



Financial Action Task Force
Groupe d'action financière

**THIRD MUTUAL EVALUATION REPORT
ANTI-MONEY LAUNDERING AND
COMBATING THE FINANCING OF TERRORISM**

FINLAND

12 October 2007

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PREFACE

Information and Methodology Used for the Evaluation of Finland

1. The evaluation of the anti-money laundering (AML) and combating the financing of terrorism (CFT) regime of Finland¹ was based on the *Forty Recommendations 2003* and the *Nine Special Recommendations on TF 2001* of the Financial Action Task Force (FATF), and was prepared using the AML/CFT Methodology 2004². The evaluation was based on the laws, regulations and other materials supplied by Finland, and information obtained by the evaluation team during its on-site visit to Finland from 16 to 27 April 2007 inclusive, and subsequently. During the on-site visit the evaluation team met with officials and representatives of all relevant Finnish government agencies and the private sector. A list of the bodies met is set out in *Annex 2* to this mutual evaluation report.
2. The evaluation was conducted by an assessment team, which consisted of members of the FATF Secretariat and FATF experts in criminal law, law enforcement and regulatory issues: Mr. Vincent Schmoll and Ms. Rachele Boyle of the FATF Secretariat; Mr. Kent Madstedt, National Economic Crimes Bureau, Sweden, legal expert; Ms. Lia Umans, CTIF-CFI, Belgium, law enforcement expert; Ms. Raquel Cabeza Pérez, Ministry of Economy and Finance, Spain, financial expert; and Mr. Joshua Kaptur, Financial Crimes Enforcement Network, USA, financial expert. The experts reviewed the institutional framework, the relevant AML/CFT laws, regulations, guidelines and other requirements, and the regulatory and other systems in place to deter ML and TF through financial institutions and designated non-financial businesses and professions (DNFBPs), as well as examining the capacity, the implementation and the effectiveness of all these systems.
3. This report provides a summary of the AML/CFT measures in place in Finland as at the date of the on-site visit or immediately thereafter. It describes and analyses those measures, sets out Finland's levels of compliance with the FATF 40+9 Recommendations (*see Table 1*), and provides recommendations on how certain aspects of the system could be strengthened (*see Table 2*).

¹ All references to country apply equally to territories or jurisdictions.

² As updated in June 2006.

EXECUTIVE SUMMARY

Background Information

1. This report provides a summary of the anti-money laundering (AML) and combating the financing of terrorism (CFT) measures in place in Finland at April 2007 (the date of the on-site visit) and immediately thereafter. The report describes and analyses those measures and provides recommendations on how certain aspects of the system could be strengthened. It also sets out Finland's levels of compliance with the Financial Action Task Force (FATF) 40+9 Recommendations (see attached table on the Ratings of Compliance with the FATF Recommendations). The Finnish Government recognises the importance of an effective AML/CFT regime and continues to actively update its AML/CFT framework.

2. Finland has a good legal structure to combat money laundering and terrorist financing. The money laundering offence established in 2003 is broad and encompasses most of the elements of the Vienna and Palermo Conventions. It is not possible to prosecute for self-laundering and this is not due to any fundamental principle of Finnish law. The terrorist financing offence is also broad though it is likely that a link to a specific terrorist act is required for prosecution of terrorist financing. There have been few convictions for money laundering and no prosecutions for terrorist financing. While the *Penal Code* provides the ability to restrain, confiscate and recover the proceeds of crime in most situations, Finland has not established a complete mechanism for freezing terrorist assets. Overall, the Finnish FIU is effective and is the focal point for Finnish AML/CFT efforts. Finland has designated competent authorities to investigate and prosecute money laundering and terrorist financing offences. Measures for domestic and international co-operation are generally comprehensive as well.

3. The preventive system addresses customer identification and other AML/CFT obligations and applies to a range of financial institutions and most of the designated non-financial businesses and professions (DNFBPs) as defined by the FATF. It does not however incorporate customer due diligence (CDD) requirements with respect to beneficial ownership or legal arrangements and no provisions have been implemented with respect to politically exposed persons or correspondent banking relationships. The legal concept of trust does not exist under Finnish law. Record keeping requirements are comprehensive and the suspicious transaction reporting requirement is sound.

4. While the volume of suspicious transaction reports (STRs) has increased in recent years, there is significant disparity in the reporting volume both within and between different financial sectors. The STR reporting requirement is sound but could be strengthened. Supervision is generally effective for the banking and insurance sectors, but AML/CFT supervision is weak or non-existent for many types of designated non-financial businesses and professions (DNFBPs) and limited AML/CFT guidance has been issued, in particular to DBFBPs. The number of detected violations and the number of sanctions imposed are low. In some areas the available sanctions are not strong.

5. Finland has a democratic parliamentary system with a written *Constitution* and a clear separation of powers. It has a civil law legal system with legislative power vested in the Parliament. Finland has one self-governing territory; the Åland Islands. Finland has a notably low level of corruption and promotes access by the public to official documents and other information from the government. Its financial sector is dominated by the banking sector, and in particular by three bank groups. The major sources of illegal proceeds in Finland relate to financial and drug-related crimes and the majority of suspicious financial activities investigated have an international dimension. While the amount of money laundering cannot be precisely determined, it is estimated that the damage caused by crime and the black economy exceeds EUR 5 billion each year. Finland has not, to date, conducted any terrorist financing investigations or prosecutions and the threat from terrorist financing does not appear strong.

Legal System and Related Institutional Measures

6. The *Penal Code* contains offences of money laundering (ML), aggravated ML, conspiracy to commit aggravated ML, negligent ML and other ML violations. These offences originated in the receiving offence. In 2003, the *Penal Code* was again amended, and the current ML offences were added as clearly independent from the receiving offence. In Finland, any offence can be a predicate offence of ML. The ML offence encompasses most of the elements of the Vienna and Palermo Conventions, though not possession of proceeds of crime or acquisition or use of such property without intention to conceal its illegal origin. It is not possible to prosecute persons for laundering the proceeds of his/her own criminal activity and this is not due to any fundamental principle of Finnish law. There have been few convictions for money laundering. The number of prosecutions for ML offences in Finland is low and the sentences provided for ML convictions are low.

7. Terrorist financing (TF) was criminalised under the *Penal Code* in 2003. At the same time, the scope of application of the system for preventing and investigating ML was extended to include preventing and investigating the financing of terrorism. The TF provision does not cover financing of a terrorist organisation or of an individual terrorist where there is no link to a specific terrorist act or terrorist acts that will occur in the future. Finland has not, to date, conducted any TF investigations or prosecutions.

8. While the *Penal Code* provides the ability to restrain, confiscate and recover the proceeds of crime in most situations, Finland has not established a complete mechanism for freezing terrorist assets. In ML cases, provisional measures may be used only when the proceeds of crime can be identified and when a connection to the offence from which the proceeds were derived can be proven. This limits the scope of application of provisional measures. There are also some gaps in the confiscation provisions. It is not possible to: confiscate property of organisations that are found to be primarily criminal in nature without a link to a certain crime; confiscate proceeds which are completely mingled with licit assets; void actions where the persons involved knew or should have known that as a result of those actions the authorities would be prejudiced in their ability to recover property subject to confiscation. It appears that the recovery of assets is generally effective but with respect to ML is low, possibly due to the focus on investigation of predicate offences rather than investigation of ML. The amount of recovered property has not increased in recent years.

9. As a member of the European Union (EU), Finland is bound by EU mechanisms to implement UN obligations with respect to freezing of funds used for TF. Finland has not enacted domestic measures to expand the coverage of the EU mechanisms. The mechanisms in Finland do not apply to persons, groups or entities within the EU, nor is there a domestic mechanism for considering requests from other States for freezing of terrorist assets. Finland's mechanisms also do not explicitly cover funds owned, "directly or indirectly" by designated persons, or those controlled directly or indirectly, by designated persons. There is no national procedure for unfreezing funds or other assets of persons or entities inadvertently affected by freezing mechanisms. In addition, the limited nature of the TF offence in Finland impacts on the scope of the terrorist asset freezing regime. Finland has issued little guidance to entities that may be holding targeted funds in Finland and communication with entities outside the banking, and insurance sectors about terrorist asset matters is limited. No terrorist assets have been frozen in Finland pursuant to the UN or EU sanctions.

10. The Money Laundering Clearing House (MLCH), Finland's financial intelligence unit (FIU), was established in 1998. It is an independent unit situated within the National Bureau of Investigation (NBI) of the Finnish Police. In addition to receipt, analysis and dissemination of STRs, the MLCH is involved in pre-trial investigations of ML and TF offences. The MLCH has a range of powers to obtain information for its analysis and investigations and it has direct access to a number of government and public databases. The FIU meets many of the requirements of Recommendation 26 and clearly plays a key role in the AML/CFT system in Finland. However, there are several factors that diminish the FIU's effectiveness. As at the time of the on-site visit, there was a backlog of reports to be

entered into the MLCH database³. Moreover, limited resources are in place with respect to guidance to obliged parties and development of trends and typologies and the current IT system is limited in functionality. Mechanisms to obtain information on the outcomes of disseminated matters are weak. Few disclosures are received on the basis of suspicion of TF and these are almost entirely due to possible name matches with persons on the UN and EU terrorist lists.

11. Finland has designated authorities to investigate ML and TF offences and equipped them with necessary powers. Investigation authorities include the Finnish Police, Finnish Customs (though it is not a competent authority with respect to TF) Border Guard, Security Police and the MLCH. The primary unit responsible for investigating ML and TF is the National Bureau of Investigations (NBI). Investigations into TF are the joint responsibility of the NBI and the Security Police. Public prosecutors prosecute all offences in Finland but they do not direct investigations. The various agencies appear adequately structured, funded and resourced to effectively carry out their functions though the resources could be focussed more on ML and TF matters.

12. As of 15 June 2007, Finland implemented a declaration system for cross-border movements of cash of EUR 10 000 or more when the *EU Council Regulation 1889/2005*: “the Cash Controls Regulation” and the Finnish *Act on the controls of cash entering or leaving the European Community* (653/2007) entered into force. As indicated by its title, this legislation only covers the transfer of cash or bearer negotiable instruments when entering or leaving the European Union territory. Cross-border declarations of currency or monetary instruments are being provided to the MLCH by Finnish Customs. As these measures are very new, it is too early to ascertain the effectiveness of this system.

Preventive Measures - Financial Institutions

13. The application of the Finnish AML/CFT measures to the financial system and to DNFBPs is not based on risk assessment in the manner contemplated in the revised FATF 40 Recommendations. The preventive system and other AML/CFT obligations apply to a range of financial institutions and most of the designated non-financial businesses and professions (DNFBPs) as defined by the FATF. Obligated parties must identify and verify the identities of persons conducting transactions. It does not incorporate customer due diligence (CDD) requirements with respect to beneficial ownership, the identification process to be conducted with respect to legal arrangements is unclear, and no provisions have been implemented with respect to politically exposed persons or correspondent banking relationships. Some CDD exemptions are in place in the banking and insurance sectors.

14. The legal concept of trust does not exist under Finnish law. The only requirements to understand the ownership and control structure of the customer exist as part of enhanced due diligence. The enhanced due diligence obligation is narrow in scope; covering only NCCT-listed countries. There are no clear requirements for money remitters and foreign exchange companies to know the nature, scope and purpose of their customer relations and transactions. There are no requirements for obliged parties to have measures in place for prevention of the misuse of technological developments in ML or TF. Limited provisions are in place with respect to the risks associated with non-face to face business relationships and transactions. Although financial institutions may rely on third parties to conduct CDD for them, and do so within financial services groups, there are no provisions in the *AML/CFT Act* or elsewhere with respect to these situations.

15. There are no limitations on the power of authorities in Finland to obtain information in the course of their duties and record-keeping requirements are comprehensive. The measures in place with respect to customer information accompanying cross-border wire transfers are strong but they do not apply to wire transfers within the EU and there are no provisions on penalties applicable to infringements of the wire transfer requirements for the remittance sector.

³ In August 2007, the MLCH advised that inputting to the database was up to date and this backlog no longer existed.

16. The customer due diligence obligation provides that all obliged parties in Finland must examine the grounds for and the purpose of the use of its services where transactions are unusual in respect of composition or scale (structure or size), or if they have no apparent financial purpose, or if they are inconsistent with the financial situation or other activities or transactions of a customer. There is no requirement however for the obliged parties to set forth their findings in writing.

17. There are no CDD requirements with respect to politically exposed persons or with respect to correspondent banking relationships. While there is no direct explicit prohibition against establishing or operating a shell bank, licensing requirements for banks would in practice exclude a bank or other institution with no physical address from gaining a license to operate. There is no provision prohibiting banks or other institutions from having correspondent relationships with shell banks and there is no provision requiring institutions to satisfy themselves that their accounts at respondent institutions cannot be indirectly accessed by shell banks.

18. The STR reporting obligation is sound and applies regardless of the amount of the transaction. There is no requirement however to report transactions suspected of being related to terrorism other than those related to terrorist acts. A large percentage of local banking institutions are not filing suspicious transaction reports. Few reports have been received from securities institutions. The legislation provides immunity from prosecution for those persons who report suspicions to the MLCH in good faith. “Tipping off” others about STR reporting is an offence. The Finnish AML/CFT system requires only STR reporting as authorities considered the benefits of a currency transaction reporting some time ago but decided not to implement such a system.

19. The various procedures for licensing financial institutions appear generally sound. The qualifications and fit and proper tests for persons operating in senior roles in this sector, however, are sometimes vague. For entities supervised by the Financial Supervisory Authority (FSA) and the Insurance Supervision Authority (ISA), on-going supervision of compliance with AML/CFT obligations is carried out primarily as part of prudential oversight and as part of risk management, internal control and code of conduct supervision. The FSA, ISA and MLCH have issued guidance and standards to assist obliged parties to implement and comply with their obligations, but limited guidance has been issued specifically on AML/CFT matters. For FSA and ISA-supervised entities, AML/CFT supervision is carried out primarily as part of prudential oversight and as part of risk management, internal control and code of conduct supervision. Both authorities could more actively conduct AML/CFT-focussed inspections and supervision and could strengthen off-site AML/CFT control. FSA supervision of financial institutions covers the entire financial group, including foreign branches. The FSA also supervises that the branches of foreign credit institutions, investment firms and fund management companies in Finland comply with the Finnish AML/CFT laws and regulations. There are no similar requirements concerning foreign branches of other financial entities. Although licencing procedures would likely prevent a bank or securities firm from establishing a branch or subsidiary in a jurisdiction that had not adequately implemented FATF standards, there is no requirement that these businesses notify the FSA or the MLCH if their foreign branches or subsidiaries were to be prevented by local rules from observing AML/CFT measures.

