notaries, they are responsible for drafting agreements and statements that the authorities and the parties wish to have set out in an official document, conducting inquiries related to obligations, and determining portions, which requires obtaining an official death certificate. To be validly accepted, the documents must be drawn up by two notaries and entered in special registers with an indication of their date. The nature of the transactions and the identity of the parties are established in supporting documentation. In both cases, records are forwarded to and cross checked by the regulatory authorities.

365. **Real Estate Agents:** Law No. 81-55 of June 23, 1981 organizes the profession. A real estate agent is any individual or legal entity who, professionally or regularly, and with a view to realizing a profit, assists in one of the following operations involving the assets of another: the purchase, sale, leasing, or swap of real property or goodwill, or non-negotiable corporate shares when the company's assets include real property or goodwill. Any individual or legal entity who, professionally or regularly, and with a view to realizing a profit, manages real property belonging to another is also defined as a real estate agent. Working in the profession requires a license from the Ministry of the Economy. The conditions governing access to the profession are strictly regulated. A high degree of formality is required, particularly the keeping of a record of services indicating the services rendered and the remuneration received, as well as a detailed record of powers of attorney. Offers and requests related to the operations in question must be publicized in detail (Article 6). Real estate agents may not under any circumstances receive monies, notes, or assets related to the operations, which must be deposited in a bank or postal account entitled "real estate management." In any case, the transaction is finalized by a notary or, more and more frequently, a lawyer. There is a National Association of Real Estate Agencies, but only 46 of the 1,500 real estate agencies in the country are registered with it.<sup>57</sup> Its role is limited and it has no AML/CFT oversight functions.

366. **Certified public accountants:** The profession is governed by Law No 88-108 of August 18, 1988 and comes under the Ministry of Finance. Certified public accountants, in their own name and on their personal responsibility, organize, check, correct and assess the accounts of businesses and organizations to which they are not bound by an employment contract. They are also authorized to certify that the accounts are true and fair and comply with legal requirements on behalf of businesses that have entrusted such responsibilities to them, whether contractually or pursuant to legal and regulatory provisions, particularly those related to the function of auditor. Certified public accountants may also analyze the position and operation of businesses from an economic, legal, and financial perspective. The conditions governing access to the profession are strictly regulated. There are currently 873 certified public accountants and 358 accounting firms operating in Tunisia. The largest firms in Tunisia are associated with international networks. A disciplinary board chaired by a judge has been established at the Association of Certified Public Accountants and Corporate Auditors of Tunisia. The Association ensures the independence of the auditors vis-à-vis the companies they audit. A commission is responsible for verifying that auditors comply with the obligation of independence and professional due diligence. International standards have been ratified by the Board and professionals receive training on a regular basis. The profession of accountant exists and is less regulated but the Association of Certified Public Accountants ensures that the profession's activities are limited in scope.

367. **Casinos:** There are only three casinos operating in Tunisia, and they are reserved exclusively for nonresidents. Access to gaming rooms is subject to presentation of an admission ticket which can be obtained only with proof of identity. The Ministry of the Interior may also require the exclusion of anyone. Casino games are regulated by Law No. 74-97 of December 11, 1974, Decree-Law 74-21 of October 24, 1994, Decree No. 76-114 of February 14, 1976, as amended by Decree No. 90-315 of February 8, 1990, Ministry of the Interior and Ministry of Tourism Guidance No. 1515 of July 6, 1988, Law No. 77-12 of March 7, 1977, Decree No. 76-115 of February 14, 1976 on the composition and methods of operation of casino gambling. These instruments indicate that the casino business is subject to prior authorization granted by joint Order of the Ministries of the Interior and National Economy. All casino personnel, as well as the CEO and members of the Board, must be of age, in possession of civil and political rights, and licensed by the Ministry of the Interior. Casinos are subject to a daily on-site inspection from opening until closing by officials from the Ministries of Finance and of the Interior. The Gaming Commission, which is made up of representatives of the Ministries of Finance, the Interior and Tourism and the BCT, conduct unscheduled inspections of casinos approximately quarterly. Every casino must keep separate accounts for

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<sup>57</sup> Figures provided by the National Association of Real Estate Agencies

gaming. These accounts are to be made available to representatives of the Ministries of the Interior and of Finance and the BCT when they perform their oversight and supervision duties. The latter also have access to the premises and their investigations must be facilitated failing which there will be criminal sanctions.

368. **Dealers in precious metals and stones:** Law No. 2005-17 of March 1, 2005 regulates the activity of any individual or legal entity that regularly purchases, sells, or processes precious metals or accepts them for safekeeping or repair. In case of noncompliance with the obligations imposed by the 2005 Law, professionals are subject to substantial penalties. These persons are required to inform the Ministry of Finance of their profession and of the premises where business will be conducted. Managers of such businesses must have a clean criminal record. The profession of jeweler working in precious metal is regulated and controlled, as are gold import and distribution activities. The law states that criminal investigation officers, customs agents, and sworn tax inspection agents are responsible for the control and detection of offenses in this area. A materials accounting record marked and signed by the staff of the Ministry of Finance must be kept on all premises, all of the operations of which must be reported. The record must be available for submission to employees of the Ministry of Finance at any time. Any sale or exchange of precious metal objects must be recorded in an invoice containing all the technical information. In 2012, 823 professionals were working as jewelry merchants.

369. **Trust and company service providers:** The AML/CFT Law applies to any person who in the exercise of his or her profession prepares or carries out, on behalf of his or her customer, financial operations or transactions for the purchase or sale of real estate or goodwill, manages customer's capital and accounts, organizes contributions for the creation of companies or other persons, operates or manages them, controls such operations or transactions, or provides advice in their regard, shall take the required customer due diligence measures. This means that some activities of company service providers are covered by the AML regulations, such as cases in which the provider acts as agent in the establishment of a legal person. However, trusts do not exist under Tunisian law.

370. These persons subject to regulation must implement their due diligence in respect of customers referred to in Articles 74 bis et seq. (see Criterion 10).

371. The Ministry of Finance's Order of September 10, 2004 specifies the various amounts mentioned in Article 74 of the AML/CFT Law as applicable to casinos and dealers in precious stones and metals.

372. **C. 22.1.a:** *Casinos* - Paragraph 2 of Article 2a of the Order states that the provisions of Article 74 of the Act apply to casinos directors in the case of customers' financial transactions the value of which is equal to or greater than D3,000 which corresponds to about US\$1,740. This upper limit seems too low and should be adjusted to the ML/TF risk represented by the casinos in the country.

373. **C. 22.1.b:** *Real estate agents* - They are covered by the due diligence obligations stipulated because they are professionals who prepare or carry out for the benefit of their customers financial operations or transactions for the purchase or sale of real property or goodwill.

374. **C. 22.1.c:** *Dealers in precious metals and precious stones* - They are covered by the obligation of due diligence in respect of customers, and the Order fixed the amount for which due diligence measures are required at D15,000 (equivalent to approximately US\$8,700). The same remark as made for casinos is applicable here as regards the amount stipulated in the legislation.

375. **C. 22.1.d:** *Lawyers, notaries, other independent legal professionals and accountants* - The definition given by Article 74 of the AML/CFT Law covers all situations contemplated by the FATF. Specifically, lawyers are subject to Decree-Law 2011-79 of August 20, 2011 on organization of the legal profession, Article 45 of which provides that "A lawyer is liable for the misconduct, pursuant to the

*provisions of Decree-Law [...] as well as other laws in force.*” He is also subject to disciplinary sanctions for neglecting his duties or for committing, through his behavior in the context of his profession or through his conduct outside it, any act that is damaging to the honor or reputation of the profession.” (Article 67 of the Decree-Law).

376. **C. 22.1.e:** *Trust and company service providers* - The AML/CFT Law applies to any person who, in the exercise of his profession, prepares or carries out, on behalf of his customer, financial operations or transactions for the purchase or sale of real estate or goodwill, manages customer’s capital and accounts, organizes contributions for the creation of companies or other persons, operates or manages them, controls such operations or transactions, or provides advice in their regard. These persons must take required customer due diligence measures. This means that some activities of company service providers are covered by the AML regulations, such as cases in which the provider acts as agent in the establishment of a legal person. However, trusts do not exist under Tunisian law.

377. In terms of awareness, the Tunisian authorities have indicated that certified public accountants were involved in the drafting of the BCT Guidance of November 2013. This Guidance has also been issued by the National Bar Association to all professionals.

378. Regarding training, on November 30, 2013 the National Bar Association held a seminar for 120 professionals on “certified public accountants combating financial crimes and money laundering.” In addition, a seminar was organized on the same day by the Tunisian Union of Industry, Trade, and Handicrafts [*Union Tunisienne de l'Industrie, du Commerce et de l'Artisanat UTICA*] to heighten awareness among professionals (entrepreneurs, traders, artisans, experts etc.) of anti-money laundering efforts. Experts from the CTAF, the Financial Market Board, and the Ministries of Finance and Justice, presented the legal and regulatory framework in this area.

379. **C. 22.2:** Article 75 of the AML/CFT Law provides that “*persons listed under Article 74 of this Act shall keep the registers, business records, and other documents held in hard copy or in electronic form for a period of not less than ten years, starting from the date on which an operation is carried or an account is closed, for purposes of consultation, where applicable, of the various phases of financial transactions and operations undertaken by them or their intermediaries and to identify all those involved and to ensure their authenticity.*” Thus, it covers all persons targeted by the FATF except those providing services to trusts and companies (see Cr.22.1).

380. **C. 22.3:** Article 74 quater applying to all persons subject to regulation states that they should have appropriate risk management systems in their relationships with persons carrying out or who have carried out prominent public functions in a foreign country, or their relatives or persons having relationships with them, obtain the approval of the director of the legal entity before establishing or continuing the business relationship with them, conduct enhanced ongoing monitoring of this business relationship and take reasonable measures to identify the source of their funds. This obligation related to PEPs do not apply to foreign PEPs, and does not take into account the risks associated with domestic PEPs.

381. This general obligation is also not reiterated and set out in detail in the legislative provisions targeting the different sectors of regulated activities. For example, Decree-Law 2011-79 of August 20, 2011 on organization of the legal profession contains no specific mention about combating ML/TF, and the potential risks related to carrying out a professional activity with or for PEPs. Similarly, Law 88-108 of August 18, 1988 dealing with revision of the legislation on the profession of certified public accountant does not include any rule related to combating ML/TF in general and PEPs in particular. Increased AML/CFT awareness of the legal professions is currently nonexistent.

382. **C. 22.4:** Article 74 *sexis* of the AML/CFT Law mentions a general obligation for individuals and entities subject to regulation to “give special attention to the risks of money laundering and terrorist financing associated with the use of new technologies and undertake other measures, where necessary, to prevent the use of new technologies for money laundering or terrorist financing purposes.” No guidelines are given to the different sectors of DNFBPs to implement this very general measure.

383. **C. 22.5:** DNFBPs subject to the AML/CFT Law must, pursuant to Article 74 bis “obtain, in case of relying on a third party, the information that can identify the customer and ensure that the third party is subject to regulation and supervision as regards combating money laundering and the financing of terrorism, that it has taken the measures required for this purpose and is able to provide, as soon as possible, copies of customer identification data and other related documents on condition that in all cases they assume responsibility for customer identification.” Just as in the case of the obligations relating to risks associated with PEPs and new technologies, this general measure is not the subject of specific measures for different types of DNFBPs.

### ***Weighting and Conclusion:***

384. The AML/CFT Law provides all the elements required by the FATF Recommendations with very little detail. The failure to take into account the obligations related to national PEPs (whereas they are taken into account for the banking financial sector in Guidance 2013-15) is a significant omission. In addition, campaigns to increase awareness of DNFBPs, including legal professionals, should be conducted. **Tunisia is partially compliant with Recommendation 22.**

### ***Recommendation 23 – DNFBPs: Other measures***

385. **C. 23.1:** The reporting requirements apply to casinos, real estate agents, dealers in precious metals and precious stones, legal professionals, and accountants (see Recommendation 20). Article 85 provides that “the persons referred to in Article 74 of this Law are required to report promptly to the Tunisian Financial Analysis Commission in writing any suspicious operation or transaction likely to be related directly or indirectly to the proceeds of an illicit act qualified by law as a misdemeanor or a crime, or to the financing of persons, organizations, or activities related to terrorist offenses, as well as any attempt to carry out these operations or transactions. The obligation to report applies even after the carrying out of the operation or transaction if any new information is likely to link said operation or transaction directly or indirectly to the proceeds of unlawful acts qualified by law as a misdemeanor or a crime, or to the financing of persons, organizations, or activities related to terrorist offenses.”

386. As seen above, Article 74 identifies institutions subject to the AML/CFT Law whether banks, non-banks, or DNFBPs. Consequently, lawyers, notaries, and other independent legal professionals and accountants when, in the name of or on behalf of a customer, they engage in a financial transaction in relation to the activities referred to previously (see 22.1), must report suspicious transactions to the CTAF. As regards other DNFBPs, dealers in jewelry, precious stones, and all other valuables, and managers of casinos are only obligated to make STRs when transactions the value of which is equal to or higher than the amounts established by the Minister of Finance’s Order of September 10, 2014 appear to be suspicious. The remarks made on these amounts for criterion 22.1 also apply here.

387. **C. 23.2 / C. 23.3:** The AML/CFT Law provides that the authorities empowered to control persons subject to the Law are responsible for developing programs and practices that are appropriate for combating money laundering and terrorist financing and for ensuring their implementation. This includes in particular putting in place internal control rules to ensure the effectiveness of the system established (Article 77). Although this general obligation should be applied by all DNFBP supervisory authorities, it appears that few of them have implemented such systems.

388. Indeed, for the legal profession neither Decree-Law 2011-79 on organization of the legal profession, nor Law No. 94-60 of May 23, 1994 on organization of the profession of notary, nor Law No. 88-108 of August 18, 1988 dealing with revision of the legislation on the profession of certified public accountant include any measures related to internal control as regards AML/CFT. At the most, there is provision for disciplinary sanctions for professional misconduct. The same observation should be made for other existing DNFBPs in Tunisia: the supervisory authorities for real estate agents and dealers in precious metals and precious stones have not taken specific measures to set up internal controls as regards AML/FT.

389. **C. 23.3:** Although the AML/CFT Law provides in Article 74 *sexis* that persons and entities subject to regulation, including DNFBPs, should “*give special attention to business relationships with persons resident in countries that do not or insufficiently apply AML/CFT international standards,*” no regulatory authority has issued specific measures to be taken in this regard.

390. **C. 23.4:** (See Recommendation 21) Secrecy is addressed by the AML/CFT Law only after the STR has been sent. Indeed, paragraph 2 of Article 81 states that professional secrecy is not binding on the CTAF when, in the performance of its duties, it relies on the assistance of the administrative authorities charged with enforcement of the law and on the persons and entities subject to regulation (Article 74). However, DNFBPs having the prerogative of professional secrecy do not see where the potential conflict between professional secrecy and STRs has been addressed in the AML/CFT Law. Thus the conflict between the obligation to report and Article 31 of Decree-Law 2011-79 on organization of the legal profession providing that “*a lawyer shall respect the confidentiality of all information that becomes known to him in the course of his professional activities.*”

### ***Weighting and Conclusion***

391. The obligations under the AML/CFT Law apply to DNFBPs but the legislative provisions related to the supervisory authorities do not address the AML/CFT issue. An analysis by industry professionals in the DNFBP should be considered. Furthermore, no supervisory authority has put in place internal control rules in accordance with Recommendation 18. **Tunisia is partially compliant with Recommendation 23.**

## SUPERVISION

### *Recommendation 26 – Regulation and supervision of financial institutions*

392. **C. 26.1:** Financial activities under the FATF Recommendations are performed in Tunisia primarily by credit institutions (onshore and offshore), insurance companies, securities brokers and the National Post Office. The Banking Law (Law No. 2001-65 of July 10, 2001 on credit institutions) states in its Article 14 that the business of banking must be carried out solely by persons licensed for that purpose, any violation being penalized as a crime.

#### *Banking financial institutions*

393. Tunisia has introduced a distinction between credit institutions (banks and financial institutions) and offshore banks, the latter category being authorized to provide financial services only for nonresidents.

394. **Banks and financial institutions:** The Central Bank of Tunisia (BCT) is the supervisory and control authority of banks and financial institutions. Law No. 58-90 of September 19, 1958 on the creation and organization of the Central Bank of Tunisia states in its Article 33 that the BCT “*shall control the circulation of money and the distribution of credit and shall ensure the proper functioning of the banking and financial system.*” Law 2001-85 stipulates in Article 32 that the BCT “*shall carry out off-site and on-site inspection of credit institutions.*” Law 2003-75 clearly explains the role of supervisory authorities in particular the BCT in the operational implementation of the obligations borne by credit institutions. Section 77 of the same law empowers the supervisory authorities to develop programs and practices that are best suited to combat money laundering and terrorist financing offenses and to ensure their implementation. These programs must in particular introduce a system for detecting suspicious transactions and operations, as well as internal control rules to ensure the effectiveness of the system established. Likewise, Article 77 ter empowers the supervisory authorities of the regulated persons and entities to impose disciplinary sanctions for noncompliance with AML/CFT obligations while respecting the adversarial process.

395. **Offshore Banks:** Banks working with nonresidents are subject to control by the BCT under Article 115 of Law No. 2009-64 promulgating the Financial Services Code for Nonresidents, which specifies that these institutions “*are subject to the control of the BCT, to the disciplinary power of the latter, and to the Committee on Financial Services.*” The oversight of offshore institutions is fully integrated with the activities of the BCT’s banking supervision directorate, which is also responsible for resident credit institutions.

396. Although financial institutions and offshore banks are subject to oversight by the BCT under legislation prior to the anti-money laundering law, there is no express legal provision giving it jurisdiction to ensure the compliance of these individuals and entities subject to AML/CFT legislation. Articles 32 et seq. of the Banking Law and 115 et seq. of the Code addressing access to financial services for nonresidents specify that for purposes of oversight, these institutions “*must keep accounts, comply with specific standards and rules set by the Tunisian Central Bank within this framework in order to exercise oversight over credit institutions in accordance with this Law, close their fiscal year on December 31 each year and draw up the financial statements within three months following the close of the previous year, prepare the balance sheets, during the year, with a frequency and in accordance with a standard format established by the Central Bank and provide the Central Bank of Tunisia with any documents, information, clarifications and explanations needed to review their situation and ensure proper application of regulations with respect to credit and exchange controls and the supervision of credit institutions.*”

397. All the aspects covered by these Articles relate exclusively to prudential supervision and supervision of foreign exchange operations and cannot be regarded, in principle according to the standard, as the legal basis either for AML/CFT supervision (monitoring) or for prescribing standards in this respect. Moreover, all the legislative provisions adopted by the BCT in this matter refer in their preambles to the legislative provisions governing the banking profession in general and not to the provisions of specific Articles.

### **Exercise of supervision by the BCT**

398. According to the Tunisian authorities, the BCT exercises its control based on three distinct powers:

- *A rule-making power*: the BCT has a power enabling it to establish management rules and prudential standards. These are issued by guidances or notes to credit institutions and deal with aspects related to management and prudential ratios;

- *A supervisory power*: BCT may carry out documentary and on-site inspections at credit institutions. Supervision relates to CIs and their subsidiaries, legal entities they control directly or indirectly, and the subsidiaries of these legal entities.

The Tunisian authorities say that the BCT's supervision takes place throughout the life cycle of the CI from the time it enters the business until it leaves. The role of the BCT is manifested first in the process of granting licenses (see C. 26.2) and second in the microprudential analysis of the money laundering risk to which the institution is exposed. This risk is managed, according to the authorities, taking into account the size of the bank's business and the complexity of its operations;<sup>58</sup>

- *A disciplinary power*: The BCT has sanctioning powers to force the institutions subject to its supervision to comply with the banking regulations. Article 77 ter of Law 2003-75 empowers the BCT to sanction credit institutions in case of breach of the AML/CFT legal provisions.

399. In terms of monitoring AML/CFT, Article 42 of Guidance 2013-15 to the CIs provides that CIs should send to the General Directorate of Banking Supervision of the Central Bank, no later than one month after the close of each fiscal year, a document modeled on Annex 6 stating:

- The total number of reports made to the Tunisian Financial Analysis Commission during the previous fiscal year; and
- The total amount of transactions reported during the fiscal year broken down according to operation type and customer category (individuals and legal entities).

400. In addition, they must incorporate a chapter on AML/CFT issues in the report that they draw up every year in the context of the measurement and oversight of risks to which they are exposed (pursuant to Article 53 of Guidance 2006-19 and Article 43 of Guidance 2013-15, both issued by the BCT to the CIs).

### ***Insurance companies***

401. Insurance companies are licensed by the Minister of Finance, after receiving the opinion of the General Insurance Committee, in accordance with Article 50 of the Insurance Code. These companies are subject to supervision and monitoring by the General Insurance Committee (CGA) which is a legal entity with financial autonomy that reports to the Ministry of Finance (see Articles 177 et seq. of the Insurance Code). Article 179 of the Insurance Code promulgated by Law No. 92-24 of March 9, 1992 as amended by Law No. 2008-8 of February 13, 2008 states that: "*As part of the duties assigned to it, the Committee shall include the supervision of insurance companies, reinsurance companies and insurance industry-related*

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<sup>58</sup> Answers to the self-assessment questionnaires - p. 269



*professions, and monitoring of their activities.*” Section 187 provides that the CGA panel must ensure the proper implementation of the provisions of the Insurance Code and its implementing regulations and issue regulations necessary for that purpose (see Article 187 et seq. of the aforementioned Code). In this context, Regulation No 1/2012 on due diligence measures to be taken in combating money laundering in the insurance sector has been issued by the CGA panel. Verification of the proper application of the provisions of these regulations is part of the work of monitoring and examination that insurance supervisors may perform as regards documentary and on-site inspection.

### ***Financial markets***

402. Securities brokers are subject to regulation and supervision by the Financial Market Board (CMF under Article 23 of Law No. 94-117 of November 14, 1994 organizing the financial market. The CMF provides oversight for collective investment schemes (unit trusts – SICAV -, mutual funds, and debt investment funds classified in this category), as well as permanent oversight of the Tunis Securities Exchange; securities brokers; securities deposit, clearing, and settlement companies; and portfolio management companies acting on behalf of third parties (under Law No. 2005-96 of October 18, 2005 on the security of financial relations). Closed-end investment companies (SICAF) and risk-capital funds (SICAR) are no longer subject to CMF supervision. However, none of the provisions of the aforementioned legislative provisions gives the CMF powers to ensure that financial market professionals comply with the AML/CFT requirements by enacting specific regulations on the matter or by requiring inspections.

403. Since the promulgation of Decree-Law 2011-99 of October 21, 2011 (amending Law No. 88-92 on investment companies), mutual funds that manage resources on behalf of unsophisticated investors are subject to the control of the CMF (licensing and inspection)—the CMF adopted a regulation on the subject (dated June 9, 2014 and published in the Official Gazette of the Republic of Tunisia (JORT) on September 9, 2014.

404. The CMF may carry out a documentary and on-site inspection of the institutions it regulates. Articles 35-39 of Law No. 94-117 clearly define the method of investigation available to the CMF as well as its disciplinary powers (Articles 41 and 42). Law 2005-96 states that the CMF is responsible for overseeing the activities of those engaged in management on behalf of third parties—the resources of the CMF for conducting inquiries and inspections being applicable to them—and it has disciplinary power over them. Investigators have access to all the documents and papers necessary for their research and findings (Article 37 of Law No. 94-117).

405. The CMF is authorized to impose disciplinary penalties on the Tunis Securities Exchange, its executives, and its personnel; the securities deposit, clearing, and settlement company, its executives, and its personnel; securities brokers, individuals and legal corporations, their executives, and the personnel placed under their authority; and the executives, managers, and depositaries of the assets of mutual funds. The penalties applicable are: warning, reprimand, fine, total or partial prohibition from carrying out all or part of a business, and withdrawal of license. Fines can be imposed when individuals engage in practices contrary to the regulations of the CMF (Article 40 of Law No 94-117), and may not exceed D20,000, (approximately US\$15,000), and when profits were made and depending on the gravity of the offense in question, the fine may be set at up to five times the amount of those profits. The last two penalties are not applicable to the Tunis Securities Exchange or to the securities deposit, clearing, and settlement company. Disciplinary measures taken by the CMF are published “whenever their effects involve third parties.” Punishment and a summary of breaches are published but not the facts and details of the offense. These are without prejudice to any criminal penalties associated with certain instances of noncompliance.

406. The facts of the investigations conducted by the CMF Office and the reasons for sanctions are published anonymously in the CMF activity reports.

407. In 2014, the CMF had 101 employees including 56 executives. Of the 56 executives, 44 are sworn. The IT department has seven employees including three that are sworn.

408. CMF agents are recruited by competitive exams. Investigations are carried out by employees who have been sworn in and authorized for that purpose by the CMF, and have to be at a minimum level of seniority within the Tunisian civil service. Investigators and other persons required to be informed of the files are bound by professional secrecy.

409. The on-site inspection program includes comprehensive inspections and ad hoc audits. The CMF conducts on-site inspection of the majority of the institutions it supervises at least once a year. CMF employees have received general AML/CFT training. To date, the CMF has not carried out any inspection as regards compliance with AML/CFT obligations.

410. In order to ensure securities brokers' compliance with the provisions of Law No. 2003-75 of December 10, 2003 relative to supporting international efforts to combat terrorism and eradicate money laundering (the AML/CFT Law), the Financial Market Board in 2014 undertook the following actions:

1) Verifying that the procedures manuals of securities brokers have the due diligence and data requirements provided for in the laws and regulations related to combating money laundering, in accordance with Article 65 bis of Decree No. 99-2478 of November 1, 1999 on the status of securities brokers;

2) Verifying that the documents used by securities brokerage companies and intended for third parties contained all the mandatory data relating to customer identity as provided by legislative provisions on combating money laundering.

3) Ensuring that all securities brokerage companies have appointed a CTAF correspondent;

4) Reviewing the semi-annual report of the assessment manager and requesting explanations in the event of reporting improprieties in combating money laundering;

5) Demanding reasons in case of finding cash receipt amounts higher than that stipulated by Article 69 of Law No. 2003-75; and

6) In 2014, the CMF started to inspect anti-money laundering measures at securities brokers. As part of this thematic inspection, the assessment manager was asked to complete a questionnaire developed by the CMF. The main irregularities found are as follows:

- The absence of specific measures applicable to business relationships with persons resident in countries that have been identified by FATF as non-cooperative countries, and to the use of new information technologies and operations and transactions of a complex nature or involving abnormally high amounts, which violates new Articles 77, 74 quinquies, and 86 of Law No. 2003-75,

- The absence of due diligence based on a risk-based approach to understanding the unusual transactions of customers;

- The acceptance of uncrossed endorsable checks which violates the measures imposed by CMF Guidance Notes No. 11-0395 of February 2, 2011 and No. 12-1143 of June 27, 2012;

- The absence of ongoing training of staff in combating money laundering, contrary to Article 13 of CTAF Directive No. 3.