20. The money remittance and foreign exchange sectors do not have a supervisory authority, nor are there rules that require these businesses to have internal controls, compliance officers, and training to ensure compliance with AML/CFT obligations. Remittance services are subject to registration requirements.

21. In the absence of a designated AML supervisor, the money remittance and foreign exchange sector is subject only to criminal sanctions, while entities supervised by the FSA and ISA are subject to additional administrative penalties. The ISA has a relatively limited range of sanctions available to it. While they are in line with the usual scale of punishments in Finland, the penalties which may be imposed under the *AML/CFT Act* and those available to the FSA and ISA are relatively low. Finnish regulatory authorities rarely apply their sanction powers and only once has a sanction been imposed for matters relation to AML/CFT obligations.

Preventive Measures – Designated Non-Financial Businesses and Professions

22. Finland encapsulates a range of designated non-financial businesses and professions as obliged parties. The only type of DNFBP, as defined by the FATF, which is not covered is trust and company service providers. The covered DNFBPs are subject to the same requirements as financial institutions to identify customers, keep records, conduct ongoing due diligence, conduct enhanced due diligence where required, report suspicious transactions to the MLCH and suspend transactions where appropriate. There is little indication that dealers in precious metals and precious stones are complying with their AML/CFT obligations and many types of DNFBPs are submitting very few STRs to the MLCH. In addition, there is a lack of clarity regarding the legal obligations (and resulting supervisory practices) for the gaming operator in the Åland Islands and this could obstruct consistent enforcement of AML/CFT measures across the entire Finnish gaming sector.

23. Gaming operators, auditors, advocates and real estate agents have designated supervisors to monitor compliance with various regulatory requirements. Although most consider the fulfilment of AML/CFT obligations part of the risk management of the institution, none provides robust AML/CFT supervision. Other DNFBPs are not supervised for compliance with AML/CFT requirements. No guidance has been provided focussing on the AML/CFT risks to which the various industries / businesses / products of the DNFBPs are exposed.

Legal Persons and Arrangements & Non-Profit Organisations

24. While Finland has a good trade registry system for legal persons, only relatively general information is required for the trade registry and this is insufficient to determine beneficial ownership and control. Measures are in place to ensure companies submit their annual accounts, and lack of compliance with this may be sanctioned. All Finnish companies, co-operatives, partnerships and other private business entities have to register with the National Board of Patents and Registration (the PRH) and be entered in the trade register, the associations register, the foundations register or the register of persons subject to business prohibition and floating charges. Any changes of the information registered in the Trade Register – such as changes to a limited liability company's name, business activities, address, board members or share capital – have to be notified to and registered immediately with the PRH. In addition, all limited companies, partnership, co-operatives and mutual insurance companies, are also obliged to submit their annual accounts and auditor's reports to PRH. Requirements that limited liability companies maintain share registers and shareholder registers are not supervised by a government authority.

25. The Finnish legal system does not allow for the creation of trusts, and the legal concept of trust does not exist under Finnish law. Foreign trusts may operate in Finland. If a foreign trust comes to a Finnish financial institution as a customer, it is treated as any other legal person which is a customer of the financial institution.

26. Finland's trade registry system and accounting requirements apply to foundations and to those associations which choose to register, and a clear process is in place for authorities to manage the money collection activities of non-profit organisations. While Finland is beginning to place greater attention and resources into work with the non-profit sector, it has not conducted a review of the sector and limited supervision and sanctions are in place to deal with inappropriate conduct in the sector.

National and International Co-operation

27. Co-operation between the various stakeholders in Finland is strong, both on a formal and informal level. The various authorities involved in AML/CFT are co-ordinating their efforts on operational and policy matters, though co-operative projects could more specifically target ML and TF issues. In addition, there is a lack of feedback and information sharing between agencies which limits the ability of the MLCH and others to completely examine the effectiveness of the system. This is at least in part due to weak information management systems, particularly with respect to collection and

analysis of statistics, and limited interagency connectivity between the various systems. It is also a result of the emphasis on regular contact rather than structured co-ordination.

28. Finland has ratified and implemented, with some shortcomings as noted previously, the Vienna, Palermo and TF Conventions and the provisions of S/RES/1267(1999) and S/RES/1373(2001). There are no unduly restrictive measures placed on the provision of mutual legal assistance. Under Finland's *International Legal Assistance in Criminal Matters Act*, Finnish authorities are expected to provide legal assistance to the fullest extent possible. Execution of requests for mutual legal assistance does not require dual criminality unless the request is for the use of coercive measures. The possibilities to carry out requests from foreign countries for identification, freezing, seizure or confiscation are in principle the same as if the offence or a suspicion of an offence has occurred in Finland. Finland has not considered establishing an asset forfeiture fund to share confiscated assets with other jurisdictions or to fund relevant national initiatives.

29. Money laundering and terrorist financing are extraditable offences, though dual criminality is required for extraditions other than to EU member States or Nordic countries. The dual criminality requirement means extradition could be refused in cases where the Finnish ML or TF offence is limited. Requests are not agreed to for extradition of a Finnish citizen to a country other than an EU member state or a Nordic country.

30. Finnish authorities are satisfied with international co-operation concerning the FIU and law enforcement authorities. There are no indications that co-operation would be ineffective or would not be used as provided in the *FATF Recommendations*. Although the MLCH and the FSA maintain some statistics concerning international co-operation, these are insufficient to fully assess the effectiveness of the system.

Resources and Statistics

31. On the whole, competent authorities appear to be adequately resourced and structured to effectively perform their functions. However, planned upgrades to the MLCH's IT systems are expected to provide welcome additional functionality and the MLCH would benefit from additional staff. There is no AML/CFT supervisor for the money remittance and currency exchange sectors. Resources could be directed towards ML/TF investigations rather than focussing on predicate crimes, and resources could be put into awareness-raising and into development of trends, typologies and guidance.

32. The extent of statistics held by authorities is variable. The FIU only produces limited statistics and has limited information on the outcomes of STRs referred for pre-trial investigation. Statistics on ML/TF investigations and on property frozen, seized or confiscated are not comprehensive. Limited statistics are kept with regard to the informal (not on the basis of MLA) exchange of information between the Finnish LEA and foreign LEAs. Finland does not review the effectiveness of its preventative AML/CFT system.

MUTUAL EVALUATION REPORT

1. GENERAL

1.1 General information on Finland

1. Finland is situated in northern Europe between the 60th and 70th parallels of latitude. A quarter of its total area lies north of the Arctic Circle. The country has a surface area of 338 000 square kilometres, making it the sixth largest country in Europe. It has four neighbouring countries: Sweden, Norway, the Russian Federation and Estonia. Finland is the most heavily forested country in Europe, with 23 million hectares under forest cover. There are approximately 190 000 lakes and 180 000 islands. Europe's largest archipelago, which includes the self-governing province of the Åland Islands, lies off the south-west coast.

2. Finland's population is 5.3 million, with a low population density of 17 persons per square kilometre. The net wealth of Finnish households is above the average level for member States of European Union. Approximately two thirds of the Finnish population lives in urban areas. The capital, Helsinki, and its neighbouring towns, Espoo and Vantaa, form the fast growing metropolitan region, which is now home to almost one million people. Ethnically, Finland is a very homogeneous country. The foreign community accounts for about 2% of the population, primarily people from neighbouring countries of the Russian Federation, Estonia and Sweden. Among them are a considerable number of people of Finnish descent.

3. Finland participates in a number of multilateral fora. It is one of the founding members of the Organisation for Security and Co-operation in Europe (OSCE) and the World Trade Organisation (WTO), and a member of the International Monetary Fund (IMF) and the World Bank (since 1948), the United Nations (1955), the Organisation for Economic Co-operation and Development (1969) and the Council of Europe (1989). Finland acceded to the European Union (EU) on 1 January 1995 and was one of the 12 original EU countries of the euro zone.

4. Forests are Finland's most crucial raw material resource, and the engineering and high technology industries are the leading manufacturing areas. These three industries also dominate Finnish exports, each of which accounting for a third of economic activity. Finland's primary export partners are the Russian Federation (11.2%), Sweden (10.7%), Germany (10.5%), the United Kingdom (6.6%), the United States (6.2%) and the Netherlands (4.8%). Its primary import partners are Germany (16.2%), Sweden (14.1%), the Russian Federation (13.9%), the Netherlands (6.2%), Denmark (4.6%), the United Kingdom (4.3%) and the People's Republic of China (4.2%)⁴.

5. Finland has a clear separation of powers. Sovereignty in Finland is vested in the people, who are represented by deputies assembled in Parliament. Legislative power is exercised by Parliament and judicial power is vested in independent courts of law, at the highest level in the Supreme Court and the Supreme Administrative Court. The only point of contact between the Finnish judicial system and the administrative system is the appointment of the highest judges by the President, after which it is, in practice, impossible to dismiss them.

6. The head of state is the President of the Republic who is elected for a six year period and may serve a maximum of two consecutive terms. The President is chosen by direct popular vote. The Council of the State (Government), which comprises the Prime Minister and a number of ministers, must enjoy the confidence of Parliament which has 200 members elected every four years. In recent years, the three biggest parties in Parliament have been the Social Democratic Part, the Centre Party and the moderate conservative National Coalition Party. Multiparty coalition governments are

⁴ Using 2005 figures.

common and usually include two of the aforementioned parties. The leader of the Government, the Prime Minister, normally comes from the party with the most seats in Parliament.

7. A distinctive feature of Finland's *Constitution* is its rigidity. A Constitutional law can be amended only if two thirds of the members of Parliament agree. Even then, the same Parliament cannot amend a law unless the amendment has previously been declared "urgent". This calls for a five-sixths majority, which means agreement among at least four or five parties. In spite of this formal rigidity there have been many incremental changes to the *Constitution* during the past twenty years. One aim has been to increase the flexibility of political decision making. The price of this has been a weakening of the parliamentary opposition's available options for manoeuvre.

8. Relations between Parliament, the Government and the President of the Republic are governed by the principles of party-based parliamentarism. The Government must enjoy the support of a majority in Parliament, which elects the Prime Minister. The President traditionally has had considerable power in the area of foreign policy, although not as much as some international counterparts. Under the Constitutional reform of 2000, the President's power in other political areas is limited, but the power to appoint senior civil servants still carries with it the potential for acts of political significance. The Government must co-operate with both the President and Parliament, but when successful, this relationship strengthens the Government's position in practical politics.

9. According to the *Constitution*, legislative power is vested in Parliament, in conjunction with the President of the Republic. Draft bills emanate from the Ministry with responsibility for the matter in question. Projects of wider general significance are prepared in committees with representatives from the various organs of government, political parties and other interest groups. The interest groups are also invited to comment upon draft legislation. Bills drafted in the Ministries are scrutinised by the Council of State in general session prior to their submission to Parliament by the President. The most important duty of the Parliament is to pass legislation. A new act is adopted or an old one amended on the basis of a government bill or a motion submitted by a representative. After a preliminary debate, the bill or motion is referred to a select committee, which thoroughly considers the matter and hears experts. The select committee drafts a report and the bill is returned to the plenary session of Parliament for the first hearing. This hearing comprises a general discussion during which the Parliament may refer the bill to the Grand Committee. The contents of the bill are decided on in a detailed consideration. Then the Parliament either adopts or rejects the bill in a second hearing. Throughout this process, the Bill is accompanied by a Government Proposal, which outlines the intention of the Bill and its provisions. A final version of the Government Proposal is adopted by the Parliament along with the Bill. Once adopted by parliament, the bill is submitted to the President for ratification of the act. In addition to acts of Parliament, the President of the Republic, the Government and ministries may issue decrees pursuant to acts adopted by the Parliament. Ministries and government agencies in some cases are also authorised to issue regulations.

10. An amendment of the *Constitution* proceeds as above until the end of the second hearing, unless the Parliament decides to leave the amendment in abeyance until the next parliamentary elections. In the vote in the new Parliament two thirds of the Representatives are required to support the amendment for it to be adopted. The *Constitution* may also be amended by a single Parliament if the bill is declared urgent by a majority of five sixths.

11. Under the *Act on the Openness of Government Activities* everyone has the right to obtain information from the government. Official documents are in the public domain unless otherwise specifically provided for. Because this right of access is considered a basic right, the authorities are expected to promote its implementation and must produce and make accessible material describing their activities, such as publications, brochures and statistics as well as information on their socially significant decisions. Under the *Constitution*, documents may be kept secret only where provided by an act. The most central provisions on secrecy are contained in the *Act on the Openness of Government Activities* (621/1999). These provisions protect public and private interests, including: international relations; the prevention and prosecution of crimes; security arrangements; preparations

for emergency conditions; State security; income, financial, monetary and currency policy; the credibility and functioning of financial and capital markets; protection of natural values; efficiency of inspection and supervisory tasks of the authorities; protection of the confidentiality of information; public economic interests; private economic interests; the interests of research and development as well as of education; the security of asylum seekers; and the protection of privacy.

12. The judicial administration provides legal certainty, which is considered a fundamental right of the people. Under the *Constitution*, everyone is entitled to have his or her case heard by a court or an authority appropriately and without undue delay. In addition, everyone is entitled to have a decision affecting his or her rights or obligations reviewed by a court or another judicial authority. Further, the *Constitution* includes guarantees of a fair trial, good public administration, the openness of proceedings, the right to receive a reasoned decision and the right to appeal against the decision.

13. The court system operates at three levels, of which the highest level deals only with cases that may set a precedent or in which a technical error has occurred in an earlier hearing. The Office of the Prosecutor General operates independently of the courts and the Police. There are also various specialised courts that rule on matters such as marketing, labour, insurance, and a series of administrative courts dealing with the complaints regarding administrative procedures.

14. Cases brought against government ministers or higher officials in the judiciary are heard in the High Court on Impeachment. The decision to pursue legal action against a minister in this way is taken by the Parliament, but the threshold for doing so is so high that the system cannot be manipulated for purely political ends. Impeachment cases are extremely rare. The highest guardian of justice in the country is the Chancellor of Justice, who is present at all cabinet meetings and can intervene at any moment if the form or content of any proposed resolution is at variance with existing legislation. Citizens who have experienced injustice at the hands of the authorities can appeal directly to the Chancellor. In addition, parliament has its own ombudsman to supervise the legality of the legislative authorities and to deal with complaints from the public. The ombudsman is also responsible for justice in the country's prisons and in the defence forces.

1.2 General situation of money laundering and financing of terrorism

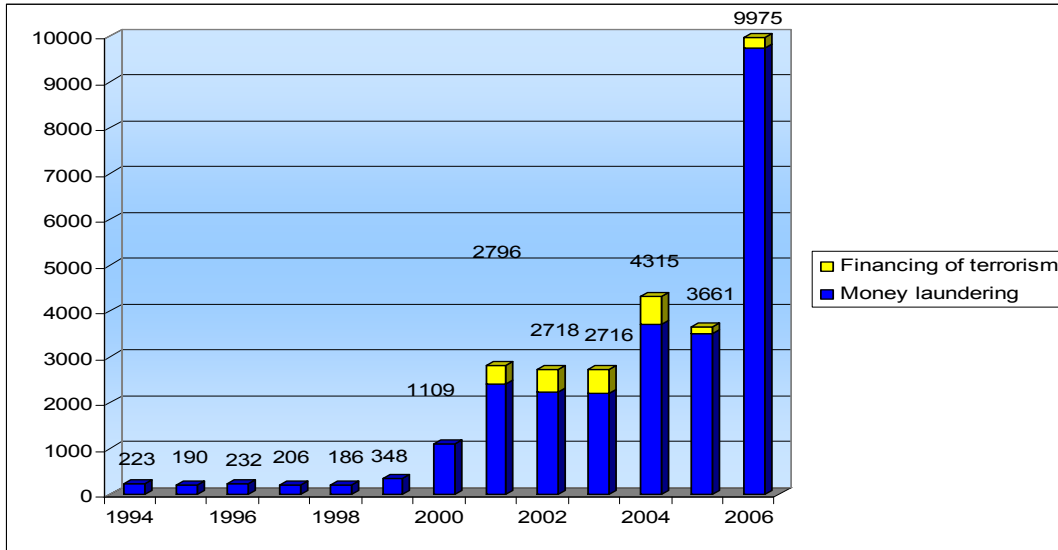
15. In 2006 the Money Laundering Clearing House (MLCH) registered 9 975 suspicious transaction reports, of which 9 742 concerned ML and 233 TF.

16. Proceeds of crime laundered in Finland mainly derive from financial and drug-related crime. Financial offences also make up most of the predicate offences for ML in Finland. In 1994-2006 the financial intelligence unit (the ML MLCH or MLCH) referred 2 498 suspicious transaction reports (STRs) for pre-trial investigation, of which 64% related to economic crimes. The most common offences in the reports referred for pre-trial investigation in 2006 were tax fraud (39%), narcotics offences (15%), fraud (10.7%), ML (10.3%), dishonesty by a debtor (5.9%), pandering (5%), fraud by a debtor (3.2%) and accounting offences (2.4%).

17. In 2003 the MLCH published a study titled "ML offences in legal praxis", which was updated in 2006. The study, which will be updated again in 2007, attempts to cover all the judgments and confiscation orders concerning ML since 1994. The study focuses on the modus operandi of ML, problematic interpretation issues in the legal practice and the amendments of the *Penal Code*. In most of the cases covered by the study, the investigation started without a suspicious transaction report⁵.

⁵ The study is available in Finnish at www.rahanpesu.fi.

Figure 1: STRs received by the MLCH



Suspicious transactions in the reports

18. Suspicious transactions are classified into different groups according to their nature. The classification is based on the reasons the obliged parties have given as grounds for reporting. In recent years the number of reports relating particularly to the transfer of funds and gambling has increased. In June 2003 a new classification item, currency transfer, was introduced in the MLCH. It refers to payment transfers from Finland to other countries and from other countries to Finland made by money transfer and money exchange businesses and entities other than banks. Earlier currency transfer reports were classified as currency exchange. In 2006 the number of currency transfer reports increased by over 4 500 from the previous year. Similarly, the reports related to gambling have increased almost by 1 000 units. Other forms of suspicious transactions have remained at the level of the previous years.

19. The number of suspicious transaction reports forwarded for pre-trial investigation as suspected ML changes considerably from one year to another. In 2006, such reports totalled 104, representing 13.4% of all the reports referred for pre-trial investigation.

Table 1: Types of financial activity noted in the STRs

TRANSACTION TYPE	2004	2005	2006	2006 %
Opening of an account	41	40	30	0.3
Cash deposit	142	147	200	2.1
Cash withdrawal	98	84	91	0.9
Domestic bank transfer	89	94	102	1.0
Circulation of funds	58	118	16	0.2
Bank transfer to another country	92	90	24	0.2
Bank transfer from another country	45	45	69	0.8
Other banking transactions	16	12	25	0.2
Financing business	3	1	2	0.1
Currency exchange	498	407	1 166	12.0
Currency transfer	1 398	1 454	6 008	61.7
Investment	6	10	10	0.1
Insurance	4	3	14	0.1
Purchase of real estate/shares in a housing company	14	14	25	0.3
Trade in movables		5	9	0.1
Gambling	1 062	870	1 820	18.7
Transport of cash	107	59	65	0.7
Other suspicious transaction	49	42	66	0.7
TOTAL	2 204	3 495	9 742	100

Table 2: Offences noted in the STRs referred for pre-trial investigation

OFFENCE	2004	2005	2006	2006 (%)
ML	5	3	104	13.40
Economical crime	289	267	1 431	56.40
Narcotic offence	138	48	374	6.70
Others	119	67	436	23.60
TOTAL	551	385	779	100

Natural persons and legal persons in the reports by areas of origin

20. The number of persons registered in the ML database has increased steadily. At the end of 2006 more than 16 000 persons had been entered in the database. Increasingly, ML reports note that one of the parties involved is a foreigner. There were 120 nationalities in the reports received in 2006; 37.1% were Finns, 4.7% Russians and 2% Estonians. After the neighbouring areas of Finland, the most numerous groups of foreigners were Asians, Africans, and persons of European origin. The reason for not knowing the nationality of certain persons is that in international money transfers, the reporting party does not know the nationality of the person receiving the funds.

Table 3: Areas of origin of natural persons

	2004	2005	2006	2006 %
Finland	1 919	1 779	3 131	37.10
Russia	374	320	393	4.70
Estonia	364	245	170	2.00
Asia	274	451	502	6.00
Africa	173	233	425	5.00
Rest of Europe	147	313	284	3.40
Middle East	79	82	251	3.00
South and North America	60	147	110	1.30
Australia and New-Zealand	3	4	3	0.10
No citizenship	6	4	9	0.10
Unknown	176	180	3 150	37.40
TOTAL	3 575	3 758	8 428	100

21. The reports received in 2006 contained more legal persons than in the previous years. This may signify that crime is committed more and more often behind the façade of legitimate business. Most of the legal persons were Finnish. The next most numerous were Estonian and Russian companies. Only a few legal persons were registered elsewhere.

Table 4: Legal persons by registration place in 2004-2006

	2004	2005	2006	2006%
Finland	630	682	762	66.80
Russia	109	123	193	16.90
Estonia	37	9	16	1.40
Rest of Europe	50	42	57	5.0
Middle East	21	11	15	1.30
South and North America	11	14	14	1.20
Asia	5	2	5	0.40
Africa	2	1	5	0.40
Australia and New Zealand	1	1	-	-
Unknown	31	21	76	6.60
TOTAL	897	906	1 143	100

Assets included in the reports

22. In addition to the nature of the transaction, an STR often indicates the sum of the funds involved. In 2006 the total value of the reported transactions was EUR 479 954 444. The largest sum was about EUR 200 000 000, the average sum reported was EUR 49 818 and the median EUR 2 828. Only 14% of reports concerned transactions of more than EUR 35 000, the transactions in most reports being fairly small. The suspicious transaction reports included 30 different currencies. The most common being the Euro, US Dollar and Swedish Crown.

Table 5: Funds in the ML reports

	2004	2005	2006	2006 %
Under EUR 10 000	2 580	2 216	8 191	85.00
EUR 10 000 – 35 000	740	784	983	10.20
EUR 35 000 – 85 000	186	193	189	2.00
EUR 85 000 – 170 000	58	69	114	1.20
Over EUR 170 000	84	99	157	1.60
TOTAL	3 648	3 361	9 634	100

Amount laundered

23. While the amount of money laundered in Finland cannot be precisely determined, some indication may be seen from the value of transactions suspended by the MLCH and the amount of property recovered from these transactions. In 1998-2006 the MLCH gave a total of 102 decisions on suspension of transaction with a total value of EUR 38 891 169. Of this amount, property worth EUR 9 763 586 was recovered by the authorities. In 2006 the MLCH gave 13 orders concerning suspension of transactions for a total value of EUR 23 657 948. From those orders the authorities recovered criminal proceeds for a total of EUR 517 017.

24. The MLCH may also apply the interim measures provided in the *Coercive Measures Act*. In 1998-2006 the MLCH seized property with a total value of EUR 8 667 753 using the interim measures. In 2006 the total of the criminal proceeds recovered by the MLCH as a result of interim measures was EUR 1 316 110.

Economic offences in Finland and total economic loss and damage resulting of these offences

25. There is a significant concern in Finland about economic crimes such as bankruptcy and accounting offences and tax fraud. It is estimated that the damage caused by financial crime and the black economy amounts to over EUR 5 billion every year. Approximately one half of this sum comprises tax losses and the other damage to business and private consumers. Such damage is likely to increase rapidly in the future, for example because of new types of criminal opportunities provided by globalisation and information technology.

26. In 2005, the Police recorded 1 723 offences of this kind, which was about 28% less than the year before. The changes in the level of control have had a substantial impact on the annual changes in the number of recorded economic crimes in Finland. Still, the overall decreasing trend of recorded economic crimes since the depression years of the early 1990s (their numbers have decreased about 15% since the mid-1990s) can also be partly due to the diminishing volume of actual economic crime.

27. In recent years, the estimated financial damage caused by financial crime investigated by the Police and customs has varied between EUR 65 million and EUR 115 million. In 2005, the reported financial damage associated with cases forwarded for investigation was EUR 91 million. Property was seized that year in connection with suspected financial offences to a value of EUR 49 million, including sequestrations, whereas the value of recovered property was EUR 47 million. The table below shows the estimated amount of proceeds of crime, seizures and value confiscated for investigations of financial crimes launched by the Police and Finnish Customs each year.

Table 6: Proceeds of crime, seizures and confiscations in financial crime cases, 2002 - 2005 (million Euro)

	2002	2003	2004	2005
Financial crime damage	68.60	77.00	105.50	91.50
Seizures	48.70	17.40	72.20	49.30
Recovered property	32.40	25.20	35.30	46.80

Transfers across the Finnish borders

28. Funds were transferred abroad in almost 63% of all the STRs received (9 742). In 85.3% of these cases, the funds were transferred from Finland to another country. Funds to Finland were

transferred from 68 different countries and funds from Finland were transferred to 132 different countries. In most of the cases, with funds transferred to Finland, the country of origin was Russia and Sweden. The destination countries of the transfers were most often Germany, Sweden, Thailand, Estonia and Russia. Estonia was significantly more often the destination country for funds transfers.

29. The total amount of the funds transferred to Finland was more than EUR 31.7 million (in 2005 about EUR 16 million) and from Finland to other countries, a little less than EUR 26.2 million (in 2005 about EUR 9.2 million).

Table 7: Number of money laundering reports involving international funds transfers

	2004	2005	2006	2006 (%)
To Finland	181	151	906	14.70
From Finland	1 324	1 410	5 230	85.30
TOTAL	1 505	1 561	6 136	100

Terrorist Financing in Finland

30. As a member of the United Nations, the EU and the FATF, Finland is under various obligations to implement applicable CFT measures. Finland has implemented among other things the *1999 UN Convention for the Suppression of the Financing of Terrorism*. The *Penal Code* was amended at the beginning of 2003 with a new chapter on terrorist offences (chapter 34a). Among the new offences is an autonomous terrorist financing offence, which covers both the provision and collection of funds, directly and indirectly, in support of a terrorist act.

31. In order to combat TF, a reporting obligation similar to the one for combating ML was implemented on 1 June 2003 through extension of the scope of the *Act on Preventing and Clearing Money Laundering No. 68/1998* (the *AML/CFT Act*). Since that date, the obliged parties when suspecting financing of terrorism have the same obligations as when they suspect ML: to identify the client, exercise due diligence and report suspicious transactions to the MLCH. As TF may be conducted with legally acquired funds, when reporting a suspicious transaction, since June 2003, the obliged parties have had to consider more carefully the destination of the funds included in the transaction. The suspicious transaction reports received by the MLCH show that more attention is being paid to the destinations and potential use of the funds than previously.

32. The MLCH has received reports from national and foreign authorities on persons, entities or groups, that might be suspected of connections to TF and that are mentioned in the relevant UN Security Council Resolutions and European Union regulations. In 2002, there were 496 such reports; in 2003, 512 reports; in 2004, 593 reports; in 2005, 166 reports; and in 2006, 233 reports. Thus far, the MLCH has not found any links between the parties involved in these reports and Finland. The persons in the reports mainly originate from Africa with the second greatest number from Asia. Europeans make up 18% of those suspected of TF. The number of persons whose nationality is unknown has diminished in the last two years, as more attention has been paid to their identification.

33. The reports of 2002, 2003, 2004 and 2005 involved 94, 114, 268 and 6 legal persons respectively, while the report of 2006 involved 109 legal persons registered. 23.7% of these legal persons were registered in Europe, about 10% in South or North America and about 12.4% in Asia.