411. Finally, the CMF will ensure that securities brokerage companies are involved in the formulation of implementing legislation related to money laundering. Indeed, the CMF in 2014 asked those companies for their comments and proposals under the proposed amendment of the Tunisian Financial Analysis Commission's Decision No. 2007-03 of March 22, 2007 related to general guidance to the financial market on the detection and reporting of suspicious or unusual operations or transactions.

412. In addition to the guide setting out the legal and regulatory provisions related to combating money laundering with which securities brokers are obliged to comply (and that were circulated to them), a draft of the regulatory provisions is being prepared by the CMF departments.

### ***National Post Office (ONP)***

413. The National Post Office is supervised by the Ministry of Information Technologies (Articles 14 and 15 of Decree No. 98-1305 establishing the ONP).

### 414. **C. 26.2: Market Entry**

#### ***Banking Institutions***

415. **Banks and financial institutions:** Article 9 of the Banking Law states that the licensing of banks, which occurs by Order of the Minister of Finance, is dependent on the status of those providing the capital (and where applicable, their guarantors) and the propriety and qualifications of their directors. Article 26 of the same Law states that “*persons may not direct, administer, manage, control, or establish a credit institution if they have been convicted of falsification of accounts, theft, breach of trust, fraud, or misdemeanor punished by the laws on fraud, extortion of funds or assets of third parties, pilfering committed by public depositary, issuance of bad checks, possession of objects obtained by means of these offenses, or violation of the foreign exchange regulations*”—and any noncompliance with these provisions are punishable as crimes. Article 15 on the withdrawal of licensing states that a license may be withdrawn “*whenever an institution does not meet the conditions on the basis of which the license was granted or whenever an institution has obtained a license by means of false declarations or any other irregular means.*”

416. In practice, and within the framework of a broad interpretation of the law, the Central Bank manages bank licenses at two levels: licensing of the institutions themselves and licensing of the executives. It makes any changes in the capital structure of credit institutions subject to license renewal based on Articles 9 and 10 of the Banking Law. With respect to new designations, Article 9 provides that the BCT shall consult with the Ministry of Finance.

417. **Offshore Banks:** These banks are licensed by the Minister of Finance on the proposal of the Central Bank (Article 75 of the Code). The terms of these licenses, and in particular those relating to the propriety of those providing the capital and the directors, are not defined in Law No. 85-108. The other conditions for license withdrawal are similar to those for onshore credit institutions.

#### ***Insurance***

418. Insurance companies and insurance intermediaries (brokers and insurance agents) are subject to licensing by the Minister of Finance. Assessors and claims adjusters of damage (for damage insurance), for their part, are subject to special terms and conditions. Licensing conditions refer to conditions of competence and propriety—the list of propriety-related offenses being the same as those contained in Article 26 of the Banking Law.

419. The 2008-8 Law amending the Insurance Code makes a distinction for obtaining licenses, between insurance companies and insurance intermediaries, and makes the insurance business conditional upon the granting of licenses. In addition, the change of shareholders or directors of insurance companies (any operation that involves a change of control of the company) requires the approval of the CGA (Article 54 of the Insurance Code) and appointments of new directors in key positions must be approved by the Minister of Finance (Article 50).

420. Insurance intermediaries, whom the Insurance Code lists in Article 69, must hold a professional identity card and be entered in a register kept for this purpose by the Office of the CGA. Section 73 of the Code specifies the professional and propriety conditions required to obtain the abovementioned professional identity card. In addition, Article 85 provides that “no person shall administer, manage, control, or establish an insurance company:

- If he has been convicted for offenses specified in paragraph 2 of Article 73 of this Code.
- If he has been convicted for contravening the insurance rules and regulations.
- If he was declared bankrupt.”

### ***Financial markets***

421. The CMF issues licenses to securities brokers (Article 57 of Law No 94-117.) and companies providing portfolio management on behalf of third parties (Article 23 of Law No. 2005-96). The Minister of Finance appoints members of the board of directors of the Tunis Securities Exchange (Article 65). The CMF may suspend or withdraw the license of the securities brokers (Article 57) and management companies acting on behalf of third parties (Article 23). The Minister of Finance may remove directors of the Tunis Securities Exchange. Procedures for the appointment of the directors of the securities deposit, clearing, and settlement companies are defined by the Company Code; the members of the Board are appointed by the General Meeting of Shareholders; and the Chair of the Board is elected by the board members.

422. The Minister of Finance can oppose the nomination of Chief Executive Officer proposed by the Board. SICAVs must inform the CMF of their establishment by submitting a file containing the articles of incorporation, their capital structure, and the composition of their managing bodies. The CMF may also ask them for any information and statistics concerning their activities. Article 58 of Law No. 94-117 specifies that securities brokers must present adequate guarantees of the propriety of their directors. There is no similar legislative provision in the case of portfolio management on behalf of third parties. Law No 94-117 does not explicitly spell out the conditions of propriety for directors of the Tunis Securities Exchange. Article 6 of Decree No. 99-2478 of November 1, 1999 sets out a list of offenses, the commission of which results in securities brokers being prohibited from practicing their profession. In fact, according to this Article “no one may be a securities broker, as an individual or as a director in any capacity whatsoever, of a public limited liability brokerage company who (a) has been convicted of falsification of accounts, theft, breach of trust, fraud, extortion of funds or securities of third parties, pilfering committed by public depository, issuance of bad checks, possession of objects obtained by means of these offenses, or violation of the foreign exchange regulations; (b) has been convicted for an intentional offense and not been rehabilitated; (c) is under a definitive bankruptcy court decision; and (d) is a director or manager of a bankrupt company with the bankruptcy decision being extended to the individual, or has been convicted under Articles 288 and 289 of the Criminal Code in relation to bankruptcy. Decree No. 2006-1294 of May 8, 2006 implementing Article 23 of Law No. 2005-96 of October 18, 2005 on strengthening financial security includes fit and proper requirements for directors of management companies (no conviction for falsification of accounts, theft, breach of trust, fraud, extortion of funds or assets of third parties, etc.).

423. Pursuant to Article 5 of Decree No. 2006-1294 of May 8, 2006 implementing the provisions of Article 23 of Law No. 2005-96 of October 18, 2005 related to the strengthening of financial security as amended by Decree No. 2009-1502 of May 18, 2009, no one is permitted to establish or manage a management company or be a member of its Board of Directors, Management, or its Supervisory Board if he has been finally sentenced (...) for infringement of the laws and regulations related to combating money laundering.

### *Activities of microfinance institutions*

424. Engaging in the business of microfinance is subject to obtaining a license from the Minister of Finance based on the report of the Microfinance Supervision Authority. Indeed, Article 11 of Decree-Law 2011-117 of November 5, 2011 on the organization of the activity of microfinance institutions provides that *“the operations of microfinance institutions are contingent on a license granted by the Minister of Finance based on the report of the microfinance supervisory authority.”*

425. **C. 26.3:** As seen above (cf. C.26.2), the conditions for granting licenses and for monitoring CIs and insurance companies and agents theoretically make it easier to close off access to criminals or accessories to their offense so that they do not become the beneficial owners of a significant share of or control a financial institution, or do not hold a management position therein.

426. As for securities brokerages and portfolio management companies, only the propriety of the directors during the approval procedure is checked. The Tunisian authorities have not shown that regular or exceptional monitoring procedures are in place.

427. Finally, as regards MFIs, Article 21 of Decree-Law 2011-117 provides that *“no person shall direct, administer or establish a microfinance institution:*

*- If he has been convicted in a final judgment for falsification of accounts, theft, breach of trust, fraud, offenses against public decency and propriety, a misdemeanor punished by the laws on fraud, extortion of funds or assets of third parties, pilfering committed by a public depositary, issuance of bad checks, possession of objects obtained by means of these offenses or violation of the foreign exchange regulations.*

*- If he was the subject of a definitive bankruptcy court decision; and*

*- If he was a director or manager of companies declared bankrupt or has been convicted under Articles 288 and 289 of the Criminal Code in relation to bankruptcy.”*

428. **C. 26.4 (a):** Law 2001-65 imposes the responsibility on each credit institution to implement a proper system of internal control that ensures the ongoing assessment of internal procedures, the identification, monitoring, and management of risks related to its business. In this context, the BCT issued Guidance 2006-19 on internal control, which clarifies the nature and extent of the internal control system, without any interaction with the AML/CFT rules. The AML/CFT Law, on the other hand, sets out the regime for prevention and enforcement that CIs should adopt, whether at group level and at the level of the different agencies. Guidance 2013-15 to the CIs points out that *“institutions must develop an organization, human and logistical resources, and clear and precise internal procedures to ensure proper application of, and compliance with, the legal and regulatory provisions for combating money laundering and terrorist financing.”* Although in terms of regulation, the abovementioned rules provide some aspects of prudential supervision applicable in AML/CFT matters, control of CIs by the BCT using a risk-based approach has not been enacted into law.

429. As regards the insurance sector, there is no legislative provision requiring the application of prudential regulations pertaining to AML/CFT and similarly no risk-based oversight approach to be applied by the CGA. However, the Tunisian authorities have indicated that the CGA is a member of the International Association of Insurance Supervisors, and has been participating since September 2013 in the World Bank project on strengthening the supervision of insurance in the Middle East and North Africa region.<sup>59</sup> The existence of a consolidated oversight approach at group level, be it in the insurance sector or the Securities Commissions sector, has not been demonstrated by the Tunisian authorities.

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<sup>59</sup> Answers to the self-assessment questionnaires - p. 2

430. **C. 26.4 (b):** Financial institutions that provide money or value transfer services or foreign exchange services are subject to the rules laid down by the Banking Law. The National Post Office, which may also be permitted to offer money or value transfer services under its governing legislation, is under the supervision of the Ministry of Telecommunications. No information has been communicated to the assessment team about any system of oversight to ensure compliance by the post office with its AML/CFT obligations.

431. **C.26.5 (a):** Although legislation provides that CIs should adopt a risk-based approach in the implementation of their prudential obligations, legislation related to the regulation of the banking financial sector does not require the BCT to modify the frequency and extent of its documentary and on-site inspections based on ML/TF risks and the policies, internal controls, and procedures of the institution or group.

432. Regarding the insurance sector, the AML/CFT legislative provisions as well as those applicable to these activities do not require the CGA to adjust the frequency and extent of these controls on the basis of ML/TF risks such as those identified and assessed by insurance companies. However, the authorities have indicated that in the context of inspection of documents, the CGA sent insurance companies a questionnaire that summarizes the due diligence measures to be taken in combating money laundering. The answers to this questionnaire will apparently be used to rank insurance companies by risk category and to schedule on-site inspections at a later date.

433. Finally, the inspections conducted by the CMF do not follow a risk-based approach to ML/TF.

434. **C. 26.5 (b):** According to information obtained from the Tunisian authorities, a country-wide risk analysis and assessment has not yet been carried out; the legislative provisions applicable by the supervisory authorities of financial institutions do not require that this aspect be taken into account in the context of their inspections.

435. **C. 26.5 (c):** According to the Tunisian authorities, the inspection program is ordered by the BCT on the basis of objective criteria: the schedule according to the risk profile and the level of exposure, the assessment of documents by supervisors on the institution's level of compliance with AML/CFT regulations (based on the annual AML/CFT questionnaire and the auditors' reports), the size of the establishment, or even the minimum frequency of inspection.

436. With regard to other financial institutions, it does not appear that the scope of the checks is based on the characteristics of the supervised institutions. The Tunisian authorities have indeed not made any regulations in this regard.

437. **C.26.6:** The regulations do not contain provisions for revising the assessment of the ML/FT risk profile of the financial institutions or the financial group. There is no provision with regard to the insurance, financial markets, and microfinance institutions sectors.

#### ***General Insurance Committee (CGA)***

438. The General Insurance Committee has legal personality and financial autonomy and is responsible in particular for supervision of insurance companies, reinsurance companies and professions linked to the insurance sector, and for monitoring of their activities. The CGA has 70 staff members, 15 of whom are assigned to documentary and on-site inspection, split between two branches: the Directorate General for inspection of insurance and reinsurance companies (12 inspectors) and the General Directorate for inspection of intermediaries and related occupations (3 inspectors). CGA staff, including those assigned to

supervision, are recruited by competitive examination, and are subject to requirements of propriety and professional secrecy (Article 83 of the Insurance Code). The on-site inspection program allows for the audit of four companies a year on average and visits can be comprehensive or focused on specific topics. Concerning intermediaries (brokers and general agents), the on-site inspection program allows for the audit of two intermediaries a year on average. It should be noted that since November 2012, the CGA has issued regulations to insurance companies regarding their obligations in combating money laundering. Thus, monitoring of documents related to compliance by these companies with their obligations to combat money laundering has commenced in preparation for on-site inspections. In addition, it is noted that pursuant to Accounting Standard 27 on internal control, insurance companies are formally required to establish effective internal control procedures. Their external auditors must also, under Guidance No. 258, forward a special report on their work to the Minister of Finance, for purposes of assessment of the certification of accounts. As part of monitoring the proper enforcement of that Regulation, the CGA sent letters to all the auditors of insurance companies asking them to issue, as part of their work, an opinion on the internal control procedures related to the new AML/CFT obligations of insurance companies, and asked that henceforth this be considered the focus of their report.

### ***Weighting and Conclusion***

439. Although banks, financial institutions, and offshore banks are subject to oversight by the BCT under legislation prior to the anti-money laundering law, there is no express legal provision giving it jurisdiction to ensure compliance of these individuals and entities subject to AML/CFT legislation. Articles 32 et seq. of the Banking Law and 115 et seq. of the Code addressing access to financial services for nonresidents specify that for purposes of oversight, these institutions “*must keep accounts, comply with specific standards and rules set by the Tunisian Central Bank within this framework in order to exercise oversight over credit institutions in accordance with this Law, close their fiscal year on December 31 each year and draw up the financial statements within three months following the close of the previous year, prepare the balance sheets, during the year, with a frequency and in accordance with a standard format established by the Central Bank and provide the Central Bank of Tunisia with any documents, information, clarifications and explanations needed to review their situation and ensure proper application of regulations with respect to credit and foreign exchange controls and supervision of credit institutions.*” All the aspects covered by these Articles relate exclusively to prudential supervision and supervision of foreign exchange operations and cannot be regarded as the legal basis either for AML/CFT supervision (monitoring) or for prescribing standards in this respect. Moreover, all the legislative provisions adopted by the BCT in this matter refer in their preambles to the legislative provisions governing the banking profession in general and not to the provisions of specific Articles.