1.3 Overview of the Financial Sector and DNFBP

a. Overview of Finland's financial sector

Table 8: Institutions conducting financial activities outlined in the Glossary of the FATF 40 Recommendations

TYPE OF FINANCIAL ACTIVITY (See the Glossary of the 40 Recommendations)	TYPE OF FINANCIAL INSTITUTION AUTHORISED TO PERFORM THIS ACTIVITY IN FINLAND
A. Acceptance of deposits and other repayable funds from the public (including private banking).	All banks (savings and limited liability savings banks, co-operative banks and commercial banks).
B. Lending (including consumer credit; mortgage credit; factoring, with or without recourse; and finance of commercial transactions (including forfeiting)).	All banks (savings and limited liability savings banks, co-operative banks and commercial banks), pawnshops.
C. Financial leasing (other than financial leasing arrangements in relation to consumer products).	All banks (savings and limited liability savings banks, co-operative banks and commercial banks).
D. The transfer of money or value (including financial activity in both the formal or informal sector (e.g. alternative remittance activity), but not including any natural or legal person that provides financial institutions solely with message or other support systems for transmitting funds).	All banks (savings and limited liability savings banks, co-operative banks and commercial banks), currency exchange and money remittance firms, and the Grand Casino Helsinki.
E. Issuing and managing means of payment (e.g. credit and debit cards, cheques, traveller's cheques, money orders and bankers' drafts, electronic money).	All banks (savings and limited liability savings banks, co-operative banks and commercial banks), money remittance firms.
F. Financial guarantees and commitments.	All banks (savings and limited liability savings banks, co-operative banks and commercial banks).
G. Trading in: - money market instruments (cheques, bills, certificates of deposit, derivatives, etc); - foreign exchange; - exchange, interest rate and index instruments; - transferable securities; - commodity futures trading.	Banks, investment firms, management firms (asset management only).
H. Participation in securities issues and the provision of financial services related to such issues.	All banks (savings and limited liability savings banks, co-operative banks and commercial banks), the Helsinki stock exchange, the Finnish Central Securities Depository Ltd., investment firms.
I. Individual and collective portfolio management.	Banks, investment firms, mutual fund companies
J. Safekeeping and administration of cash or liquid securities on behalf of other persons.	Banks, investment firms, management firms of common funds, brokers and other institutions authorised to operate in the capital markets.
K. Otherwise investing, administering or managing funds or money on behalf of other persons.	All banks (savings and limited liability savings banks, co-operative banks and commercial banks), fund management companies, investment firms.
L. Underwriting and placement of life insurance and other investment related insurance (including insurance undertakings and to insurance intermediaries (agents and brokers)).	Insurance and reinsurance companies.
M. Money and currency changing.	All banks (savings and limited liability savings banks, co-operative banks and commercial banks), currency exchanges and money remittance firms.

34. The following financial institutions operate currently in Finland.

Table 9: Number of financial institutions and corresponding supervisory authority as at 31/12/2006

FINANCIAL INSTITUTION	#	AML/CFT SUPERVISOR
Banks	336	Financial Supervisory Agency
Financing institutions	11	
Finnish branches of foreign credit institutions	25	
Investment firms	39	
Finnish branches of foreign investment firms	3	
Mutual fund companies	27	
Paws shops	11	
Life insurance companies	15	Insurance Supervisory Agency
Non-life insurance companies	26	
Non-life insurance associations	90	
Insurance brokers	314	
Finnish branches of foreign insurance companies	22	
Money transfer / money exchange services	45	State Provincial Office of Southern Finland (registration)

35. A **credit institution** can be a deposit bank, a financing institution or a payment institution. The *Act on Credit Institutions* (30.12.1993/1607) regulates the business of credit institutions. The act applies to credit institution activity where negotiable funds are accepted from the public as well as when credit and other financing is offered for own account, or when general payment transmission is carried on or electronic money is issued. The act also governs the exclusive right of credit institutions to carry on the business of acquiring negotiable funds from the public as well as exemptions relating thereto. An institution other than a credit institution may not carry on business operations where negotiable funds are accepted from the public in another manner than by issuing securities referred to in the *Securities Markets Act* (495/1989) unless otherwise provided for.

36. A **deposit bank** may be a limited company, a co-operative or a savings bank. It must belong to a deposit-guarantee fund. A deposit bank is an authorised credit institution which may also accept deposits from the public. Deposit banks may undertake the following activities:

- Acquisition of deposits and other repayable funds from the public.
- Other acquisition of funds.
- Granting of credits and other forms of financing as well as other facilitating of financing.
- Financial leasing.
- General payment transmission and other payment transactions.
- Issuance of electronic money, related data processing and storing of data on an electronic device on behalf of another undertaking.
- Collection of payments.
- Currency exchange.
- Trustee operations (legal services in connection with and related to financial services).
- Trading in securities trading and other securities operations.
- Guarantee operations.
- Credit reference activity.
- Brokerage of shares and participations in housing corporations, and savings related to real estate.
- Other activity comparable to the activities referred to in the *Act on Credit Institutions*.

37. A **financing institution** is an authorised credit institution that may accept negotiable funds other than deposits from the public as well as carry other business activities referred to in the *Act on Credit Institutions* and related activities other than accepting deposits from the public. A financing

institution may not accept from the public other funds payable on demand otherwise than in connection with general payment transmission and the issuance of electronic money. A financing institution may carry on mortgage credit banking activity as provided for in the *Act on Mortgage Credit Banks No. 1240/1999*. A financing institution may be a limited company, a co-operative or a mortgage society referred to in the *Act on Mortgage Societies No. 936/1978*.

38. A *payment institution* is an authorised credit institution that may provide general payment transmission activity or may issue electronic money. Only the banks offer general payment transmission services. Currently there are no electronic money institutions in Finland.

Overview of the banking sector

39. In Finland there are approximately 360 credit institutions (banks and financing institutions such as mortgage, leasing, factoring and credit card companies). The main bank groups are Nordea Bank Finland, Sampo Group, OP Bank Group, savings banks (including Aktia), local co-operative banks and the Bank of Åland plc. The Finnish banking sector is highly concentrated, with the three main players accounting for more than 80% of the total market. The main bank groups also provide a substantial proportion of investment services and they own investment firms and mutual fund companies. There are 39 savings banks and 42 local co-operative banks that form a group with mutual IT-services and product development. Some new credit institutions have been established in Finland in recent years. These new banks focus mainly on retail customers or investment services and are rather small players in the market. Mortgage banks have recently become more active, and, although their importance is still limited, they are expected to grow in the future.

40. Nordea is the largest of the financial groups, with a market share of approximately 40%. Nordea Bank Finland plc belongs to a conglomerate of banks, insurance and investment companies owned by Nordea Bank Sweden Plc. The group has branches and subsidiaries in EU countries, USA, Singapore and Russia. Sampo Bank Group consists of Sampo Bank plc in Finland and its subsidiary banks in the Baltic countries and Russia and a number of investment firms. In November 2006 Sampo plc signed an agreement to sell all Sampo Bank plc's shares to Danske Bank A/S. The transaction comprised all companies in the Sampo Bank Group, including the Finnish Sampo Bank plc and its subsidiary banks operating in the Baltic countries and Russia, as well as various investment services companies. OP Bank Group comprises 232 independent member co-operative banks and the Group's statutory central institution, OP Bank Group Central Co-operative. OP Bank Group operates mainly in the domestic banking and insurance market. OKO Bank (part of OP Bank Group) merged with the insurance company Pohjola in 2006. Insurance business (life and non-life) is now an important part of OP Bank Group's operations.

41. Foreign credit institutions are also present in the Finnish market. Swedish Handelsbanken also has a growing position in the Finnish market. The rest of the branches of foreign credit institutions concentrate on corporate lending and play only a minor role.

42. Competition in the Finnish banking markets is high. All large institutions have strong growth-oriented strategies, which have been realised through narrowed interest margins, especially in the housing loan market. There has also been downward pressure on customer fees. In recent years, Finnish markets for mutual funds and voluntary pension schemes have been growing rapidly, and banking groups compete for market share also in these areas.

43. In Finland, the Deposit Guarantee Fund is regulated by law, and all deposit banks must be members of the Fund. Deposits are guaranteed up to EUR 25 000 per depositor per bank. The deposit guarantee scheme covers deposits from the general public. Deposit balances in excess of EUR 25 000 are guaranteed only if they derive from the sale of a residence in own use and the money is deposited no earlier than six months prior to insolvency of the bank. The Fund is financed by yearly payments by banks. Member banks of the Fund may also be required to provide loans to the

Fund. No bank has a specific quota in the Fund. Rather, all assets of the Fund are available to cover all losses of customers of any member bank.

Table 10: Banking groups operating in Finland, as at 31/12/2005

	BALANCE SHEET (MILLIONS OF EURO)	PERSONNEL (GROUPS)	BRANCHES (DEPOSIT BANK)
Domestic banks		28 976	1 567
Nordea Bank Finland ⁶	123 711	8 910	318
OP Bank Group ⁷	52 845	11 973	680
Sampo ⁸	42 985	4 369	122
Savings banks	5 358	1 106	197
Aktia Savings bank	4 554	814	74
Local co-operative banks	3 231	715	142
Bank of Åland	2 170	472	26
Evli Bank	612	289	3
eQ Bank	540	127	1
Kaupthing Bank Finland ⁹	135	90	1
AsuntoHypoPankki	475	30	1
Tapiola Bank	330	42	1
Gyllenberg Private Bank ¹⁰		39	1
Branches of foreign banks		949	49
Danske Bank	326 400	61	1
Skandinaviska Enskilda Banken	210 471	147	1
Handelsbanken	167 500	582	36
DnB NOR Bank	135 607	5	1
Carnegie AB		51	1
Citibank		44	2
Deutsche Bank		17	1
Calyon		14	1
HSH Nordbank		14	1
Norddeutsche Landesbank ¹¹		6	1
EFG Investment Bank		2	1
Forex Bank			1
FöreningsSparbanken (Swedbank)		6	1
TOTAL		29 925	1 616

44. **Investment Firms** - The *Act on Investment Firms (579/1996)* regulates the provision of investment services: securities brokerage, market-making, securities dealing, underwriting, asset management and placing the issues. Investment services may be provided only by an authorised Finnish limited company (an investment firm), a Finnish management company (only asset management), a Finnish credit institution in accordance with the *Act on Credit Institutions No. 1607/1993* or a foreign investment firm, credit institution or financial institution. In addition to the core services mentioned above, service providers can provide ancillary services according to Council Directive on investment services in the securities field (93/22/EEC). The number of Finnish investment firms was 40 by the end of 2006. Four fund management companies provide asset management services in Finland. Finnish credit institutions are allowed to provide investment services according to their authorisation as a credit institution. All Finnish service providers are obligated to belong to the investor-compensation fund.

45. **Mutual Fund Companies** - The *Act on Common Funds (48/1999)* regulates management companies carrying out common fund activity. A management company may establish one or more common funds. A management company may also provide asset management, investment advice and custody and administration services of units in common funds and as provided for in the *Act on*

⁶ Nordea Bank Finland belongs to the Nordea Bank Group.

⁷ Includes the staff of the Pohjola insurance companies (2 788 employees).

⁸ Figures relate to staff and number of branches linked to banking activity. As of 31 December 2005 Sampo Bank plc became owner of the investment service companies of the Sampo plc (holding company).

⁹ Kaupthing Bank Finland belongs to the Kaupthing Bank Group.

¹⁰ Subsidiary owned by SEB.

¹¹ From 2 January 2006 Bank DnB NOR A/S.

Investment Firms. Authorisation to act as a management company can be granted only to a Finnish limited liability company. The assets under management in Finnish management companies have grown steadily: EUR 34.4 billion at the beginning of 2005; EUR 44.7 billion by the end of 2005; and, EUR 60.9 billion by the end of 2006. The growth in assets under management was 36% in 2006, being the second largest growth rate in Europe. 74% of this growth came from new investments. At the beginning of 2006 there were 467 funds managed by Finnish fund management companies and by the end of 2006, this had increased to 502. During that year 58 new funds were established and a number of fund mergers occurred as part of company restructuring by some of the largest fund management companies in Finland. There were 27 fund management companies by the end of 2006. The newer fund management companies established in the past few years have mainly been small companies managing only one or two highly specialised non-UCITS funds.

46. **The Helsinki Stock Exchange Ltd, HSE** - The HSE is the licensed stock exchange in Finland and is supervised by the Finnish FSA. The HSE has no operative role or responsibility in relation to AML/CFT. However, all its members are subject to regulation in this area.

47. **The Finnish Central Securities Depository Ltd - APK** is the authorised clearing organisation and central securities depository in Finland, and it is supervised by the FSA. In its role as a central securities depository, APK is covered by the ML legal regime.

48. **Pawnshops** - There are 11 pawnshops governed by the *Act on Pawn Shops*. Pawnshops grant small loans against secure collateral. Their combined loan portfolio is around EUR 17 million.

49. **Money Transfer businesses** - Businesses or professions practising other payment transfer services than payment intermediation referred to in the *Credit Institutions Act* are registered at the State Provincial Office of Southern Finland. There are 45 registered money transfer and money exchange companies.

Table 11: FSA supervised entities, as at 31/12/2005

	NUMBER	BALANCE (x 1 000 €)
Commercial Banks	13	170 299 023
OP BANK Group Central Co-operative	1	52 844 538
Member banks of the OP Bank Group	232	32 712 589
Local Co-operative banks	42	3 231 539
Savings banks	39	5 019 554
Limited liability savings banks	3	4 378 970
Financing Institutions	11	29 266 614
Investment firms	39	80 000 000 ¹²
Mutual fund companies	27	44 700 000 ¹³
Finnish branches of foreign credit institutions	25	12 648 404
Finnish branches of foreign investment firms	3	20 000 000 ¹⁴
Finnish representative office of foreign credit institutions	1	
Marketplaces (Helsinki stock exchange)	1	
The Finnish Central Securities Depository Ltd, APK	1	
Pawnshops	11	20 000
Deposit guarantee and investor compensation funds	5	

50. **Life and non-life insurance** - Life and non-life insurance companies are governed by the *Finnish Insurance Companies Act (1062/1979)*. The act is under reform, and the new version is expected to come into force in 2008. Non-life insurance associations are governed by the *Finnish Insurance Associations Act (1250/1987)* which came into force on 31 December 1987. In life insurance the most important insurance products are pure risk, endowment and pensions (life-annuity) insurance. All savings contracts are offered both as traditional with interest guarantees and unit-

¹² Total assets under management include EUR 44.7 billion in mutual funds.

¹³ Total fund assets.

¹⁴ Assets under management.

linked. In non-life insurance the most important insurance classes are third party motor liability, workers' compensation, fire and other damage to property and land vehicles.

51. **Insurance Brokers** - Insurance brokers are governed by the *Act on Insurance Mediation (570/2005)*. When the act came into effect in 2005, the ISA brought into use a new register for intermediaries, covering both insurance brokers and insurance agents. Insurance brokers are defined as natural or legal persons, who represent clients' interest. Insurance agents act on behalf of and under full responsibility of insurance companies.

Table 12: ISA supervised entities, as at 31/12/2005

	# OF ENTITIES	PREMIUMS (1 000 €)
Non-life insurance companies	25	2 982 823
Non-life insurance associations	92	152 808
Life insurance	15	3 094 872
Pension companies	7	8 045 703
Intermediaries (brokers)	76	-

Table 13: Significant Insurance Companies in Finland

COMPANIES	PREMIUMS WRITTEN (1 000 €)
Non-Life Insurance	
If P & C Insurance Company Ltd.	872 210
Pohjola Non-Life Insurance Company Ltd.	704 285
Tapiola General Mutual Insurance Company	588 942
Fennia Mutual Insurance Company	296 756
Localinsurance Mutual Company	129 757
Life Insurance	
Nordea Life Assurance Finland Ltd.	969 742
Sampo Life Assurance Company Limited	646 273
OP Life Assurance Company Ltd.	639 775
Pohjola Life Insurance Company Ltd.	333 972
Tapiola Mutual Life Assurance Company	141 151
Pension Insurance	
Varma Mutual Pension Insurance Company	2 764 239
Ilmarinen Mutual Pension Insurance Company	2 348 076
Tapiola Mutual Pension Insurance Company	1 168 060
Mutual Insurance Company Pension-Fennia	808 462
Etera Mutual Pension Insurance Company	671 561

DNFPBs

52. **Gaming operators** - According to s.11 of the *Lotteries Act (1047/2001)* gaming licences are granted for the purposes of gaming activities in order to provide legal protection for those who engage in gaming activities, to prevent abuse and criminal activity and to reduce social problems created by gaming. A gaming licence may be issued separately: *i*) for running money lotteries, pools and betting; *ii*) for keeping slot machines available for use, operating casino games and running casino activities; and *iii*) for operating totalisator betting. A gaming licence is granted for the sole use of the holder and only one licence is granted at a time. Gaming licences are granted and revoked by the Council of State and may be issued for a maximum of five years.

53. Gaming licences have been granted for the period 1 January 2007 to 31 December 2011 to three gaming operators: Veikkaus Oy, Slot Machine Association (RAY) and Fintoto Oy. The gaming licence for running money lotteries, pools and betting has been granted to Veikkaus Oy. The licence for keeping slot machines available for use, operating casino games and running casino activities has been granted to RAY and the licence for operating totalisator betting has been granted to Fintoto Oy. Veikkaus Oy and Fintoto Oy have Internet gaming services, where almost all their games are available. The player has to register to be able to play on the Internet and the age limit for all gambling activity is 18 years. The identity of a player is checked from the Population Register

Centre. There are also stake limitations. For example, Veikkaus Oy has proposed stake limits of EUR 100 daily for live betting on the Internet.

54. There is one casino in mainland Finland, Grand Casino Helsinki, which is run by RAY. RAY does not run casino games on the Internet. No licences for operating casino games on the Internet have been granted. According to s.62(2) of the *Lotteries Act* it is prohibited to sell or supply tickets for a lottery run without a licence required under this act or to promote such a lottery by publishing or distributing related advertising. RAY's gaming revenues in the year 2005 were EUR 648.4 million and profit EUR 404.5 million. Slot machines generate more than 90%, casino games in clubs almost 5% and Grand Casino Helsinki around 4% of revenues. A total of EUR 400.5 million of revenues has been used to promote health and social welfare. EUR 295.5 million has been distributed in funding assistance to voluntary organisations and EUR 105 million was transferred to the State Treasurer for use in providing care and rehabilitation for war veterans. Veikkaus Oy's turnover in the year 2005 was EUR 1.3 billion, and Fintoto Oy's was EUR 195.8 million.

55. It should be noted that the province of Åland Islands has a special status in Finland as a demilitarised, self-governing region. Due to this autonomy, Åland has enacted its own *Lotteries Act No. 10/1966*, which is separate from the Finnish legislation. By the virtue of this act, the Åland Government has granted the province's Slot Machine Association, *Ålands Penningautomatförening* (PAF) a licence for operating casino and gaming activity on Åland, onboard ships and on the Internet. PAF applies the Finnish *AML/CFT Act*. (See section 4.1 for further discussion of this issue.)

56. **Real estate agents** - In accordance with s.3 of the *Act on Real Estate Businesses and Apartment Rental Agencies* (1075/2000), real estate and apartment rental businesses must be entered in the relevant register of the State Provincial Office before they start their operation. In accordance with s.7 of the above act, the State Provincial Office keeps a register on the real estate and apartment rental agencies. Under s.5 of the same act, there must be a responsible person in the agency to see that good business practices are observed and that the activities comply with the law. The responsible person also has to see that every branch of the agency has a person with professional qualification referred to in subsection 3 and that other persons participating in the activities have the required proficiency. Only a person having passed the exam of the Central Chamber of Commerce may work as a responsible person of such an agency. Under s.17 of the same act, the appropriate State Provincial Office supervises the compliance with the law. In accordance with s.18, the State Provincial Office may use coercive measures and prohibit the activities of an agency that has not been registered, give a warning or impose a fine for non-compliance with relevant legislation.

57. **Dealers in precious metals and precious stones** - Any articles made from precious metals sold in Finland must meet the requirements prescribed in the relevant Finnish statutes (*Law on Articles of Precious Metals* (1029/2000), *Government Decree on Articles of Precious Metals* (1148/2000)). The national statutes apply both to articles manufactured in Finland and to imported products. The Safety Technology Authority (TUKES) monitors the sale and import involving articles of precious metals. TUKES supervise the conformity of products to protect the consumer and promote fair competition in the jewellery trade. Any company or individual entrepreneur intending to manufacture or import of articles made from precious metals is required to apply for a label from TUKES. There is no specific legislation concerning precious stones in Finland. Hence, this field is not monitored separately in general or as for obligations set forth in the *AML/CFT Act*. The *Consumers Protection Act* and the regulations of the Consumer Ombudsman also apply to commerce in precious metals and stones.

58. **Lawyers, notaries and other independent legal professionals** – In Finland (as in Sweden and Estonia), professionally supervised lawyers do not have a monopoly in the provision of legal services. The general procedural legislation relating to the qualification of attorneys and counsel was tightened in early 2006 in the context of legal aid reforms. In principle all counsel must have a Master of Laws degree. These new qualifications concern only acting as an attorney and counselling at courts however, and legal advice outside the courts may still be offered by anyone. The so called 'agents',

who are persons without legal training but who work in the business of legal advice, commonly concentrate on counselling in specialised areas.

59. The number of lawyers in Finland is about 16 000, of which almost 75% are members of the Association of Finnish Lawyers. The Association of Finnish Lawyers is a professional association that operates in the interest of lawyers, develops and maintains professional their skills and influences legal policy. More than half of the Finnish lawyers work in the public sector and 50% of these are employed within the court system.

60. The Finnish Bar Association is regulated by the *Act on Advocates* (496/1958). A registered association with the same name preceded the organisation. The Bar Association has about 1 570 members, who are designated as "advocates" (in Finnish: *asianajaja*; in Swedish: *advokat*). Law firms additionally employ about 550 associates. Of the advocates, about 120 are public legal advisers. Legal aid offices also employ more than 100 legal advisers who are not members of the Bar Association. The Finnish Bar Association is in charge of the professional supervision of advocates, other lawyers acting in the advocate offices and public legal advisers.

61. Anyone applying for membership in the Bar Association must have completed a Master of Laws degree and must be known to be a person of integrity. Further, s/he must have several years experience in the legal profession and other judicial duties and must pass a special examination on the elements of the legal profession and professional ethics. Only members of the Bar Association may use the professional titles *asianajaja* or *advokat*. An advocate is independent and autonomous in relation to all other parties except his client. Responsibilities of an advocate and supervision of his practice in terms of penal or indemnity liability do not differ in principal from those of other citizens. Every advocate must, however, take out liability insurance to cover potential damages arising from anything but premeditation or gross negligence. The Board of the Bar Association must verify that advocates fulfil their duties according to professional ethics and the Bar Association may undertake disciplinary actions against its members for breaches of ethical conduct. Such procedures usually commence with a written complaint. The Chancellor of Justice is informed of Bar Association decisions, and he may file appeals regarding these decisions with the Appellate Court of Helsinki.

62. Practising lawyers who are not members of the Bar Association may not have met the requirements for an advocate, or may prefer not to be subject to such obligations. Lawyers who are not members of the Bar may include those recently graduated from university, those who have just started practising or have just transferred from other fields of law, and part-time lawyers. A lawyer who has been dismissed from the Bar Association may still pursue his profession under other professional titles; in this case, however, s/he practises outside the supervision of the Bar Association.

63. *Public legal advisers:* Public legal advisers are lawyers, who as civil servants offer legal services free of charge or with a partial charge to individuals who are unable to afford private legal counsel. In principal the public legal advisers help clients in all legal matters. The law provides that a public legal adviser must have a Master of Laws degree and sufficient experience from the work as a lawyer or a judge. As mentioned above, the Finnish Bar Association is in charge of the professional supervision of advocates, other lawyers acting in the advocate offices and public legal advisers.

64. *Law offices and the comparable offices:* In addition to the advocate offices, law offices and other comparable entities offer legal services as their main business. Most law offices and the comparable offices are one-person enterprises. As at April 2006, approximately 600 to 700 lawyers offer legal services in law offices and corresponding entities.

65. *Others offering legal services:* Legal services are also offered along with other business services. In these cases the services relate to the main business of the enterprise. Examples of these

are the notarial business of the banks, real estate, debt collection, property management, accounting and undertaker's offices¹⁵.

66. **Accountants** - Nearly all corporations and foundations in Finland must keep accounting records. In addition, a natural person engaged in business or professional activities must keep records of these activities. Relevant Finnish legislation for the accounting profession includes the *Accounting Act (1336/1997)*, the *Accounting Ordinance (1339/1997)* and the *Ordinance on the Accounting Board (784/1973)*. There are additional special accounting provisions in other acts and norms are established in decisions of the Ministry of Trade and Industry. The present *Accounting Act* is based on the fourth and seventh EC company law Directives, the 'Annual Accounts and Group Accounts Directives', which govern the contents of financial statements. Current accounting basically remains subject to national regulation. The general purpose of financial statements is to give a true and fair view of the return on the activities of the reporting entity and on its financial status.

67. There is no regulation concerning the profession of accountants or their supervision. However, if the legal obligations concerning accounts are breached by an accounting professional, he or she may be charged with an accounting infraction (s.4, chapter 8, *Accounting Act*) or offence, an aggravated accounting offence, or a negligent accounting offence (s.9, s.9a, s.10, chapter 30, *Penal Code*). In evaluating possible penal or indemnity liability of an accountant, it is essential to determine if he or she has followed good accounting practices as defined in s.3, chapter 1 of the *Accounting Act*.

68. **The Association of Finnish Accounting Firms** acts as an umbrella organisation for Finnish accounting firms. Its main functions are information, education, looking after members' interests and promoting ethical guidelines for its members. Moreover, the association qualifies the professional bookkeepers through professional examinations. This KLT examination authorises accounting firms and their personnel. However, a significant number of accountants are not professionally organised.

69. **Auditors** - In Finland, requirements for audits and auditors are contained in the *Auditing Act (936/1994)* and the *Auditing Ordinance* as well as Ministerial decrees. The act includes provisions on authorisation and registration of auditors, reporting obligations, independence, secrecy, supervision and penal provisions. More detailed regulations regarding supervision are in the *Auditing Ordinance*. Ministerial decrees provide further details on authorisation requirements. The *Chamber of Commerce Act (878/2002)* underpins the organisation and objectives of the Chamber of Commerce.

70. An auditor has to be a natural person or an authorised firm of auditors. An auditor must have such knowledge and experience about accountancy, economic and legal affairs, as well as auditing, as is necessary in the light of the corporation or foundation. A person lacking full legal capacity, having been bankrupt or banned from business operations, may not be an auditor. The auditing system in Finland comprises HTM auditors, authorised by the Chamber of Commerce and KHT auditors, authorised by the Central Chamber of Commerce. An authorised KHT auditor will typically audit large and medium size enterprises as an employee of a KHT audit firm applying both national and international auditing standards. For both categories of authorised auditors a certain educational background, professional experience and an examination of professional competence is required. The detailed requirements are prescribed in the regulations given by the Ministry of Trade and Industry. All authorised auditors (KHT and HTM auditors as well as KHT and HTM audit firms) are entered in a public register, held by the Ministry of Trade and Industry. At the beginning of 2007, there were 712 KHT auditors and 760 HTM auditors and 40 KHT and 27 HTM audit firms in Finland. International audit firms are considered KHT audit firms.

71. At least one of the auditors of a corporation or a foundation has to be a citizen of a state in the European Economic Area (EEA)¹⁶, or belong to an authorised firm of auditors referred to in the

¹⁵ In Finland some undertaker's offices offer legal counselling concerning matters relating to the estates of deceased persons. Most commonly undertaker's offices will make estate inventories on behalf of the heirs

Auditing Act. The obligation to use an authorised auditor or an authorised firm of auditors depends on the size of the corporation or foundation. The accounting legislation does not require an approved auditor be used, and in small enterprises it has always been acceptable to choose auditors without the above qualifications. These auditors must also have such knowledge and experience about accountancy, economic and legal affairs, as well as auditing and the nature and scope of activities of the corporation or foundation. Such auditors have however a similar criminal and indemnity liability as the approved auditors. Under the 1994 legislation, both authorised and other auditors are obliged to observe good auditing practices when carrying out tasks provided in law. This includes compliance with the international auditing standards of the International Federation of Accountants. The Auditing Boards of the Chamber of Commerce supervise that the HTM auditors maintain their proficiency and comply with the law. The Auditing Board of the Central Chamber of Commerce supervises the activities of KHT auditors. No system of supervision exists for the non-authorised auditors.