440. The regulatory powers available to the authorities supervising financial institutions in AML/CFT matters are not clearly defined. Financial institutions are subject to strict regulations as regards registration and obtaining licenses for carrying out their activities. However, the BCT, the CMF, and the CFA have not yet put in place the tools required to carry out the controls on a risk-based approach to ML/TF. The extent and frequency of documentary and on-site inspections are not formalized to take into account the types and levels of ML/TF risks identified. No review of the assessment of the risk profile of financial institutions has been conducted. **Tunisia is noncompliant with Recommendation 26.**

### ***Recommendation 27 – Powers of supervisors***

441. **C. 27.1: Power to supervise and monitor financial institutions:** Financial institutions are subject to supervision by an independent body authorized to oversee their activities. Credit institutions are supervised by the BCT, the insurance sector by the CGA, and securities brokers by the CMF. Microfinance companies are also supervised by an independent authority, pursuant to Decree-Law 2011-117 organizing microfinance activities, with explicit reference being made to the AML/CFT Law.

442. The aforementioned authorities (BCT, CGA, and CMF) are considered to be the supervisory bodies for banking and financial institutions subject to regulation in application of the AML/CFT Law which designates them by referring to the “Non Banking and Banking Financial institutions” which include all categories of financial institutions. In addition, Tunisian authorities refer to laws conferring broad supervisory powers to the BCT, CGA and CMF for the entities they supervise and monitor.

443. **C. 27.2: Power to conduct inspections of financial institutions:** Financial sector supervisory authorities, including the supervisor of postal services, exercise AML/CFT regulation and supervision. In practice, the BCT, CMF, and CGA conduct the documentary and on-site inspections required to ensure that they effectively perform prudential supervision.

444. **C. 27.3: Power of supervisors to compel production of documents:**

445. **Credit institutions:** Banking Law 2001-85 stipulates that “*credit institutions incorporated under Tunisian law, as well as branches or agencies of credit institutions with registered offices abroad and authorized to conduct business in Tunisia, shall [...] provide to the BCT any documents, information, clarifications, and explanations needed to review their situation and ensure proper application of regulations with respect to credit and foreign exchange controls and supervision of credit institutions.*”

446. **Insurance:** Article 83 of the Insurance Code stipulates that “*insurance companies, reinsurance companies, intermediaries, assessors, and claims adjusters are required, in carrying out their duties, to send to the supervisors all documents and information that they request. In this regard, agencies subject to regulation cannot invoke professional secrecy against these supervisors. These supervisors may, at any moment, conduct on-site inspections of operations carried out by insurance companies, reinsurance companies, intermediaries, assessors, and claims adjusters.*” Furthermore, pursuant to Article 12 of Regulation No. 1/2012, insurance companies are required to inform the CGA of the internal control procedures put in place to combat money laundering, and provide information on the number of transactions reported to the CTAF, as well as on the type and total amount of these transactions.

447. **The financial market:** In accordance with Article 37 of Law No. 94-117, CMF investigators are authorized, in the exercise of their duties, to make all the necessary findings, to compel the production, on first demand and without the need for an on-site visit, of documents and records, irrespective of the medium on which they are stored, as well as the registers needed to conduct the review and make observations, and to make copies thereof. They are also entitled to obtain delivery, with acknowledgement of receipt, of the documents and records required for the performance of their duties or pursuit of the investigation.

448. **Microfinance:** In accordance with Article 43 of Decree-Law 2011-117 of November 5, 2011 organizing the activities of microfinance companies, the microfinance supervisory authority is tasked with “*implementing a risk centralization system for the sector and informing microfinance companies of risks at their request; to that end, the authority may request that microfinance companies provide it with all statistics and information to facilitate monitoring of their activities. It may also conclude partnership contracts with similar supervisory authorities for information-sharing purposes.*” In addition, Article 44 stipulates that the microfinance supervisory authority is independent and is vested with all the powers necessary to perform these tasks, as well as the powers needed for the administration of services.

449. **National Post Office:** The ONP is supervised by the Ministry of Communications Technologies (Articles 14 and 15 of Decree No. 98-1305 establishing the ONP).



450. **C. 27.4: Sanctions in line with Recommendation 35: proportionate and dissuasive:** The powers of supervisors to impose sanctions are generally adapted, effective, proportionate, and dissuasive, and are covered in the laws governing the powers of the BCT, the CGA, and the CMF.

451. In addition to powers to impose sanctions provided for by their respective regulations, the AML/CFT law, as amended by Law 2009-65 of August 12, 2009, stipulates that the competent disciplinary authority may, following a hearing with the concerned party, impose one of the following sanctions:

- 1- a warning,
- 2- a reprimand,
- 3- ban on conducting business or the suspension of the license for a period not exceeding two years,
- 4- dismissal,
- 5- permanent ban on conducting business or withdrawal of the license.

452. It was specified that these “*sanctions shall also be applicable to the executives and members of the supervisory board, once their responsibility for failure to comply with due diligence measures is established.*”

453. The link between amounts for fines and offenses (for credit institutions and insurance companies) is a fatal constraint, because it most often prevents the imposition of a financial penalty for failure to meet internal control obligations. The BCT believes that it could impose a financial penalty without establishing a direct link with a transaction, but has not done so to date. In accordance with Articles 40 and 42 of Law No. 94-117 of November 14, 1994 on the reorganization of the financial market, decisions made by the Financial Market Board are reasoned and subject to appeal before the Tunis Court of Appeal. The facts pertaining to investigations conducted by the CMF and the reasons for sanctions are published anonymously in the CMF activity reports.

454. Internal control requirements are part of the organizational obligations of persons subject to regulation and, as such, the absence of internal controls is subject to disciplinary sanctions, pursuant to Article 42 of Law No. 94-117, which stipulates that any violation of the laws and regulations or of professional rules and practices will result in the imposition of sanctions by the Financial Market Board’s panel, which has been established as the disciplinary board. The sanctions are as follows: a warning or a reprimand and, in the case of institutions other than the Tunis Securities Exchange and the securities deposit, clearing, and settlement company, a temporary or permanent ban on conducting some or all business activities and, where applicable, withdrawal of the license.

***Weighting and conclusion:***

455. Financial institution supervisory authorities conduct documentary and on-site inspections and have authorized access to all types of documents, in accordance with the legal provisions governing the business activities of individuals and entities subject to regulation.

456. **Tunisia is largely compliant with Recommendation 27.**

**Recommendation 28 – Regulation and supervision of designated non-financial businesses and professions**

**Table 2. Regulation and supervision of DNFBCs**

Sectors/ Professions	Supervisory authority/self-regulatory body	Power to conduct AML/CFT controls	Licensing (excluding criminals)	Sanctions
Lawyers	National Bar Association	Yes	Yes	Yes
Notaries	Ministry of Justice/ Office of the Public Prosecutor in its district	No	Yes (condition: no criminal record)	Yes
Accountants	Ministry of Finance	No	Yes	Yes
Casinos	Ministry of the Interior/ BCT	No	Yes	No
Real estate agents	Ministry of Finance	No	Yes	No
Dealers in precious metals and precious stones	Ministry of Finance	No	No <sup>60</sup>	No
Trust and Company Service Providers	No	No	No	No

**Casinos**

457. **C.28.1 (a):** Casino games are regulated by Law No. 74-97 of December 11, 1974, Decree-Law No. 74-21 of October 24, 1994, Decree No. 76-114 of February 14, 1976, as amended by Decree No. 90-315 of February 8, 1990, Ministry of the Interior and Ministry of Tourism Guidance No. 1515 of July 6, 1988, Law No. 77-12 of March 7, 1977, and Decree No. 76-115 of February 14, 1976 on the composition and methods of operation of casino gambling.

458. It should be noted that only three of these legal provisions—Decree-Law No. 74-21 and Decree Nos. 76-114 and 76-115—were made available to the assessment team.

459. Article 2 of Decree-Law 74-21 of October 24, 1974 stipulates that casino operations are subject to prior authorization granted by joint order of the Ministry of the Interior and the Ministry of the National Economy, the composition and functions of which are established by Decree No. 76-115. Article 1 of the aforementioned decree stipulates that this commission is composed of the Director General of the tourism office, who serves as the Chair, representatives from the Ministry of the Interior and the Ministry of Finance, the governor of the BCT, the governor of the region, and the mayor of the commune in which the future casino will be located, or their representatives.

460. **C. 28.1 (b):** The first paragraph of Article 6 of Decree-Law No. 74-21 stipulates that all casinos must have a director and a board composed of three persons, including the director. Pursuant to the second paragraph of this Article, the director and the members of the board must be of age, in possession of their civil and political rights, and licensed by the Minister of the Interior. It should be specifically noted that, in accordance with Article 4 of the decree-law, a casino license is issued to individual applicants and cannot be transferred or assigned. In addition, Article 19 of this decree-law provides for sanctions against any person who has served as the director or a member of the board without first having received a license from the Minister of the Interior. All casino personnel, as well as the Chief Executive Officer and members of the board, must be of age, in possession of their civil and political rights, and licensed by the Ministry of

the Interior. Casinos are subject to on-site daily inspection during their hours of operation by officials from the Ministries of Finance and the Interior.

461. The Ministry of the Interior may also request the exclusion of any person. However, no legal guarantee is provided with respect to preventing criminals or their associates from entering the profession, or holding a significant or controlling interest, or holding a management function in a casino.

462. **C. 28.1 (c)**: Under the AML/CFT law, casinos are required to comply with AML/CFT provisions. Casino accounts must be made available to representatives of the Ministries of the Interior and Finance and the BCT when they perform monitoring and supervision. The latter also have access to the premises and their investigations must be facilitated, failing which there will be criminal sanctions.

#### *DNFBPs (other than casinos)*

463. Lawyers: There are currently 9,245 practicing lawyers (2014 data). They are responsible for representing parties, defending, assisting, and advising them, and carrying out on their behalf all proceedings before all judicial, administrative, disciplinary, and regulatory authorities. Lawyers in Tunisia are currently active in AML/CFT-related activities considered risky. They have exclusive jurisdiction in the preparation of the articles of association of companies, and in the drafting of contracts and instruments for the transfer of real property and contracts for real estate contributions to the capital of commercial companies (while not impinging on the purview, reserved by law, of notaries and land property preservation deed writers property registry). In practice, these documents represent considerable competition for notaries, who are subject to stricter requirements with respect to officially recorded instruments and the organization of their activities. In this context, verifications of the origin of funds and identification of the parties concerned are minimal. The risk exists because lawyers appear to be unaware of the AML/CFT system. There is a national bar association, with headquarters in Tunis, of which all lawyers in Tunisia must be a member. Lawyers are subject to disciplinary sanctions if they fail in their duties or if, because of their behavior in the context of their profession or through their conduct outside it, they commit any act that is damaging to the honor or reputation of the profession. Under this system therefore, lawyers are subject to possible disciplinary action in the event of noncompliance with AML/CFT obligations.

464. Notaries: There are 1,049 notaries practicing in Tunisia. Notaries fall under the jurisdiction of the Attorney General of the Court of Appeal and are under the direct supervision of the public prosecutor for the district in which they serve. Notaries are subject to inspection by the public prosecutor every three months, and by the tax authorities. They are also subject to disciplinary sanctions imposed by a disciplinary board that exists in each Court of Appeal. A Chamber of Notaries is located at the seat of each Court of Appeal, as well as a National Association of Chambers of Notaries; however, these bodies are content to have only an informative and representative role. Notaries are responsible for drafting agreements and statements that the authorities and parties wish to have set out in an official document, conducting inquiries relating to obligations, and determining portions, which requires obtaining an official death certificate. The nature of the transactions and the identity of the parties are established in supporting documentation. Despite the rigors of the formal requirements imposed on these professionals, the origin of funds used during transactions is seldom verified when cash is involved. The profession appears to have limited awareness of the AML/CFT system.

Real estate agents: A real estate agent is any individual or legal entity that, professionally or regularly with a view to realizing a profit, assists in one of the following operations involving the assets of another: the purchase, sale, leasing, or swap of real property, goodwill, or non-negotiable corporate shares when the company's assets include real property or goodwill, and/or manages real property belonging to another. The conditions of access to the profession are strictly regulated, and a license issued by the Ministry of

Economy is required to practice this profession. All transactions are finalized by a lawyer in most cases, or by a notary.

465. Certified public accountants: Certified public accountants, who are under the supervision of the Ministry of Finance, organize, check, correct, and assess the accounts of businesses and organizations to which they are not bound by an employment contract. They are authorized to certify that the accounts are true and fair. They may also analyze the position and operation of businesses from an economic, legal, and financial perspective. The conditions of access to the profession are strictly regulated. There are currently 873 certified public accountants and 358 public accounting firms operating in Tunisia. A disciplinary chamber headed by a judge has been established at the Association of Certified Public Accountants and Corporate Auditors of Tunisia. The Association ensures the independence of the auditors vis-à-vis the companies they audit. International standards have been ratified by the chamber and professionals receive training on a regular basis. However, it appears that no specific training on the anti-money laundering mechanism has been provided and the interviews revealed that there is limited compliance by certified public accountants and auditors with AML/CFT provisions.