72. A reform of the *Auditing Act* is underway in Finland. The Government proposal for a new *Auditing Act* and related legislation was submitted to the Parliament on 13 October 2006. The proposal is for a new *Auditing Act* taking into consideration changes in national and EU legislation and other developments of the field of auditing¹⁷.

73. ***Trust and company service providers*** - Trust and company service providers are not regulated in Finnish law. Finland has begun to amend and reform the *AML/CFT Act* in 2006. This law-drafting work will conclude during 2007, at which time the scope of the *AML/CFT Act* is expected to extend to trust and company service providers.

1.4 Overview of commercial laws and mechanisms governing legal persons and arrangements

74. ***Limited companies*** - Limited liability companies, co-operatives and mutual insurance companies are the only corporate forms with limited personal liability in Finland. Limited liability companies are the predominant type of business organisation. Limited liability companies may be private or public. The difference between the two categories is determined by the right of the latter (public companies) to turn to the public to raise capital whereas the former has no right to issue its shares to the general public. One or several founders may establish a limited liability company. A founder may be a physical person or legal person. At least one of the founders must be domiciled within the EEA unless the Registration Authority (National Board of Patents and Registration; PRH) grants an exemption from this rule. A person who is legally incompetent or who has been declared bankrupt cannot be a founder. When a company is incorporated, it must be registered with the PRH, which processes the application and verifies that it is in compliance with the *Companies Act*. If the application is approved, they issue a certificate of registration. PRH also monitors the company register to check that the company has a legally competent board and company auditor and, when it is necessary according to Finnish law, a Managing Director and a person authorised to receive service of process. There need only be a person authorised to receive service of process for those companies which do not have any board members nor a managing director resident within the EEA. If this is not the case, PRH can initiate a liquidation process. A registration number is issued when the process has been completed. The number is used for identification when in contact with authorities and others. The articles of association specify the basis for the company's activities. A copy of the articles of association must be filed with PRH, and it is a public document. Private companies with a share capital of at least EUR 80 000 and public companies must appoint managing directors. In these companies, the same person may not be both managing director and chairman of the board unless the company has a supervisory board. The managing director, at least one the board members, at least one of the deputy members must be resident within the EEA unless PRH grants an exemption from this rule. The board and the managing director are not required by law to maintain ownership

¹⁶ European Union + Norway, Liechtenstein and Iceland.

¹⁷ The new *Auditing Act* and *Accounting Ordinance* implementing the 8th EC Company Law directive entered into force on 1 July 2007.

information beyond that which is kept in the share register. When changes are made in the company's name, type of business activities, address, board members, share capital, etc., these changes have to be registered to PRH immediately.

75. **Partnerships** - Partnerships exist as trading partnerships and limited partnerships, and both of these forms are regulated in *Partnerships Act*. There are no specific provisions relating to partnerships depending on whether the partners have domicile in Finland and/or whether the partnership carries on business in Finland. Trading partnerships and limited partnerships are run by two partners or more. The partners can be legal persons or individuals. In a trading partnership the partners are personally responsible for the company's contracts and debts. In a limited partnership there has to be at least one partner with unlimited responsibility. Trading partnerships and limited partnerships are legal persons and they must be registered at PRH. The registration must contain information about the partnership's activity as well as the identity of the partners. Incorrect or misleading information in a registration or failure to comply with the obligation of registration could be subject to a fine. For a trading partnership or limited partnership to be established the partners have to agree to establish a partnership. This agreement can be made in writing or orally. In practice the agreement has to be made in writing and signed by all the partners because it has to be registered at PRH. If the partnership is terminated or liquidated, the partners are obliged to notify PRH.

76. **Co-operatives** - are legal entities regulated in accordance with the *Co-operatives Act*. They are formed by a minimum of three physical persons or legal entities. For a co-operative to acquire legal capacity it must be registered with PRH. PRH's Trade Register contains the same information on co-operatives as it does on limited liability companies, among other things, the names and addresses of the board members (the only exception is contributed capital of a co-operative which is only made public when annual accounts are registered). After a co-operative has been registered, its liability extends only to the capital assets contributed by its members.

77. **Registration Authority (PRH)¹⁸ and the Trade Register** - All Finnish companies, co-operatives, partnerships and other private business entities must register with PRH's Trade Register. The objective of Trade Register is to provide the public with an updated overview of important information on all business entities registered in Finland, including limited liability companies, co-operatives, mutual insurance companies, partnerships SEs and EEIGs. The *Trade Register Act* establishes the rules for registration. The register includes information on, among other things: the articles of association or partnership agreement, the date of the formation, the registered address, municipality and the board members and deputy board (and if any, supervisory board) members, if any, the managing director, partners of a partnership and the person(s) who signs for the company of the company, co-operative, partnership or another registered business entity. In addition to the trade register mentioned above, the PRH maintains several other registers – all regulated by law – on associations, foundations, persons subject to business prohibition and floating charges.

78. Notifications to the register must be accompanied by certain documents. The PRH then verifies whether submitted notifications are in accordance with the law. Pursuant to the *Accounting Act*, all limited companies, co-operatives and mutual insurance companies (including banks, financial intermediaries, etc.), are obliged to submit their annual accounts and auditor's report to PRH within two months after being adopted by the annual general meeting (AGM). If the annual accounts have not been submitted within 12 months after the end of the financial year, the PRH may force dissolution of the company. The laws relating to the business entity's accounts determine the required content of the annual accounts. The board and, if any, managing director, or partners of a partnership are responsible for ensuring that the accounts meet all requirements. The PRH only checks that all necessary documentation has been attached, and that the accounts have been adopted by the company's or co-operative's AGM. If a company or a co-operative lacks a qualified board or, if any, a managing director or a representative referred to in the act on the right to act as an entrepreneur entered in PRH's trade register, PRH may enforce dissolution of the company or the co-operative.

¹⁸ www.prh.fi

79. The *Trade Register Act* also applies to foreign entities operating a business in Finland through the agency of a local office that is independently run and administered. If such an office is deemed to be a branch under the terms of the act, it must be officially entered into the Trade Register.

80. Any person has the right to access information recorded in the register from the PRH. Part of the information is made public in the PRH's Gazette. All private and public limited companies and co-operatives must establish and maintain an updated register of all shareholders, including name and address. The register of shareholders or members is publicly available. For partnerships, information concerning ownership and control is included in the PRH register. The business ID gained through registration of a company, other business entity or foundation is used for all public business and industry registers, including tax authorities. Through the PRH the public can also gain access to official information about business enterprises in certain other countries. The information is available via the Internet in the European Business Register (EBR).

81. **Non-profit associations** - The Finnish *Constitution* provides a general right to form, belong to and take an active part in associations. This right is guaranteed to all citizens. There is general legislation for non-profit associations. An association must be registered in order to limit the personal liability of the members and board members. After an association has been registered, liability extends only to the assets it holds. If such an association conducts business, it should in certain circumstances also be registered in the Trade Register. In this case the register contains, inter alia, names, personal identity numbers and addresses of the board members, and the persons authorised to sign for the association. In order to qualify as a non-profit association, the association must have another purpose with its business than making profit for its members or management. Due to this extensive definition the non-profit association is used, as a legal form, by as diverse organisations as trade unions, employers' associations, charities, sports associations, voluntary organisations, political parties etc. Membership in a non-profit association does not entitle an individual to any form of ownership of the association's assets. The constitution of a non-profit association must allow the number of members to vary (*i.e.* membership cannot be fixed). Although it is not mandatory to register a non-profit association, almost all of them are registered at PRH's Associations Register. Associations with a "public benefit" purpose may qualify for beneficial tax treatment.

82. **Foundations** - A foundation is a legal entity in Finland. For a foundation to acquire legal capacity it must be registered with PRH. The *Foundations Act* contains rules on how to establish a foundation, about the foundation's administration, auditing, supervision, registration, etc. A foundation deed must be established in writing and signed by the founders. PRH as the registration authority can require the board to fulfil its responsibilities and a failure to comply would be subject to a fine. The PRH may also bring an action for damages against the board on behalf of the foundation. The PRH's Foundations Register contains the same information as that which is maintained on limited liability companies (among other things, the names and addresses of the board members). An authorised auditor is compulsory for all foundations. Foundations with a "qualified public benefit" purpose may qualify for beneficial tax treatment.

83. **Religious Communities** - According to the *Freedom of Religion Act*, a register of religious communities is kept by the PRH. Religious communities that fulfil the requirements set in the law and their registered local communities and congregations are expected to file notifications of establishment, amendment and dissolution with the Register of Associations. Under the reference provisions of the *Freedom of Religion Act*, the *Associations Act* is applied quite extensively to these religious bodies. The aim of the new law has been to harmonise the regulations governing religious bodies with the *Associations Act*, and to create a framework for freedom of religious association. An Expert Board functioning in connection with the Ministry of Education has the task of giving the PRH its opinion whether the purpose and activities of a particular religious community are in compliance with the *Freedom of Religion Act*. A religious community that has been registered in accordance with the law may acquire rights and assume obligations and be party to legal actions before courts or other authorities. Independent parts of a community may also be registered individually.

84. **Trusts** - Trusts cannot be established under Finnish law. For civil purposes, a foreign trust with Finnish resident settlers and beneficiaries will therefore necessarily be governed by the law of a jurisdiction that recognises the concept. The applicable law is the foreign law chosen by the parties or, if none has been chosen, that with which the trust shows the closest connection. Nevertheless, the foreign law in question must be in conformity with Finnish binding laws. There are no obstacles for a Finnish citizen to be trustee of a foreign trust. Also note that all entities that operate as a business in Finland, which would include trustee activities, are obliged to maintain accounting records.

1.5 Overview of strategy to prevent ML and TF

a. AML/CFT Strategies and Priorities

85. The overarching focus of the Finnish AML strategy is to make it difficult for offenders to use the proceeds of crime and make it likely that they will be detected and apprehended if they do so. The AML strategies are also seen to be one of the most efficient means of tackling organised crime, as it prevents criminals from making use of their illegally acquired funds.

86. Finnish authorities believe that the property laundered in Finland is mainly derived from financial and drug-related crime. While there has been no comprehensive estimate made of the laundered proceeds of crime, it is estimated that in recent years the street value of narcotic drugs in Finland is close to EUR 100 million. Correspondingly, the calculated losses caused by financial crime amount to approximately EUR five billion each year. The proceeds of offences committed abroad are also laundered in Finland.

87. After the terrorist attacks of September 2001, international co-operation with respect to combating terrorism was significantly enhanced. Finland has actively taken part in this co-operation. Finland condemns terrorism and subscribes to the view that international terrorism is among the most important security threats all countries face. Terrorism is seen as a threat to human rights, democracy and the rule of law, as well as to internal security and international peace.

88. The Finnish Internal Security Program was drawn up as an inter-ministerial effort under the lead of the Ministry of the Interior in 2004. The Internal Security Program outlines the goals for internal security, including the prevention and reduction of economic crime and the prevention of terrorism, as well as the measures and resources to achieve them. The Program focuses especially on the improvement of co-operation between public authorities, with the aim of increasing the effectiveness of internal security measures and improving the quality of services. Finland emphasises the importance of effective multilateral co-operation in the combat against ML and international terrorism and participates actively in action against ML and terrorism within the framework of the EU, the UN, the Council of Europe, and the OSCE as well as in other international bodies like FATF, Egmont Group, Europol and Interpol.

89. As part of its internal security programme, the Government adopted in February 2006 a resolution on combating financial crime and the black economy in 2006-2009. This programme is a continuation of three earlier similar programmes. According to the programme for combating financial crime and the black economy, special attention should be paid to enhancing the effectiveness of recovering the proceeds of crime. The recovery of the proceeds of crime is considered a socially effective and efficient means of combating financial crime, in particular. Further the lack of seed money for new criminal activity, resulting from successful confiscations, prevents offenders from continuing, or at least makes it far more difficult for them to continue, their criminal activity.

90. Finland is currently in the process of amending the AML/CFT legislation and regulations as required by the 2003 *FATF Recommendations* and *Directive 2005/60/EC of the European parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing* (the 3rd EU ML Directive). A detailed proposal for the new legislation will be presented to the Finnish Parliament during autumn 2007 and the new

Act on Preventing and Clearing ML is expected to be in force in December 2007. The main changes to the AML/CFT measures in Finland are expected to be:

- Revised customer due diligence (CDD) obligations, including provisions dealing with beneficial owners; on-going monitoring of transactions; and, enhanced due diligence relating to PEPs and correspondent banking.
- Application of AML/CFT measures to trust and company service providers and sales of any high value goods when the payment is above EUR 15 000 in cash.
- Introduction of fit and proper requirements for persons who own and direct money transfer and money exchange businesses and introduction of AML/CFT supervision for this sector.
- Introduction of fit and proper requirements for persons who own and direct company service providers, application of registration requirements to these businesses and introduction of AML/CFT supervision for this sector.

b. The institutional framework for combating ML and TF

91. **The Ministry of Finance** is responsible for the preparation of legislation concerning financial markets, *i.e.* credit institutions, investment firms, mutual funds and pawnshops. The Ministry of Finance is responsible for the authorisation and revocation of authorisation of stock and derivative exchanges and the central security depository. The Ministry is also the Finnish representative in the Committee on Prevention of ML and Terrorist Finance of the European Commission.

92. **The Ministry for Foreign Affairs** participates in international co-operation against terrorism and TF within the framework of the EU (common foreign and security policy), the UN and certain other international fora. The Ministry is responsible for the implementation of sanctions imposed by the United Nations Security Council (UNSC) and the EU, including sanctions to combat terrorism, as well as for reporting to the UNSC. Any amendments to the *Sanctions Act* are prepared by the Ministry. The Ministry also organises meetings for inter-authority co-ordination on the implementation of counter-terrorist sanctions and related international obligations.

93. **The Ministry of Interior** is responsible for drafting anti-ML legislation, is in charge of all Police functions and is in command of the Police force in Finland. The Ministry chairs the national FATF Working Group and established the national FATF Committee. The Ministry of Interior co-ordinates the AML/CFT efforts of all Finnish authorities. In addition, the Ministry is responsible for national supervision and legislation regarding of the running of lotteries, (including casino gaming activities) and the arrangements of money collections. See also the notes below under “Casino Supervisory Body”.

94. **The Ministry of Justice** is responsible for the preparation of the penal legislation, including in particular the provisions in the *Penal Code* on ML and terrorist crimes, as well as legislation on extradition, enforcement of foreign confiscation orders and on other forms of international legal assistance in criminal matters. The Ministry of Justice also acts as the Central Authority in granting international assistance in criminal as well as in civil and commercial matters and is responsible for legislation relating to lawyers.

95. **The Ministry of Social Affairs and Health** is responsible for the legislation drafting concerning insurance institutions and products. However, *Insurance Contracts Act* is in the hands of the Ministry of Justice. The ISA acts in the administrative field of the Ministry of Social Affairs and Health, but is autonomous in its decision-making and supervision activities. Further The Ministry of Social Affairs and Health controls and supervises RAY's (Finland's Slot Machine Association) funding activities, including the procedures for preparing the distribution proposal and assistance plan, the payment of assistance and control of its use.

96. **The Ministry of Trade and Industry** is responsible for legislation related to the Trade Register, accounting and auditing.

97. **The Money Laundering Clearing House**, operating within the NBI as the national Financial Intelligence Unit, is the only public authority in Finland empowered to receive reports on suspicious transactions. The duties of the MLCH include the prevention and detection of ML and TF. It therefore establishes whether there is cause to launch a pre-trial investigation or not. It also carries out pre-trial investigation into cases of ML and refers cases for the consideration of charges.

98. **The National Bureau of Investigation (NBI)** is a national Police unit operating throughout the Finnish territory, whose duty is to combat and investigate the most serious professional, organised and international crime and offer specialist services in combating crime to all Police administration and other law enforcement authorities. The NBI is the national centre for the international operational Police co-operation in Finland. Investigation of terrorist offences is conducted jointly by the NBI and the Security Police.

99. The **Security Police** may investigate terrorism-related offences in the interests of protecting state security. It also has the duty to grant assistance and co-operate with other pre-trial investigation authorities in the investigation of terrorist acts in Finland. The main duties of the Security Police are the fight against international terrorism and the prevention of unlawful intelligence gathering carried out in Finland by foreign powers. It also combats internal security threats and carries out preventive security work. The Security Police can be considered Finland's intelligence service.

100. **Finnish Customs** is subordinate to the Ministry of Finance and responsible for the customs control of imports and exports and international traffic and other customs measures, as well as customs and excise duties in accordance with the relevant provisions. Under the *Customs Act*, it is also the competent authority for the investigation of ML offences involving import or export of assets. These offences may be in connection with customs audit or control activities. With the coming into force of European Parliament and Council Regulation (EC) No.1889/2005, Finnish Customs also became the competent authority for controls of cash entering or leaving the Finnish territory.

101. The **public prosecutors** (the Prosecutor-General, the Deputy Prosecutor-General, a State Prosecutor, a District Prosecutor and a Prosecutor for the Åland Islands) have the right to prosecute in all offences with a few exceptions. It is the duty of the prosecutor to see to the determination of criminal liability in the consideration of a criminal case, the assessment of the charges and the trial in a manner consistent with the public interest and the legal safeguard of the parties. A prosecutor is independent in the assessment of the charge in a case being considered by him or her. The Office of the Prosecutor-General is the central administration for the prosecution service. It maintains the operational conditions of the entire prosecution service as a regular central administration agency, as well as functions as the staff of the Prosecutor General. This involves numerous tasks in personnel management and finance, public relations, training and development, as well as international relations and international legal assistance. Further the Office of the Prosecutor General is responsible for the prosecution of terrorist offences (s.7, chapter 34, the *Penal Code*).

102. The **Financial Supervision Authority (FSA)** operates in connection with the Bank of Finland; however, it is an independent decision making body. It grants and revokes authorisation for credit institutions, investment firms, mutual fund companies and pawnshops. It supervises financial markets and participants, and exercises prudential supervisory powers. In addition, the FSA monitors for any ML/TF activity, through both on- and off-site inspections of approximately 500 supervised entities. These include banks and other credit institutions, pawnshops, investment firms, stock and derivative exchanges, book-entry system participants and management companies for mutual funds.

103. **Bank of Finland (BOF)** - The primary objective of the BOF, the central bank, is to maintain price stability in the Euro area and Finland. In its capacity as the overseer of payment systems, the BOF participates in maintaining the reliability and efficiency of payment and overall financial systems. It is only indirectly concerned with AML/CFT, but when performing its primary tasks, the Bank takes into account issues related to ML. Thus, ML issues have been taken into account in relation to the development and creation of regulatory framework for electronic payment systems.

104. The *Finnish Insurance Supervisory Authority (ISA)* - The ISA supervises and controls insurance and pension institutions as well as other operators in the insurance industry. The primary function of ISA is to promote the financial stability of insurance and pension institutions as well as other operators in the insurance industry while maintaining confidence in the insurance business. It carries out both on-site and off-site inspections of insurance companies and intermediaries. The ISA supervises both life- and non-life insurance companies' compliance with AML/CFT requirements. The ISA has a staff of about 73 persons.

105. *Casino supervisory body* - According to s.42 of the *Lotteries Act* lotteries are supervised in order to protect the lottery participants, to prevent abuse and criminal activity and reduce social problems associated with lotteries. The Ministry of the Interior is responsible for national supervision of the running of lotteries and for keeping statistical records on lotteries. The ministry can issue statements and instructions on the running and supervision of lotteries. The ministry's tasks include approval of rules of play and the maximum size of stakes for slot machines and games operated in a casino. The ministry also submits proposals to the Council of State concerning the granting of gaming licences. The ministry's Gaming Administration Unit is for the most part liable for the above-mentioned tasks. The State Provincial Offices and District Police supervise the non-money lotteries run in their own particular areas. According to s.43 of the *Lotteries Act* the Ministry of the Interior appoints official supervisors to supervise the compliance of gaming activities with the rules of play approved under s.14 and confirm the pools, betting and totalisator betting results and amount of winnings in each round. For the supervision of Grand Casino Helsinki, the Ministry of the Interior has appointed eight official supervisors. The Åland Government is responsible for supervision of gaming activities run by PAF (province's Slot Machine Association, *Åland Penningatutomatförening*) on Åland, onboard ships and on the Internet. PAF applies the Finnish *AML/CFT Act*.

106. *State Provincial Offices* - In Finland, State Provincial Offices are State regional authorities directed by seven ministries. They act as general administration, supervisory and security authorities at regional level, performing certain specialist functions. The State Provincial Offices supervise the activities of two obliged parties under the *AML/CFT Act*. Firstly, they monitor compliance with the *Act on Real Estate Businesses and Apartment Rental Agencies* (1075/2000), and the *Act on Assignments for such Businesses* (1074/2000). Real estate and apartment rental businesses must be entered in the relevant register of the State Provincial Office before starting their operation. Secondly, the State Provincial Office of Southern Finland supervises businesses or professions practising payments transfer activity other than payment intermediation referred to in the *Act on Credit Institutions*. Before starting their operation, businesses or professions performing payments transfer activity in Finland must notify the State Provincial Office.

107. *Supervision of auditors* - The Auditing Board of the Central Chamber of Commerce has authorised auditors in Finland since 1925. The Auditing Committees of the regional Chambers of Commerce have authorised auditors since 1950. Audit firms have been authorised by the Auditing Board of the Central Chamber of Commerce and by the local Chambers of Commerce since 1983. According to the *Auditing Act*, the Auditing Board of the Central Chamber of Commerce authorise KHT auditors and KHT audit firms, the Auditing Committees of Commerce authorise HTM auditors and HTM audit firms. The Auditing Board of the Central Chamber of Commerce organise the auditors' examinations for both categories of auditors. The Auditing Board of the Central Chamber of Commerce supervises and takes appropriate measures to ensure that the auditors and audit firms authorised by it maintain their proficiency and other qualifications required for the authorisation and that they observe the *Auditing Act* and any rules given by virtue thereof.

108. The Auditing Board of the State, within the Ministry of Trade and Industry, gives instructions and statements on the *Auditing Act* and related ordinances. The Auditing Board of the State also makes proposals and motions regarding audit regulations and look after the general guidance, development and supervision of the audit function. The Auditing Board of the State also hands down decisions, if an auditor makes an appeal against a decision made by the Auditing Board of the Central Chamber of Commerce. All of these bodies are independent. The members and the secretaries of the

bodies legally have the same responsibilities and liabilities as civil servants. An appeal against a decision made by the Auditing Board of the State on the basis of the *Auditing Act* or the ordinance given by virtue thereof may be lodged in the Supreme Administrative Court. Only in the cases where the application for KHT or HTM auditor or KHT or HTM audit firm has been rejected or where the authorisation has been cancelled can be appealed to the Supreme Administrative Court.

c. Approach concerning risk

109. Finland has not yet adopted a risk-based approach to AML/CFT. The FSA and ISA standards do require, as a general obligation, risk assessment of the customers, business, products and services that financial institutions provide. Institutions supervised by these bodies are required to assess and manage all the risks they face. AML/CFT risks are considered a component of this broader operational risk.

110. Finland is currently in the process of amending the AML/CFT legislation and regulations as required by the 2003 FATF recommendations and the 3rd EU ML Directive. The new *Act on Preventing and Clearing ML* is expected to be passed by the parliament in December 2007. A risk-based approach to AML/CFT measures is expected to be a feature of the new Finnish legislation.

d. Progress since the last mutual evaluation

111. Since the last mutual evaluation of Finland in 1998, the legislation concerning ML has been amended significantly. The amendments concern mainly the *AML/CFT Act* and the *Penal Code*. In 2003 the Parliament of Finland passed amendments to the *Act on Preventing and Clearing ML (AML/CFT Act)* due to obligations laid down in the 2nd EU ML Directive, and the 1999 UN Convention for the Suppression of the Financing of Terrorism. With the amendments that entered into force at the beginning of June 2003, the ML preventing system was extended to cover suspected terrorist financing. In addition new entities under obligation to report were added to the *AML/CFT Act*. New entities under obligation to report:

- All financial institutions including businesses or professions practising other payments transfer than payment intermediation.
- Apartment rental agencies.
- Businesses or professions offering services in accounting or auditing.
- Businesses or professions selling or dealing precious stones or metals, works of art or vehicles.
- Businesses or professions holding auctions.
- Businesses or professions providing assistance in legal matters, when they participate on behalf of the customer in the planning and realisation of the following transactions:
 - A purchase or a sale of real estate or business units.
 - Management of the cash assets, securities or other funds of the client.
 - Opening or management of the bank, savings or book-entry securities account.
 - Assets arrangements required to establish, manage or administer companies.
 - Establishment or management of or responsibility for the activity of foundations, companies or similar institutions.
 - Acting on behalf of the customer in business or real estate transactions.

112. The penal provisions on negligence in reporting under the *AML/CFT Act* were previously provided in chapter 32 of the *Penal Code*. The provision was moved in the amendment of the legislation to s.16a of the *AML/CFT Act*. The *AML/CFT Act* s.16-16b contains provisions on the failing to fulfill the customer due diligence or reporting obligation as well as a failure to notify about payments transfer activity. Further the act was furnished with provisions on reinforced identification, customer due diligence and reporting obligation. These obligations apply if the client of the obliged party is a citizen or entity from a country in relation to which the FATF has recommended that countries impose counter-measures.

113. The *Decree on Preventing and Clearing ML*, given by the Ministry of the Interior (890/03), entered into force on 1 November 2003. The decree gives detailed provisions on the following points under the *AML/CFT Act*:

- Obligation to identify.
- Obligation to identify if acting on behalf of another person.
- Obligation to retain identification data.
- Obligation to perform customer due diligence.
- Obligation to report.
- Obligation to suspend and refuse to conduct a transaction.
- Enhanced identification, customer due diligence and reporting obligations.
- Contents of the report on the transfer of payments operations.

114. In December 2002 the Parliament accepted a *Government bill for amending the provisions concerning financial crime* (61/2003). The new provisions entered into force on 1 April 2003. At the same time several amendments concerning ML were made to chapter 32 of the *Penal Code*:

- Creation of a distinct penal provision.
- Revision of the essential elements of offence.
- Legislation on attempt and negligence, and on conspiracy for aggravated ML.
- Raising the maximum penalty.
- Transfer of the offence of failure to fulfil the reporting obligation to the *AML/CFT Act*.

115. The aim of the amendments to the penal provisions concerning ML was to clarify the previous situation where commission of certain acts might be punishable under both the receiving offence and the ML offence. The differentiation was also supported by the need to emphasise in legislation the gravity of ML and its relevance as a part of serious organised crime. As ML was detached from the traditional receiving of property of criminal origin, its penal scale could be amended to correspond to the basic scale of other types of financial crime. At the same time the penal scale could be enacted to meet the international standards. Aggravated ML may lead to six years of imprisonment.

116. The *Penal Code* was further amended at the end of 2002 with the integration a new chapter on terrorism (chapter 34a). According to s.5 of that chapter, a person who directly or indirectly provides or collects funds in order to finance a terrorist act or who is aware that these funds will be used to finance a terrorist act, commits an offence. This was complemented by extension of the scope of the *AML/CFT Act* on 1 June 2003 to cover prevention and investigation of TF.

2. LEGAL SYSTEM AND RELATED INSTITUTIONAL MEASURES

Laws and Regulations

2.1 Criminalisation of money laundering (R.1 & 2)

2.1.1 Description and Analysis

117. Chapter 32, sections 6–10 of the *Penal Code* of Finland (39/1889) contains the provisions on money laundering (ML), aggravated ML, conspiracy for the commission of aggravated ML, negligent ML and other ML violations. According to the restrictive provision in s.11 of the same chapter, the person who committed the predicate offence or, as a rule, a person living in a joint household with the offender cannot be sentenced for ML. Under s.14, corporate criminal liability is available for the offences of ML and aggravated ML.