466. Dealers in precious metals and precious stones: A dealer in precious metals and precious stones is any individual or legal entity that regularly purchases, sells, processes, or manufactures precious metals or accepts them for safekeeping or repair. Dealers are required to inform the Ministry of Finance of their profession and of all premises where business will be conducted. The managers of these businesses must have a clean criminal record. The profession of jeweler working in precious metals is regulated and supervised, as are gold import and distribution activities. The law stipulates that criminal investigation officers, customs agents, and sworn tax inspection agents are responsible for inspections and the identification of offenses in this area.

467. Trust and Company Service Providers: The AML/CFT law applies to any person who in the exercise of his profession, prepares or carries out, on behalf of his customer, financial transactions or operations for the purchase or sale of real estate or goodwill, manages customers' capital and accounts, organizes contributions for the creation of companies or other persons, operates or manages them, controls such operations or transactions or provides advice in their regard. These persons shall adopt the required customer due diligence measures.

468. **C.28.2 / C.28.3 / C.28.4:** Article 77 of the AML/CFT law stipulates that *“the authorities empowered to supervise the persons mentioned in Article 74 of this Law shall be responsible for developing programs and practices that are appropriate for combating money laundering and terrorist financing offenses and ensuring that they are implemented.*

*These programs and practices should include:*

- a system for detecting suspicious operations and transactions, including the appointment of persons selected from among their executives and employees for ensuring compliance with the reporting obligation,*
- internal control rules to ensure the effectiveness of the system established,*
- ongoing training programs for their staff.”*

469. Although the anti-money laundering law does not adopt a profession-based approach that includes a definition of the activities covered by AML/CFT requirements, it is activity-based, regardless of the profession engaging in these activities.

470. Nevertheless, while Article 74 indeed covers all DNFBPs designated in FATF Recommendation No. 22, the general obligation set forth in the aforementioned Article 77 has not been implemented. All designated nonfinancial professions covered by the anti-money laundering law are subject to regulation or

self-regulation. The exercise of these activities is subject to licensing by the public authorities, which conduct regular inspections, each within the limits of their authority.

471. Pursuant to criteria 28.2 and 28.3, no supervisory authority has issued any legal texts that are regulatory in scope or set forth legal provisions on customer identification, the reporting of suspicious operations, training, internal oversight, and record-keeping, taking into consideration the type of each activity and the size and volume of the operations of each structure.

472. Similarly, neither the powers granted to the competent authorities to supervise compliance by the other DNFBPs, as recognized by the aforementioned Article 77, nor the practical procedures for its implementation have been formally established in legislation governing their respective activities (criterion 28.4.a).

473. The systems put in place to obtain licenses required to conduct these activities are sufficiently robust to prevent entry of criminals or their associates into these professions.

474. In the case of the precious metals sector, Article 5 of Law No. 2005-17 of March 1, 2005 stipulates as follows: “Subject to the legislation in force, any legal or natural person who, on a regular basis, purchases, sells, processes, or manufactures precious metals or accepts them for safekeeping or repairs must inform the competent agencies of the Ministry of Finance of his profession and of all premises where business will be conducted. Furthermore, all legal and natural persons or any legal representative of a legal person or its technical manager must not have been found guilty of criminal intent.”

475. With respect to certified public accountants, Article 3 of Law No. 88-108 of August 18, 1988 stipulates that “No one may practice the profession of certified public accountant if he is not registered with Tunisia’s Association of Certified Public Accountants. In order to be a registered member of the Association, the following conditions must be met (...) 3) Have never been convicted of any crime or misdemeanor of such a nature as to tarnish his respectability, unless it was committed unintentionally.”

476. With regard to lawyers, Article 3 of Decree-Law No. 2001-79 of August 20, 2011 stipulates that “Taking into account international conventions, only persons registered with the Bar Association may practice law, on either a permanent or temporary basis. Persons wishing to join the Bar must be registered with the Bar Association and must meet the following requirements: (...)

- have no criminal record for intentionally committed heinous crimes, or have never declared bankruptcy, or been dismissed for dishonorable reasons.”

477. It should be noted, however, that these licensing measures are less binding for dealers in precious stones than for dealers in precious metals. The impact must nevertheless be considered in context, given the weakness of this business sector in Tunisia.

478. With respect to sanctions that can be imposed by the oversight authorities, Articles 77 bis and 77 ter define the system to be applied. Under this system, if any of the parties fail to conduct due diligence of the parties subject to supervision, disciplinary penalties may be imposed in accordance with the procedures in place provided for by the specific disciplinary system for each person [subject to regulation]. An important clarification is made in paragraph 2 of Article 77 bis, which states that “*in the absence of a specific disciplinary system, disciplinary penalties shall be imposed by the authority empowered to supervise these legal or natural persons.*” As a result, supervisory authorities, even in the absence of a specific disciplinary penalty system related to AML/CFT, must apply their usual disciplinary measures. Article 77 ter defines the type of sanction that can be imposed by the disciplinary authority:

- 1) warning,
- 2) reprimand,

- 3) prohibition from conducting business or suspension of the license for a period not exceeding two years,
- 4) dismissal,
- 5) permanent prohibition from conducting business and withdrawal of the license.

479. It should be noted that these sanctions, despite their unsuitability for individuals who are executives, shall also be applicable to the executives and members of the supervisory board once their responsibility for failure to comply with due diligence measures is established.

480. Article 77 ter must therefore in principle be applied in the absence of a disciplinary system for the regulation of a number of DNFBPs: casinos, real estate agents, and dealers in precious metals and precious stones (see Table X: Regulation and supervision of the DNFBPs).

481. **C. 28.5:** No ML/FT risk analysis of the DNFBPs has been conducted by the Tunisian authorities.

### ***Weighting and conclusion***

482. In accordance with the AML/CFT legal framework, DNFBPs are subject to supervision by their supervisory authorities; however, this has not resulted in the adoption of AML/CFT legislation in each sector. The regulatory authorities should adopt legislation and priority should be accorded to a sector-wide risk approach. **Tunisia is partially compliant with Recommendation 28.**

### ***Recommendation 34 – Guidance and feedback***

483. **C. 34.1:** Article 80 of the AML/CFT Law mandates the CTAF to “establish the general guidelines to enable the persons referred to in Article 74 (persons subject to regulation) to detect and report suspicious operations and transactions.” Pursuant to this article, the CTAF issued the following three guidelines:

- Decision No. 2006-01 of April 20, 2006 on the reporting of suspicious or unusual operations. This guideline pertains to the sample suspicious transaction report that must be completed by the reporting party and establishes the report submission procedures. The CTAF also sent a guidance to correspondent banks regarding the documents and records that must accompany the sample suspicious transaction report.
- Decision No. 2006-02 of April 20, 2006 on the general guidelines for credit institutions, nonresident banks, and the national post office for the detection and reporting of suspicious or unusual operations or transactions. This Decision established the regulatory and organizational measures to be put in place by the persons concerned in order to comply with the 2003 Law.
- Decision No. 2007-03 of March 22, 2007 setting out the general guidelines for the financial market for the detection and reporting of suspicious or unusual operations or transactions. This Decision establishes the regulatory and organizational measures that must be implemented by financial market stakeholders in order to comply with the 2003 Law.

484. With respect to feedback, Articles 88 and 89 of the 2003 Law stipulate that the CTAF must inform the author of the suspicious transaction report of the follow-up action taken. This feedback must be provided if the suspicion raised in the report is confirmed and even when the assessment conducted by the CTAF does not corroborate the suspicion. In addition, if the CTAF decides to submit this report to the public prosecutor, the prosecutor must notify the author of the STR and the CTAF of its decision.

485. The Financial Market Board prepared an explanatory guide aimed at clarifying the measures adopted to help combat money laundering and the financing of terrorism, in accordance with the legislative and regulatory provisions pertaining thereto. This guide was distributed to securities brokers and portfolio management companies on behalf of third parties and included the following:

1. General principles of the AML/CFT law
2. Identification of customers, representatives, and beneficiaries
3. Customer acceptance strategy
4. Establishment of relationships with a foreign correspondent
5. Due diligence obligations
6. Reporting of suspicious operations
7. Provisions relating to foreign branches and subsidiaries

486. With respect to the DNFBNs, the Tunisian authorities did not inform the assessment team of any specific measures taken to facilitate the provision of ongoing feedback from the CTAF.

487. The CTAF nevertheless publishes typologies for entities subject to regulation in its annual reports.

### ***Weighting and conclusion***

488. Information-sharing between the authorities and regulated persons through the dissemination of good practices and the provision of adequate feedback remains extremely limited in terms of scope, updates, relevance, and appropriateness, as it involves only the financial sector and is done almost exclusively by the CTAF, which did not update its directives after the new legislative reforms were instituted in 2009. The authorities regulating the banking and financial sector must establish specific guidelines. It appears, however, that no feedback is being provided to the DNFBNs. **Tunisia is noncompliant with Recommendation 34.**

### ***Recommendation 35 – Sanctions***

489. **C. 35.1:** Apart from noncompliance with targeted financial sanctions, the 2003 AML/CFT law makes provision for a suite of sanctions applicable to all individuals and entities subject to regulation that fail to comply with preventive measures obligations: warning, reprimand, ban from conducting business or suspension of the license, dismissal, and permanent ban. Article 77 bis makes provision for disciplinary proceedings to be instituted against regulated entities that fail to comply with the following provisions relating to:

- due diligence obligations (Art. 74 bis),
- updating of customer information (Art. 74 ter),
- supervision of majority-owned subsidiaries and companies (Art. 74 quater al.1),
- measures applicable to PEPs (Art. 74 quater al.2),
- correspondent banks and shell banks (Art. 74 quinquies),
- countries that fail to adequately meet international AML/CFT standards (Art. 74 sexis al.1),
- the risks associated with the use of new technologies (Art. 74 sexis al.2).

490. These disciplinary proceedings must comply with the procedures provided for in the disciplinary system for each profession. It is specified that in the absence of a specific disciplinary system, proceedings must be instituted by the authority empowered to supervise these persons (Art. 74 bis al.2). However, no details were provided on the procedure for conducting these proceedings and the body before which proceedings will be heard. Article 77 ter sets forth the list of sanctions applicable to individuals and legal entities subject to regulation, and to their executives.

491. The AML/CFT law also makes provision for criminal penalties for regulated entities that deliberately fail to comply with their obligations to report suspicious operations: one to five years in prison and a fine of between D5,000 and D50,000 for regulated entities that fail to report suspicious operations or transactions (Article 97).

492. More specifically, with respect to the banking and financial sector, Article 42 of Law 2001-65 defines the disciplinary sanctions, ranging from a warning to withdrawal of the license, which are applicable to credit institutions that fail to comply with banking legislation and regulations. These offenses are prosecuted at the initiative of the BCT. The most severe sanctions (starting with a ban on conducting certain operations) are imposed by the Banking Commission,<sup>61</sup> while the others fall under the sole purview of the Governor of the Central Bank. Fines are included among the sanctions applicable solely to the members of the board of directors, the management board, and the supervisory board, and managers or their representatives, and *“the amount [may be] up to five times the value of the funds to which the offense relates.”*

493. Insurance companies also face sanctions if they fail to comply with insurance legislation, in accordance with Article 87 et seq. of the Insurance Code, which can be imposed by the CGA (warning, reprimand, supervision) or the Ministry of Finance (withdrawal of license, automatic transfer) in addition to pecuniary sanctions, depending on the seriousness of the acts in question.

494. Law No. 94-117 on the reorganization of the CMF also makes provision for a disciplinary system applicable to financial market stakeholders (the Tunis Securities Exchange; the deposit, clearing and settlement company; securities brokers; directors; managers; depositaries of the funds and assets of mutual funds; pursuant to Article 42, the sanctions provided for may include a warning, a reprimand, or withdrawal of license (not applicable to the Tunis Stock Exchange).

495. With regard to the DNFBPs, while the specific regulations for each profession do not explicitly incorporate AML/CFT, sanctions that can be imposed for noncompliance with regulations and/or damage to the reputation of the profession are in place. In the case of lawyers, Article 67 of Decree-Law No. 2011-79 of August 20, 2011 on the organization of the law profession stipulates that *“all lawyers are subject to disciplinary sanctions, if they fail in their duties or if, because of their behavior in the context of their profession or through their conduct outside it, they commit any act that is damaging to the honor or reputation of the profession.”* A disciplinary board that includes the President of Tunisia’s Bar Association and members of the Associations’ board is authorized to impose disciplinary sanctions against lawyers who fail to fulfill their obligations. The applicable sanctions are a warning, reprimand, demotion, temporary suspension, and temporary or permanent disbarment.

496. However, the current regulations governing real estate agents, dealers in precious metals and precious stones, and casinos make no provision for general obligations to uphold the honor and integrity of the profession, referring solely to the obligation to comply with the legislation in force.

497. **C. 35.2:** The general sanctions provided for by the general system for all regulated individuals and entities stemming from the AML/CFT law stipulate that these sanctions are also applicable to executives and members of the supervisory board, once their responsibility for failure to comply with due diligence measures is established. These sanctions are disciplinary sanctions and are added to those provided for in

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<sup>61</sup> The Commission is composed of four members (a judge who serves as the Chair, a general director from the Ministry of Finance, a general director from the Central Bank of Tunisia, and the managing director of the Tunisian Professional Banking Association).



the Criminal Code. However, the sanctions set forth in Article 77 ter of the anti-money laundering law are not adapted to cover executives of entities subject to regulation.

498. Article 45 of Law 2001-65 defines the sanctions applicable to individuals associated with a credit institution (members of the board of directors, members of the management board, members of the supervisory board, and managers and their representatives), which include temporary suspension, dismissal, and fines. These sanctions are imposed by the Banking Commission. Fines are proportional to the amount involved in the offense in question. Sanctions under the Banking Law are not published.

***Weighting and conclusion***

499. A range of proportionate sanctions is applicable to entities subject to the AML/CFT law, and covers the legal entities and their executives. **Tunisia is largely compliant with Recommendation 35.**

## LEGAL PERSONS AND ARRANGEMENTS

### *Recommendation 24 – Transparency and beneficial ownership of legal persons*

#### *Basic information*

500. **C. 24.1:** Law 95-44 of May 2, 1995 on the Commercial Register was amended by Law 2010-15 of April 14, 2010, with a view to enhancing transparency regarding information on commercial companies. The new Articles 8/9 (requirement to register and information to be communicated to register the businessperson: relating to the businessperson and the business), 10/11 (obligation to register and information to be provided to register the legal entity: relating to the legal entity and the business) of the Law on the Commercial Register outline the information contained in the commercial register. The information is made available to the public, in accordance with Article 1 of this law stipulating that “the commercial register is designed to centralize information on businesspersons and companies, and to make this information available to the public.”

501. In parallel to the local commercial registers held at the courts of first instance, a central register containing all information and instruments is held by the National Institute of Normalization and Industrial Property (INNORPI), and centralizes the information included in each local register.

502. Law 2000-93 of November 3, 2000 on the enactment of the Code on Commercial Companies defines commercial companies as general partnerships, limited partnerships, and jointly owned companies on one hand, and limited liability companies and joint stock companies that can either be public limited companies that may or may not make public offerings or partnerships limited by shares, on the other.

503. Articles 15 and 16 of the Code provide for the publication of the instruments of incorporation for each type of company, with the exception of jointly owned companies, in Tunisia’s Official Gazette, as well as of any amendment to these instruments and any appointment of company directors. All commercial companies, be they a limited liability company or another type, are required to appoint an auditor, as soon as they meet two or three of the following criteria relating to the amounts determined by decree:

1. total balance sheet amount;
2. total amount of income;
3. average number of employees.

504. **C.24.2:** Based on the STRs received by the CTAF, the use of legal entities for criminal purposes was identified as a major risk in Tunisia and the CTAF’s Steering Committee launched three sectoral studies on the vulnerability of companies operating in the international trade and services sectors, as well as of associations, in order to gain a better understanding of these risks and identify risk mitigation measures.

505. **C. 24.3:** Article 14 of Law 2000-93 stipulates that the deposit of the companies’ articles of association and of the documents required under the Law on the Commercial Register constitutes registration. The requirement that all commercial companies be registered in a commercial register is set forth in Article 2 of Law 95-44. Article 11 of Law 2010-15 specifies the information that all legal entities required to register must provide in the commercial register in order to be registered:

- 1- *The company name or business name if one of them is used and, where applicable, the number and date of the priority rating certificate appearing on the business name, company name, or trade name,*
- 2- *the company’s legal form of organization or the legal system governing it,*
- 3- *the amount of the share capital with an indication of the contribution amounts in cash and a summary description and estimate of the contributions in kind; in the case of an open-stock company, the minimum amount below which capital cannot be reduced must be indicated,*
- 4- *the address of the company’s registered office,*

- 5- *the main activities of the company,*
- 6- *the duration of the company as stipulated in its articles of association,*
- 7- *the date of closure of the financial year,*
- 8- *the tax identification number of the company,*
- 9- *the surname, first name, personal domicile, nationality, and date and place of birth of the partners who are jointly and severally liable for company debts,*
- 10- *the surname, first name, date and place of birth, personal domicile, nationality, and the other information specified in paragraph 2(A) of Article 9 of this law, and for:*
  - *partners and third parties with the power to lead or manage, or the general power to establish the company, with the indication for each one, in case of a commercial company, that they are establishing the company alone or jointly with third parties,*
  - *where applicable, the members of the board of directors, the management board, the supervisory board, or the auditors.*
- 11- *Any secondary registration references.”*

506. The following information on the institution is also required:

- “1- *the address of the institution;*
- 2- *the purpose of the commercial activities conducted;*
- 3- *the trade name or business name of the institution;*
- 4- *the date of commencement of operations;*
- 5- *in the case of the establishment of a business, its acquisition or a modification to the legal system under which it was operated, in these two latter cases, mention must be made of the first name and surname of the previous operator, its registration number in the commercial register, the date on which it was removed from the register or, where applicable, the date on which the registration was modified. In cases where goodwill is purchased or shared, the title and date of its entry in Tunisia’s Official Gazette must be indicated;*
- 6- *In the case of joint ownership of assets required for the operation of a business, the surnames, first names, and domicile of the joint owners;*
- 7- *In the case of business leasing management, the surname, first name, and domicile of the lessor, the start and end dates of the leasing-management arrangement and, where applicable, tacit renewal of the contract;*
- 8- *the surname, first name, date of birth, domicile, and nationality of the persons with the general power to represent the entity subject to regulation.”*

507. With regard to foreign investments in Tunisia, the Investment Promotion Code (December 27, 1993) instituted the principle of freedom to invest in sectors covered by this code for nationals and foreigners. Under certain conditions, investments—be they domestic or foreign—must be subject during the first stage to supervision by governmental bodies and committees.

508. Investments carried out by a foreigner must receive prior authorization if it relates to a sector not covered by an investment code (the number of sectors, while declining, remains significant) or certain activities in the partially export-oriented services sector, in proportions above 50 percent of the capital of a company, or when these investments are carried out in a secondary market, with 50 percent of the capital of companies not considered to be SMEs.

509. **C. 24.4:** In accordance with Article 11 bis of the Code on Commercial Companies, all commercial companies must have:

- a register that contains the surnames, first names, and addresses of each executive and the members of the supervisory board;
- a register of the shares or stocks and bonds, making mention in particular of securities in this register, the identity of their respective owners, the related operations, as well as the encumbrances to which the

securities in question are subject, pursuant to the provisions of Law No. 2000-35 of March 21, 2000 on the dematerialization of securities.

510. Article 11 bis does not stipulate that this information must be maintained within Tunisia at a location stated in the company register.

511. However, in the case of limited liability companies, Article 111 of the same Code stipulates that a register of partners must be kept at the registered office under the responsibility of the manager and that this register must contain the following information:

- 1) the specific identity of each partner and the number of shares held by each one,
- 2) the payments made,
- 3) the assignment and transfers of company shares indicating the date of the operation and its registration in the case of assignment between living persons.

512. With regard to stocks and bonds, pursuant to Law No. 2000-35 of March 21, 2000 on the dematerialization of securities and Implementing Decree No. 2001-2728 of November 20, 2001 on the registration criteria for stocks and bonds and licensed intermediaries for the maintenance of stock and bond accounts, stocks and bonds issued on Tunisian territory and subject to Tunisian legislation, regardless of the type thereof, must be registered in the accounting books according to category with:

- the issuing legal entity on behalf of companies not making public offerings,
- the issuing legal entity or the licensed intermediary duly mandated by the legal entity on behalf of companies making public offerings (Article 3 of the law and Article 1 of the decree).

513. Stock and bond accounts must contain the following information:

- the identification details of the individual or legal entity that owns the stocks and bonds and, where necessary, the identification of the beneficial owner and the rights attached thereto as well as, where applicable, the person who has those rights,
  - the restrictions that can be placed on these securities, such as pledging and seizure.
- The number and name of the account must allow for the precise identification and nationality of the account holder as well as the features of the stocks and bonds held (Article 3 of the decree).

514. In addition, pursuant to Article 18 of CMF regulations on the maintenance and administration of stock and bond accounts, the appointed licensed intermediary (by the issuing company for maintenance of accounts) must maintain a general register for each category of stocks and bonds, which, in addition to identification details, must contain (Article 9 of the same regulations):

- (the surname, first name, and domicile of the account holder in the case of individuals, and the corporate or business name, its legal form of organization, and the address of the registered office in the case of legal entities;
- The national identity card number or any other piece of identification if the account holder is a foreigner, in the case of individuals;
- The registration number in the commercial register, in the case of legal entities, or the equivalent in the country of origin for foreign legal entities;
- The nationality of the account holder;
- The number and category of the stocks and bonds held;
- The rights attached to the stocks and bonds and, where applicable, the person who has those rights;
- The restrictions placed on these securities (e.g., pledge, seizure, non-transferability).
- An account number for each account holder and the identity of the licensed administrator(s)/intermediary (ies).

515. **C. 24.5:** The updating of data and any changes in the commercial register must be done within one month starting from the introduction of these amendments (article 16 of the Corporate Code) except for the transfer of shares for SAs whose articles of association do not include transfer conditions and for SAs becoming public companies . The new Article 33 of Law 2010-15 states that, “*the registrar must obtain information on legal and natural persons subject to regulation in order to invite them to register in the commercial register. The registrar must also ensure continuous consistency between the information included in the commercial register and the actual situation, in accordance with the provisions of this law.*” Article 33 stipulates that this must be done by the registrar in partnership with the tax audit offices, the chambers of commerce and industry, and the National Social Security Fund under the jurisdiction of the court (sharing of lists indicating the name, registered office, line of business, registration number in the trade register, and tax identification number).

516. With regard to stocks and bonds, the issuing companies and licensed intermediaries must update the stock and bond accounts for which they are responsible whenever they are made aware of any changes, either in ownership, pursuant to the rules governing the stocks and bonds being transferred, or the rights and restrictions attached thereto, to which the stocks and bonds in question may be subject (Article 4 of Implementing Decree No. 2001-2728 of November 20, 2001).

### **Information on beneficial ownership**

517. **C. 24.6 – 24.8:** The identification of the beneficial owners is only partially possible in Tunisia, using a combination of mechanisms:

- a. Information available in public registers: Information contained in the commercial registers essentially relate to the legal ownership of legal entities and not to beneficial ownership, even when these two notions may overlap in some cases. When a company is held by another company, the commercial register mentions only the name of the shareholding company and not of the individuals ultimately exercising effective control over the company. If the shareholding company is Tunisian, consultation of the commercial register regarding the second company is possible—law enforcement authorities did not indicate any difficulties in this kind of case, which they frequently encounter.

Obtaining basic information and information on beneficial owners of legal persons in these cases is hindered by the absence of the disclosure requirement for shareholders and board members acting on behalf of another person and the lack of the requirement to update the data regarding the transfer of shares for SAs whose articles of association do not include transfer conditions.

Obtaining information on beneficial owners is complex where foreign companies are involved. In this instance, the absence in legislation of the requirement to identify beneficial owners obliges the authorities to rely on international cooperation, preventing them from securing this information in a timely manner.

- b. Information held by entities subject to regulation: With respect to the implementation of due diligence measures, entities subject to regulation are required to take reasonable measures to identify the natural persons exercising control over a legal entity (Art. 74 bis of the AML/CFT law). However, given that company law does not require the identification of natural persons who own or exercise control over companies, entities subject to regulation face the same aforementioned limitations with regard to the identification of beneficial owners. Typically, only a copy of the articles of association and an extract from the commercial register are required in the case of entities subject to regulation, for purposes of identifying legal entities.

518. Other than the requirements to update the data in the commercial register and the establishment of a register for shares or movables, no other provisions in the Tunisian laws allows a) to require that one or

more natural persons residing in the country be authorized by the company to communicate all the basic information and the information available on the beneficial owners , to provide any other assistance to the relevant authorities, and to be responsible for these information and assistance vis-à-vis these authorities ; and/or b) to require that a DNFBP in the country should be authorized by the company to communicate all the basic information and the information available on the beneficial owners and to provide further assistance to the authorities and to be responsible for these information and assistance vis-à-vis these authorities ; and/or c) to take similar measures that are specifically identified by the countries.

519. Criteria 24.6 to 24.8 have not been met.

520. **C. 24.9:** The Law on the Commercial Register is silent on the issue of keeping records and data following the cessation of the business activities of legal entities. Tunisian authorities did not inform the assessment team of any legislation requiring legal entities to keep information and registers following their dissolution or cessation of business activities.

### **Other requirements**

521. **C. 24.10:** The Tunisian Ministry of Justice states that law enforcement authorities are empowered to access all information held by the concerned parties and that these parties cannot invoke professional secrecy. This principle is enshrined in the Criminal Code or public prosecutors, police investigative services, and investigating judges have access to this information, in view of their investigative powers.

522. **C. 24.11:** All securities and stocks and bonds must be registered in accordance with Law No. 2000-35 of March 21, 2000 on the dematerialization of securities. The first paragraph of Article 3 of this law stipulates that “*stocks and bonds, regardless of the type, issued in Tunisian territory and subject to Tunisian legislation must be registered and recorded in accounts held by the issuing legal entity or by a licensed intermediary.*” This pertains to all types of stocks and bonds such as shares, non-voting preference shares, investment certificates, participating securities, bonds, convertible debt securities, stock and bond mutual fund holdings, rights attached to the aforementioned stocks and bonds, and the other negotiable financial instruments on organized markets (Article 1 of the Law).

523. Article 314 of the Code on Commercial Companies stipulates as well that stocks and bonds issued by public limited companies, regardless of category, must be registered. It further stipulates that they must be recorded in accounts held by the issuing legal entities or by a licensed intermediary.

524. **C. 24.12:** In accordance with Article 167 of Law 2000-93, in the case of joint stock companies, subscriptions must be confirmed by a subscription form signed by subscribers or their representatives. This form must list, among other things, the surname, first name, and domicile of the subscriber. In the case of agency agreements, the law requires the identification of the shareholder on behalf of whom the representative is acting. No other type of representation is provided for by law; no information in this regard was provided to the assessment team during the on-site visit.

525. No information pertaining to the possibility of nominee shareholders was provided to the assessment team. Legislation governing company law does not include any requirement to disclose the identity of the person that appointed them. The same applies in the context of a power of attorney, where, except for the above mentioned subscription, no measure is applied to legal representatives binding them to reveal their status or to keep the information that identify the person who designated them and to place such information at the disposal of the relevant authorities upon request. C. 24.12 has not been met.

526. **C.24.13:** Article 55 (2) of Law 95-44 on the Commercial Register stipulates that any person registered in the commercial register must, within the prescribed timeframe, either ensure that additional information is provided or any necessary corrections are made in the register, or that the information is provided or corrections are made if inaccurate or incomplete information has been provided, or proceed with removal from the register. Failing that, the officially appointed judge, either at the request of the Office of the Public Prosecutor or any person with a justifiable interest therein, issues an order authorizing the request for registration. Article 55 also stipulates that any objection raised during registration must be brought before the judge appointed to monitor the register, who shall issue his decision by means of an order.

This prevention measure is supplemented by sanctions listed in Title III of Law 95-44 in the form of fines for persons not registered or who provide inaccurate or incomplete information (Articles 68 and 69).

527. **C. 24.14 and 24.15:** International cooperation and information-sharing mechanisms (administrative and judicial) are applicable to information relating to commercial companies. However, no information on the implementation or quality of this international cooperation system was provided to the assessment team.

### ***Weighting and conclusion***

528. The vulnerability of legal entities in ML/FT matters was clearly identified by Tunisian authorities, based on the analysis of the STRs received by the CTAF and specific studies were launched to gain a better understanding of the risks facing this sector. With regard to transparency measures, a broad range of information on legal entities is available to the public and law enforcement authorities. However, the information appearing in the commercial register on beneficial owners pertains primarily to the legal ownership of the company and not the beneficial ownership arrangement, even where these two notions may overlap in some cases. In addition, under the AML/CFT law, persons subject to regulation are required to take reasonable measures to identify the beneficial owners in accordance with the applicable due diligence measures; this requirement is applied through the provision of an excerpt from the commercial register, except for situations where shareholders and board members are acting on behalf of another person or in cases of transfer of shares for SAs whose articles of association do not include transfer conditions. Thus, in cases where shareholders are Tunisian individuals or legal entities, the registers can be consulted to identify the beneficial owners. In cases where the owner of a Tunisian company is a foreign legal entity, identification of the beneficial owners is dependent on the implementation of international cooperation arrangements, which hinders the timely acquisition of this information. **Tunisia is partially compliant with Recommendation 24.**

### ***Recommendation 25 – Transparency and beneficial ownership of legal arrangements***

529. **C. 25.1:** Tunisia does not have trust or fiducie arrangements in place, nor does it have an applicable legal framework in this regard. Tunisia is not a party to the Hague Convention and does not recognize trusts. *Waqfs*, which are legal arrangements that are comparable but not similar to trusts and are frequently used in countries governed by Islamic law, no longer exist as they were abolished by a decree issued on July 18, 1957. However, Tunisia has other legal arrangements, the impact of which may in certain situations be similar to trust-like legal arrangements, which allow owners to use a third person to act as the ostensible owner of a property. This is the case, for example, with usufruct, which is the dismemberment of the right of ownership separating the *usus* of a property from the bare ownership, for a variable period of time. During the period in question, the usufructuary may conduct ongoing transactions relating to the property for which he enjoys the right of usufruct. However, he cannot alienate the property without the agreement of the bare owner who recovers full ownership and use of the property when the usufruct expires. The usufruct agreement is a contract that is signed by a bare owner and a usufructuary and establishes the

rights and obligations of these two parties for the entire duration of the dismemberment period. If the usufruct involves real property, a notarized document is required and due diligence rules under the AML/CFT law are applicable to the latter (Recommendation 22); no transparency measures are provided for in the other cases.

530. Moreover, it should be noted that, as is the case in many civil law countries, freedom of contract is the rule, and restriction the exception. As a result, even if not provided for by law, mechanisms similar to trusts, foundations, or other legal arrangements that separate (at least de facto) the use and allocation of an asset under a beneficial ownership arrangement are not excluded. In addition, it is in principle possible in Tunisia for a trust or similar foreign arrangement to own assets in Tunisia or for a Tunisian lawyer, or any other person, to act as a trustee/manager of property located abroad or in Tunisia, or on behalf of a trust established under foreign law. No specific measure is provided by Tunisian law or the AML law to identify beneficial owners and ensure the transparency of transactions. The sole requirement applicable is the general obligation to identify the “beneficiaries [1]” of a transaction when it is carried out on behalf of a third party.

531. **C.25.2:** In view of the nonexistence of a specific provision recognizing or regulating trusts and similar arrangements in Tunisia, there are no specific measures relating to data updating, provided for in point 25.2 of the methodology. However, in cases where the usufruct relates to real property, all changes in the ownership of this property should be covered in a notarized document.

532. **C.25.3:** Neither foreign trustees nor possible Tunisian trustees of a trust governed by foreign law are required to declare their status to financial institutions or to DNFBPs when they establish business relations or carry out occasional transactions.

533. **C.25.4:** There is no specific prohibition, either by law or a binding measure, preventing the trustees (hypothetically managing a foreign trust in Tunisia, since there is no provision for trusts under Tunisian law) from providing authorities with relevant information on the beneficial owners and assets of a trust. This is applicable as well in the case of usufruct.

534. **C.25.5:** In the absence of a specific requirement for trustees to declare their status to financial institutions and DNFBPs, the information on beneficial owners, the residence of the trustee and any asset held or managed by the designated nonfinancial business or profession may be obtained during an investigation if law enforcement authorities discover the existence of a trust, and by exercising their usual investigative powers.

535. **C.25.6:** Given that Tunisian law makes no provision for trusts, requests from foreign authorities for the transmission of information will presumably pertain only to foreign trusts operating in Tunisia. In this regard, Tunisian authorities will be able to transmit information in their possession; however, this information may be limited or even nonexistent, in view of the absence of a specific requirement to report the existence of the trust located abroad.

536. **C.25.7 and 25.8:** Given that trusts are not recognized in Tunisia and that there is no obligation to report the activities of foreign trusts operating in Tunisia, there are no specific sanctions for noncompliance by trustees with obligations or the failure to provide information on trusts (presumably foreign trusts operating in Tunisia).

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<sup>[1]</sup> The equivalent in English of the French term “bénéficiaire effectif” is “beneficial owner.” The adjective “effectif” was not used in the law to qualify the noun “bénéficiaire.” The term “bénéficiaires” has therefore been rendered simply as “beneficiaries.”



### ***Weighting and conclusion***

537. Tunisia does not have a legal framework for trusts because these legal arrangements do not exist. However, Tunisia has other legal arrangements, the impact of which may, in certain situations, be analogous to that of trust-like legal arrangements such as usufruct. In view of the fact that trusts and fiducies are not explicitly prohibited in Tunisian law, it is possible for foreign trustees to establish business relations with Tunisian financial institutions or DNFBPs, for a foreign trust or similar arrangement to own assets in Tunisia, or for a Tunisian lawyer or any other person to act as trustee/manager of a property located abroad or in Tunisia, or on behalf of a trust established under foreign law. These situations notwithstanding, no specific anti-money laundering measure is provided in Tunisian law or the AML law to identify beneficial owners and ensure the transparency of transactions. **Tunisia is non-compliant with Recommendation 25.**

## **INTERNATIONAL COOPERATION**

### ***Recommendation 36 – International instruments***

538. **C. 36.1/C. 36.2:** Tunisia signed the Vienna Convention on December 17, 1989 and ratified it by means of Law No. 90/67 of July 24, 1990. The Palermo Convention was signed on December 14, 2000 and ratified by Decree No. 698 of March 25, 2003. Although this convention was ratified in 2003, a number of these provisions have yet to be implemented, particularly with respect to the fundamental building blocks of an effective prevention system (cf. comments on the recommendations pertaining to customer due diligence measures).

539. The 1999 United Nations Convention on the financing of terrorism was signed on November 2, 2001 and ratified by Decree No. 441 of February 24, 2003. The United Nations Convention for the Suppression of the Financing of Terrorism has not been fully implemented (cf. analysis of Recommendation 6):

- Although the United Nations lists have been distributed to financial institutions, financial supervisors have not performed controls to ensure the implementation and effectiveness of the inspections conducted by these institutions. None of the customers appearing on the abovementioned lists has been identified,
- Tunisia does not have an administrative freezing mechanism that is fully consistent with the provisions of Resolutions 1267 and 1373 (cf. Recommendation 6).

540. Moreover, a number of minor reforms on issues relating to due diligence requirements and the application of financial sanctions relating to terrorism and the financing of terrorist acts are needed to pave the way for implementation of all signed and ratified international conventions.

### ***Weighting and conclusion***

541. Amendments made to the AML/CFT law in 2009 represent a significant step forward for Tunisia. However, although financial institutions have access to the United Nations lists via the web site of the Ministry of Finance, financial supervisors have not performed controls to ensure the implementation and effectiveness of the inspections conducted by these institutions. Tunisia does not have an administrative freezing mechanism that is fully consistent with the provisions set forth in Resolutions 1267 and 1373. **Tunisia is partially compliant with Recommendation 36.**

### ***Recommendation 37 – Mutual legal assistance***

542. **C. 37.1/C. 37.2:** Tunisia has signed bilateral mutual legal assistance agreements with numerous countries (list attached). If no convention exists, the general system used is governed by Article 331 of the

Code of Criminal Procedure, which stipulates that “*with respect to non-political prosecutions in a foreign country, letters rogatory issued by a foreign authority shall be received through diplomatic channels and transmitted to the State Secretariat for Justice in the forms described in Article 317 [...]. In cases of emergency, they may be exchanged directly between the legal authorities of the two States, as provided for in Article 325.*” The State Secretariat for Justice (cf. Ministry of Justice) is the central authority tasked with receiving requests for mutual legal assistance. Under Article 317 on extraditions, the file is received by the Ministry of Foreign Affairs and forwarded to the Ministry of Justice to ensure that it is in order. The emergency procedure facilitates the direct exchange of letters rogatory between judicial authorities (Article 325 of the Code of Criminal Procedure).

543. Article 82 of the AML/CFT law also stipulates that the CTAF may request assistance from its foreign counterparts with which it has signed memoranda of agreement, with a view to expeditious exchange of financial information.

544. **C. 37.3:** Mutual legal assistance is covered in Articles 331 to 335 of the Code of Criminal Procedure. Article 331 of this Code constitutes the general framework organizing mutual legal assistance. Letters rogatory are received through diplomatic channels and transmitted to the Ministry of Justice, and are executed in accordance with Tunisian law, provided the prosecutions in the foreign country are not political in nature.

545. If a bilateral mutual legal assistance agreement exists with the requesting State, it is applicable in accordance with the conditions set forth in the bilateral agreement.

546. **C. 37.4 (a):** Reasons such as fiscal matters are not included in the list of grounds for refusal of assistance. Insofar as the facts described (predicate offenses) in a request for mutual legal assistance are also punishable under Tunisian law, mutual assistance may be granted by Tunisia, irrespective of the technical differences between Tunisian and foreign legislation regarding qualification of the offense. According to the Tunisian authorities, the dual criminality requirement is strictly observed where provided for in bilateral agreements. However, the fact that Tunisia has criminalized all serious offenses and adopted a definition of money laundering that covers all crimes and misdemeanors makes it possible in practice to easily meet this requirement, which should not be so restrictive as to hinder Tunisia’s ability to provide mutual legal assistance.

547. **C. 37.4 (b):** Professional or banking secrecy cannot be invoked as a ground to refuse a request for mutual assistance. The Tunisian authorities informed the assessment team that the judge may obtain any information from all institutions and businesses upon a simple, unappealable request. Similarly, bank documents were transmitted to the requesting States at their request, in connection with international letters rogatory.

548. Article 333 of the Code of Criminal Procedure provides for the transmission of evidence or documents in the possession of Tunisian authorities, “*unless prevented by special considerations. This condition is extremely vague and could be open to a high degree of subjectivity.*”

549. **C. 37.5:** Tunisian authorities indicated that when prosecutions in a foreign country are involved, requests for mutual legal assistance are executed by an investigating judge, whose actions are protected by the principle of the secrecy of judicial investigations. This guarantees the confidentiality of the requests for mutual legal assistance.

550. **C. 37.6:** Under Article 331 of the Code of Criminal Procedure, mutual assistance is not contingent upon the existence of dual criminality, except where otherwise provided for in a bilateral agreement (see C. 37.4 (a)).

551. **C. 37.7:** The Tunisian authorities indicated that the facts are a determining factor in requests for mutual legal assistance: if the characterization of the facts establishes an offense under Tunisian law, mutual assistance is provided even if the terminology or the categorization of offenses differs in the two countries. The conditions for dual criminality are provided for in Article 311 of the Code of Criminal Procedure.

552. **C. 37.8:** Under Article 331 of the Code of Criminal Procedure, requests for mutual assistance are executed in accordance with Tunisian law. Accordingly, all investigative techniques provided in Tunisian law are applicable to requests for mutual legal assistance. In practice, this means that all possible national investigative measures can be implemented to respond to international requests for mutual legal assistance.

### *Weighting and conclusion*

553. The legal basis for mutual legal assistance is satisfactory. **Tunisia is compliant with Recommendation 37.**

### *Recommendation 38 – Mutual legal assistance: freezing and confiscation*

554. **C. 38.1 and C.38.4:** Tunisia can implement all the legal measures provided for by Tunisian law in order to honor an international request for mutual legal assistance. This includes, in particular, the identification, freezing, and seizure of assets related to the offenses of money laundering and terrorist financing. With regard to the execution of a foreign confiscation order, Article 332 of the Code of Criminal Procedure covers the notification of such an order to an individual residing in Tunisia. Furthermore, with respect to extradition, Article 328 stipulates that the Indictments Chamber decides whether all or some of the securities, assets, money, or other objects seized should be forwarded.

555. Apart from this procedure, which is part of extradition arrangements, Tunisian law makes no explicit provision for the recognition and execution of foreign decisions regarding the confiscation of assets in Tunisia belonging to persons who do not reside in Tunisia, or for the repatriation of these assets to the requesting countries. Confiscation can be decided by the court only in cases where a jurisdictional link is established; in such cases, confiscation is carried out for the benefit of the Tunisian treasury.

556. The Tunisian authorities stated that a draft of a new Code of Criminal Procedure makes provision for a mechanism to coordinate seizure and confiscation actions with foreign authorities, in particular with regard to the coordination of freezing actions, and the confiscation and sharing of confiscated assets with other countries.

557. **C. 38.2:** With regard to requests for assistance made on the basis of non-conviction-based confiscation proceedings and related provisional measures, the Tunisian authorities indicated that a draft of a new Code of Criminal Procedure provides for a mechanism to coordinate seizure and confiscation actions with foreign authorities.

558. **C. 38.3:** Tunisia has signed numerous bilateral agreements with other countries. No provision has been made for the general system in Tunisia's legislation, and Tunisian authorities have indicated that the draft new CPP will implement the changes required to take into account the need for mechanisms to manage frozen or seized assets or assets that have been confiscated and, where necessary, make use of them.

### *Weighting and conclusion*

559. **Tunisia is partially compliant with Recommendation 38.** The legal basis for mutual legal assistance with respect to freezing, seizure, and confiscation set forth in the Code of Criminal Procedure is incomplete. The draft new Code was not provided to the assessment team.

### ***Recommendation 39 – Extradition***

560. **C. 39.1 (a):** Pursuant to Article 311 of the Code of Criminal Procedure, extradition is granted if the offense prompting the request is punishable under Tunisian law. In accordance with Law 2003/75, money laundering and terrorist financing are criminal offenses. As a result, the Tunisian authorities stated that related extradition requests are executed without delay.

561. **C. 39.1 (b):** Extradition is covered in Chapter VIII of the Code of Criminal Procedure (Articles 308 to 330). Section II of this chapter is devoted to the extradition procedure.

The Indictments Chamber of the Tunis Court of Appeal is responsible for reviewing extradition requests. The foreign national must appear before this court within 15 days of notification of the arrest warrant (Article 321 of the Code of Criminal Procedure). There are two types of extradition procedures:

1. Judicial proceedings culminating in an unappealable decision handed down by the Indictments Chamber (Article 323 of the Code of Criminal Procedure); and
2. A simplified procedure whereby the persons whose extradition is requested waives the right to judicial proceedings (Article 322 of the Code of Criminal Procedure).

562. If the Indictments Chamber believes that the legal requirements have not been met, it issues a negative ruling, which is final. A favorable ruling by the court paves the way for the Government to decide on whether or not to grant the extradition. In emergencies, and at the direct request of the legal authorities of the requesting State, prosecutors may, acting on a simple opinion, order the provisional arrest of the foreign national. Article 316 of the Code of Criminal Procedure stipulates that “*all extradition requests shall be sent to the Tunisian Government through diplomatic channels [...].*” In emergencies, Article 325 stipulates that “*prosecutors [...] may, acting on a simple opinion, [...] order the provisional arrest of the foreign national.*” A formal notification of the request must be submitted at the same time through diplomatic channels.

563. With respect to terrorist financing specifically, Article 60 of Law No. 2003-75 stipulates that “*terrorist acts shall result in extradition, pursuant to Article 308 et seq. of the Code of Criminal Procedure, if they are committed outside the territory of the Republic of Tunisia by a person who is not a Tunisian national against a foreign national, or foreign interests, or a Stateless person, if the perpetrator of these acts is on Tunisian territory.*”

564. Under Article 314 of the Code of Criminal Procedure, when extradition is being requested by several States at the same time, priority is accorded to the State whose interests were targeted by the offense, or to the State on whose territory the offense was committed. However, if these competing requests cite different offenses, paragraph 2 of this Article stipulates that all factual circumstances shall then be taken into account, in particular the relative severity and location of the offenses, as well as the respective dates of the requests.

565. **C. 39.1 (c):** Pursuant to Article 316 of the Code of Criminal Procedure, the extradition request must be sent to the Tunisian Government through diplomatic channels and accompanied by the original or authenticated copy of either an arrest warrant or any other document having the same legal effect and issued in accordance with the law of the requesting State.

566. The Tunisian authorities stated that the factual circumstances prompting the request for extradition, the date and place where the offenses were committed, the legal qualification, and the references to the applicable legal provisions must be indicated as accurately as possible. A copy of the laws applicable to the incriminating act must also be attached thereto.

567. **C. 39.2:** Article 312 of the Code of Criminal Procedure explicitly states that Tunisian citizens cannot be extradited. However, pursuant to Article 305 of this Code, proceedings may be instituted against any Tunisian citizen who, while not on Tunisian territory, is found guilty of a crime or a misdemeanor punishable by Tunisian law. This citizen may be prosecuted and tried in Tunisian courts, unless the law of the foreign country does not prosecute the offense in question or the accused has proven that he was ultimately tried in the foreign country and, if convicted, that he has served his sentence or his sentence was time-barred, or that he has been pardoned. Tunisian law does not, however, impose any obligations in this regard.

568. **C. 39.3:** Article 311 of the Code of Criminal Procedure stipulates that extradition is granted when the offense prompting the request is punishable under Tunisian law by a criminal penalty, and when the penalty prescribed in accordance with the law of the requesting State is a prison sentence of at least six months.

569. **C. 39.4:** The Tunisian authorities indicated that, except where otherwise provided for in bilateral, regional, or multilateral treaties, the Code of Criminal Procedure provides simplified extradition mechanisms. Article 322 of the Code of Criminal Procedure makes provision for the implementation of a simplified procedure whereby the person whose extradition is requested waives the right judicial proceedings and formally consents to being handed over to the authorities of the requesting State.

***Weighting and conclusion***

570. **Tunisia is compliant with Recommendation 39.**

***Recommendation 40 – Other forms of international cooperation***

571. **C. 40.1/2/3/4:** With respect to the financial sector supervisory authorities (credit and leasing institutions, insurance companies, and securities brokers), Tunisia's legal system is as follows:

- Under the new Article 61 ter of Law 58-90 (established by Law 2006-26 of May 15, 2006), the central bank of Tunisia may conclude bilateral cooperation agreements with supervisory authorities in foreign countries, which provide for the exchange of information, in particular when branches or subsidiaries of credit institutions are being established in the two countries, and define the procedures for supervising them.

- The legal arrangements governing supervisors of insurance companies were also modified to facilitate international cooperation. Law 2008-8 of February 13, 2008 amending and supplementing the Insurance Code introduced new arrangements regarding the functions of the General Insurance Committee (cf. C.26 for more details on the role of the CGA). Pursuant to Article 180, this committee "*may, in performing its duties, cooperate with foreign institutions and organizations that are either counterparts or perform the same functions, and conclude agreements with them following approval by the competent authorities.*"

- Lastly, with regard to securities brokers, Article 46 of Law 94-117 authorizes the Financial Market Board to cooperate with its foreign counterparts or with the authorities performing similar functions, once approval has been granted by the competent Tunisian authorities. To that end, this Board may conclude cooperation agreements that provide in particular for information-sharing and cooperation with respect to investigations conducted as part of its mandate. In this context, in December 2009, the CMF signed the Multilateral Memorandum of Understanding of the International Organization of Securities Commission (IOSCO) on consultation, cooperation, and the exchange of information. Moreover, the Tunisian authorities informed the mission that bilateral agreements for cooperation and information-sharing have been signed with regulatory authorities in France, Morocco, Egypt, the United Arab Emirates, and Turkey. The CMF is also a member of the Union of Arab Securities Authorities, which provides a general framework for cooperation.

The responses provided by Tunisian authorities reveal that only the CMF, through its membership in the IOSCO, has a regulatory mechanism governing international cooperation with its foreign counterparts.

572. **C. 40.5/6:** Article 46 stipulates that the CMF “*may conclude cooperation agreements covering, in particular, information-sharing and cooperation for investigations conducted as part of its responsibilities, in accordance with the following conditions:*

- *the information shared must be required by the requesting counterpart authority for the performance of its functions, and must be used for this purpose only,*
- *the Financial Market Board cannot invoke professional secrecy with respect to information-sharing,*
- *the requesting counterpart authority must safeguard the confidentiality of the information and provide the guarantees needed to ensure its protection under conditions that are, at a minimum, equivalent to those to which the Financial Market Board is subject.”*

573. Furthermore, drawing on instances of refusal of requests expressly provided for in the IOSCO Multilateral MOU, Article 46 of Law No. 94-117 sets forth the following instances in which a request for information-sharing can be refused:

- if the information may undermine law and order or threaten the vital interests of Tunisia,
- if legal proceedings have already been instituted in Tunisian courts in respect of the same facts and against the same persons concerned by this information;
- if the request concerns persons who have been the subject of final judgments rendered by Tunisian courts in respect of the same facts;
- if the request is likely to be at odds with domestic legislation and regulations;
- if the request comes from a counterpart authority that has no cooperation arrangements with the Financial Market Board in this area.

574. Consequently, Tunisian authorities should, in practice, respond to requests on tax-related issues that could potentially be subject to secrecy or confidentiality provisions.

575. **C. 40.7:** In accordance with Article 38 of Law 94-117, CMF investigators and all other persons required to review the files are bound by professional secrecy. The provisions of Article 254 of the Criminal Code pertaining to professional secrecy in all the relevant sectors are applicable to them.

576. The Tunisian authorities also indicated that information-sharing with a foreign country must be authorized by the National Personal Data Protection Agency, which, prior to granting approval, ensures that the requesting authority is in a position to protect the confidentiality of the information shared and provide the necessary guarantees for the protection of this information under conditions that are, at a minimum, equivalent to those provided for under Tunisian domestic law.<sup>62</sup>

577. **C. 40.8:** Tunisian legislation makes no reference to the possibility of formulating requests on behalf of a foreign counterpart.

### **CMF**

578. With respect to the CMF, execution of requests for mutual assistance from a foreign counterpart is governed by the terms set forth in the IOSCO Multilateral MOU. Thus, the CMF may, on behalf of a foreign counterpart (while honoring the confidentiality of the request for assistance), compel the production

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<sup>62</sup> Response to the technical compliance questionnaire – pp. 401/402

of documents from any person designated by the requesting authority or from any other person that may possess the information or documents being requested.

579. The CMF may obtain any other information pertaining to the request and will seek responses to questions and/or a declaration (or, if so authorized, sworn testimony) from any person directly or indirectly involved in the activities covered in the request for assistance or that is in possession of information that could contribute to proper execution of the request.

580. **C. 40.9 and C. 40.11:** Article 82 of the AML/CFT law authorizes the CTAF to share financial information relating to combating money laundering and terrorist financing with the FIUs with which it has signed memoranda of agreement, in order to provide early warnings about these offenses and prevent their commission. These memoranda of agreement are signed by the President of the CTAF or an individual authorized to do so. No administrative or other type of formality, nor the prior consent of any authority, is required for these memoranda.

581. **C. 40.10:** The Tunisian authorities indicated that, at the request of the foreign FIU, the CTAF provides feedback to their foreign counterparts on the use of the information provided and the findings of the analysis conducted using this information.<sup>63</sup>

582. **C. 40.12:** All financial supervisors, namely the BCT, CCM, and CGA, have a legal basis for cooperating with their foreign counterparts.

583. **C. 40.13:** No legal provision expressly empowers financial supervisors (BCT, CMT, CGA) to share with their foreign counterparts any information to which they have access at the national level, in particular information held by financial institutions.

584. **C. 40.14:** Article 61 ter of Law 58-90 governing the activities of the BCT makes provisions for the possibility of engaging in cooperation, particularly through information-sharing when agencies and subsidiaries of the financial institutions are being established in the two countries. The legal provisions relating to the CCM and CGA do not expressly provide for information-sharing within the group.

585. **C. 40.15:** No specific legal provision affords financial supervisors the opportunity to seek information on behalf of their foreign counterparts or authorize them to seek the information in the country themselves.

586. **C. 40.16:** In accordance with the laws and regulations applicable to financial authorities, these authorities are not required to request authorization from the relevant authority prior to circulation of the information exchanged.

587. **C. 40.17/18/19:** The Customs authorities have cooperated extensively with countries with the highest flows of migrants and goods: Algeria, Libya, France, and Italy in particular. The Customs authorities are active participants in the World Customs Organization. Operational thematic meetings are held on a very regular basis in the region to facilitate expeditious circulation of the information. In the area of police cooperation, Tunisia is part of a highly effective intelligence network, particularly with France, Italy, and Germany. The authorities indicated that the general cooperation approach adopted is extremely effective.

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<sup>63</sup> Response to the technical compliance questionnaire – p. 403

588. Tunisia has signed numerous agreements on organized crime, such as those with France in 1988 on organized crime and security, with Italy in 1988, with Germany in 2003, with Portugal, Malta, Greece, and Libya in 1984, and with Morocco in 2000. In addition to these formal agreements, de facto cooperation exists with many countries.

589. Tunisia is a member of Interpol and benefits in particular from the organization's IT logistical resources, as well as from training. Tunisia also participates in European projects, particularly those conducted by MEDACEPOL (JAI).

590. Tunisia serves as the headquarters of the ministerial council of the Arab Convention against Terrorism.

591. **C.40.20:** The Tunisian authorities did not indicate whether Tunisia's relevant authorities could share information with non-counterpart foreign authorities. Apart from the fundamental principles of secrecy, confidentiality, and the restricted use of data shared, Tunisian law does not appear to prohibit this practice.

***Weighting and conclusion***

592. **Tunisia is largely compliant with Recommendation 40.**