118. These offences originated in the receiving offence provision in s.1, chapter 32 of the *Penal Code*. On 1 January 1994 the receiving offence was amended to create a stand-alone ML offence, though still with a link to the receiving offences. This amendment was designed to implement the *Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering* (the 1st EU ML Directive). Then, when the *AML/CFT Act* was adopted in 1998, the ML offence in the *Penal Code* was also amended. In 2003, the *Penal Code* was again amended, and the current ML offences were added as clearly independent from the receiving offence. At that time the maximum punishments for ML were also increased. The 2003 amendments to the *Penal Code* were designed to implement the *Directive 2001/97/EC of the European Parliament and of the Council of 4 December 2001 amending Council Directive 91/308/EEC on prevention of the use of the financial system for the purpose of money laundering* (the 2nd EU ML Directive). The national scope of application of the ML offence, and the AML system, is however broader than required in the *Second Directive*. In Finland, any offence can be a predicate offence to ML.

Recommendation 1

119. The ML offence in s.6 of chapter 32 of the *Penal Code* provides that a person who “receives, uses, converts, conveys, transfers or transmits property acquired through an offence, the proceeds of crime or property replacing such property in order to conceal or obliterate the illegal origin of such proceeds or property or in order to assist the offender in evading the legal consequences of the offence”, may be sentenced for ML to a fine or to imprisonment for at most two years. Further, it also provides that a person who “conceals or obliterates the true nature, origin, location or disposition of, or rights to, property acquired through an offence, the proceeds of an offence or property replacing such property or assists another in such concealment or obliteration”, may be sentenced for ML to a fine or to imprisonment for at most two years.

120. The Finnish ML provisions meet many of the requirements set by the 1988 *UN Convention against illicit Traffic in Narcotic Drugs and Psychotropic Substances* (the *Vienna Convention*) and the 2000 *UN Convention against Transnational Organized Crime* (the *Palermo Convention*). The ML offence seems not to cover the mere possession of proceeds of crime nor does it cover acquisition or use of such property in situations when the perpetrator does not intend to conceal or obliterate the illegal origin or does not in fact conceal or obliterates the illegal origin of the proceeds of crime. This is not in accordance with the requirements set in article 3(1)(c) of the *Vienna Convention* and article 6(1)(b)(i) of the *Palermo Convention*. The receiving offence in s.1, chapter 32 of the *Penal Code* does cover possession and acquisition, but only with respect to “theft, embezzlement, robbery, extortion, fraud, usury or means of payment fraud”. Thus, the possession of proceeds of crime and the acquisition or use of such property is not criminalised in all cases. In addition, self-laundering is not criminalised, nor is laundering performed by a member of the same household as the offender

who only used or consumed the property obtained by the offender for the ordinary needs of the joint household.

121. Chapter 32 of the *Penal Code* also contains provisions on aggravated ML, conspiracy for the commission of aggravated ML, negligent ML and other ML violations. If the property which is the subject of laundering is very valuable or the ML offence is committed in a particularly deliberate manner, the offence constitutes aggravated ML and when the activity is assessed as a whole, the act may be considered to be aggravated ML (s.7). The limit for very valuable property, *i.e.* the threshold for aggravated ML, has been established in case law and incorporated in *Government Proposal HE 53/2002 for amending certain provisions on financial crime in the Penal Code and certain related acts*, at approximately EUR 13 000. The punishment for aggravated ML is imprisonment for at least four months and at most six years. Conspiracy is not punishable in relation to the ML offence. Conspiracy for the commission of aggravated ML (s.8) is not punishable in all cases; it may be applied only in those instances in which the proceeds are derived from bribery, aggravated EU tax fraud or aggravated subsidy fraud. The punishment for conspiracy to commit aggravated ML is a fine or imprisonment for at most one year. Persons are guilty of negligent ML (s.9) when they are not sure of the origin of the money, but their acts, which are deemed to be ML, show gross negligence. The punishment for negligent ML is the same as that for the ML offence; a fine or imprisonment for at most two years. ML cases in which the offence is deemed to be petty are considered ML violations (s.10), for which the punishment is a fine.

122. The Finnish ML offence applies to “property acquired through an offence, proceeds of crime or property replacing such property” and thus extends to any type of property, regardless of value, that directly or indirectly represented the proceeds of crime. The term "proceeds of crime" includes criminal proceeds even if the property itself was not directly acquired through a crime. The only requirement is that, as a result of an offence, the amount of property is greater than without the offence. This is outlined in the 2002 government proposal to the parliament (RP 53/2002 rd p.35) which explained the amendments being sought at that time. The conclusion is that in principal all crimes that directly or indirectly have an influence on the value of property linked to a perpetrator could be recognised as predicate offence for money laundering.

123. Under Finnish law, any offence can constitute a predicate offence. Finland is a party to the Council of Europe *Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime* (ETS No. 141) and has not declared, in accordance with article 6(4) of that Convention, that its ML offence only applies to specified predicate offences or categories of such offences.

Table 14: Categories of predicate offences in Finnish law

CATEGORIES OF OFFENCES IN THE 40 RECOMMENDATIONS	FINLAND'S PREDICATE OFFENCES
Participation in an organised criminal group and racketeering.	<i>Penal Code</i> , chapter 17, 2.1a
Terrorism, including terrorist financing.	<i>Penal Code</i> , chapter 34a
Trafficking in human beings and migrant smuggling.	<i>Penal Code</i> , chapter 25, s.3 and s.3a <i>Penal Code</i> , chapter 17, s.8 and s.8a
Sexual exploitation, including sexual exploitation of children.	<i>Penal Code</i> , chapter 20, s.1 to 9a
Illicit trafficking in narcotic drugs and psychotropic substances.	<i>Penal Code</i> , chapter 50, s.1 to s.4
Illicit arms trafficking.	<i>Act on Firearms</i> (1/1998), s.101
Illicit trafficking in stolen and other goods.	<i>Penal Code</i> , chapter 32, s.1 to s.5
Corruption and bribery	<i>Penal Code</i> , chapter 16, s.13 to s.14a and s.20(3) <i>Penal Code</i> , chapter 30, s.7 and s.8 <i>Penal Code</i> , chapter 40, s.1 to s.4, s.11 and s.12
Fraud	<i>Penal Code</i> , chapter 36, s.1 to s.3 <i>Penal Code</i> , chapter 37, s.8 to s.10
Counterfeiting currency	<i>Penal Code</i> , chapter 37, s.1 to s.7
Counterfeiting and piracy of products	<i>Penal Code</i> , chapter 49
Environmental crime	<i>Penal Code</i> , chapter 48
Murder, grievous bodily injury	<i>Penal Code</i> , chapter 21, s.1 to s.4, s.6 and s.9
Kidnapping, illegal restraint and hostage-taking	<i>Penal Code</i> , chapter 25, s.1, s.4, s.5 and s.8

CATEGORIES OF OFFENCES IN THE 40 RECOMMENDATIONS	FINLAND'S PREDICATE OFFENCES
Robbery or theft	<i>Penal Code</i> , chapter 31, s.1 and s.2 <i>Penal Code</i> , chapter 28, s.1, s.2 s.3, s.9a, s.9b and s.9c
Smuggling	<i>Penal Code</i> , chapter 46, s.4 to s.5
Extortion	<i>Penal Code</i> , chapter 31, s.3 and s.4 <i>Penal Code</i> , chapter 36, s.6 and s.7
Forgery	<i>Penal Code</i> , chapter 33, s.1 to s.4
Piracy	-
Insider trading and market manipulation	<i>Penal Code</i> , chapter 51, s.1 to s.4

124. There is no offence of “piracy” but in practice this activity is criminalised through other kinds of offences such as murder, robbery and hijacking. Hijacking is considered an international offence and therefore punishable in Finland regardless of where the crime was committed (s.7, chapter 1, the *Penal Code* and s.12 of the *Decree on Application of s.7, chapter 1 of the Penal Code* (1996/627)).

125. In order to convict a person for ML, Finnish courts must be satisfied that a predicate offence was committed and that financial benefit was gained through that offence. This can be established even if the person who committed the predicate offence is unknown, or has not been convicted for the predicate offence. While this has not yet been demonstrated in prosecutions for the stand alone ML offence, established in 2003, it can be seen that convictions have been obtained for the aggravated receiving offence (s.2, chapter 32, *Penal Code*) without need for a conviction for the predicate offence. See for example the 21 January 2005 decision of the Eastern Finland Court of Appeal (judgement R03/1448) which convicted a person for aggravated receiving when the suspected perpetrator of the predicate offence, a foreigner living abroad, had not been apprehended by authorities. The question of to what extent the predicate offence must be proven before the accused can be sentenced for a receiving offence (or by implication, for a ML offence), was considered by the Supreme Court of Finland in decision 2004:24. In that decision, the Supreme Court placed some emphasis on considering the nature of the property and the nature of the predicate criminal activity involved. A conviction was however obtained without need to establish a specific link to the date and place of the predicate offence. In another case, which was presented to the evaluation team, the Court of Appeal found that large amount of cash was emanating from a large scale drug trafficking and that several people had – among other things - transported the money and handed it over to a real estate agent for the purpose of buying property. The court found that they must have realised that the money was of illegal origin because of their knowledge of the activities of the suspect in the drug offence and the fact that the money was handed over in cash. These people were convicted of aggravated receiving (the case was prosecuted before ML become a separate offence). These decisions indicate that it may not be necessary to establish a specific link to the date and place for the predicate offence. However, due to the fact that there are very few convictions for ML indicates that a relatively high burden of proof is put on the enforcement and prosecution authorities. The effect in practice could be that it is not possible to use the ML offence to the extent that would be desired, and many potential cases are not investigated or followed through to prosecution.

126. Dual criminality is required in Finnish criminal law (s.11, chapter 1, the *Penal Code*). Applying Finnish criminal law to offences committed in the territory of a foreign State requires, as a rule, that the act is also punishable under the law of the place of commission and that a sentence could have passed for the offence by a court of that State. It can thus be said that ML is punishable in Finland when the predicate offence is punishable in the State where it was committed.

127. In addition to applying to offences committed in Finland, chapter 1 of the *Penal Code* provides that Finnish law applies to:

- Offences committed outside of Finland which are directed at Finnish natural or legal persons, which are punishable in Finland by imprisonment of more than six months but only if the offence is punishable under the law of the place of commission (s.5 and s.11).
- Offences committed outside Finland by Finnish citizens but only if the offence is punishable also under the law of the place of commission (s.6 and s.11).

- Offences committed outside of Finland where the punishability of the act is based on an international agreement binding on Finland or on another statute or regulation internationally binding on Finland (*i.e.* international offences) (s.7).
- Terrorist offences committed outside Finland, regardless of the laws in place in the location where the offences were committed (s.7).
- Offences committed outside Finland, which are punishable in Finland by imprisonment of more than six months and where the State concerned has requested that charges be brought in Finland or has requested extradition but the extradition request has not been granted, however only if the offence is also punishable under the law of the place of commission (s.8 and s.11).

128. It is not possible in Finland to prosecute a person for laundering the proceeds of his or her own criminal activity. The ‘restrictive provisions’ of s.11, chapter 32 of the *Penal Code* provide that “(1) A person who is an accomplice in the offence through which the property was obtained or that produced the proceeds shall not be sentenced for the offence referred to in this chapter. (2) The provisions of this chapter do not apply to a person living in a joint household with the offender, and who only used or consumed property obtained by the offender for ordinary needs in the joint household.” The prohibition on prosecution for self-laundering exists because the laundering offence originated in the receiving offence in Finland. When the provisions on receiving offences were enacted, it was considered that the perpetrator or accomplice of the predicate offence should not be punished separately for hiding or otherwise handling the proceeds of crime, as this can be adequately taken into account when assessing the predicate offence (*Government Proposal 66/1988*). In the case of receiving, the principal offence (of receiving) is deemed to cover the whole set of criminal acts. Finnish authorities have argued that the restrictive provisions on ML similarly exist because conducting a crime from which there are proceeds and laundering the proceeds is considered to be a single act. Following this logic, since it is considered a single act, the double jeopardy principle applies meaning that the person cannot be prosecuted for both the predicate offence and for laundering the proceeds of the predicate offence.

129. The absence of a self-laundering offence is based on the development of the ML offence as an offence following a similar logic to the receiving offence rather than on any fundamental principle of Finnish law. When the ML offence was created in 1994 and on the two occasions since then when it has been amended, the Finnish authorities and Parliament have had an opportunity to remove the restrictive provision and allow for prosecution for self-laundering but have not done so. It is clear that the restrictive provisions have had an impact on the number of ML prosecutions, as investigators must choose between obtaining evidence of the predicate offence alone and obtaining evidence of both the predicate offence and ML offence. Commonly they choose to investigate only the predicate offence.

130. Making self-laundering an offence would probably result in greater recognition of the seriousness of this criminal activity. Recognising money laundering behaviour as a crime itself even in situations where the offence has been committed by the perpetrator of the predicate offence could be handled in the same way as when two or more offences (for example, when a forgery is an essential element in committing a fraud) are applicable to certain types of criminal activity. Creation of the self-laundering offence would make it possible to punish a perpetrator of a predicate offence where s/he takes steps to launder the proceeds after completion of the predicate offence. It would also make it possible to punish those who give advice to the perpetrator on how to launder the proceeds long after that the predicate offence has been completed. It would also be available in those cases where it is discovered after the conviction for the predicate offence has been obtained that in fact the proceeds of crime were much higher than established during the conviction for the predicate offence.

131. Chapter 5 of the *Penal Code* contains offences of complicity, instigation and abetting. If two or more persons have committed an intentional offence together, each is punishable as an offender (s.3). A person who intentionally persuades another person to commit an intentional offence or to make a punishable attempt at such an act is punishable for incitement to the offence as if he/she was the offender (s.5). A person who, before or during the commission of an offence, intentionally furthers

the commission by another of an intentional act or of its punishable attempt, through advice, action or otherwise, shall be sentenced for abetting on the basis of the same legal provision as the offender. Incitement to punishable aiding and abetting is punishable as aiding and abetting (s.6). In addition, s.1a of chapter 17 provides for offences with respect to participation in a criminal organisation.

132. Attempt is punishable for the offences of ML (s.6(2) of chapter 32) and aggravated ML (s.7(2) of chapter 32), though not for negligent ML or for ML violations. Conspiracy is criminalised only with respect to aggravated ML (s.8, chapter 32), not with respect to the ML offence, negligent ML or ML violations. Under s.8, conspiracy for the commission of aggravated ML is punishable by a fine or imprisonment for at most one year and is only available where a person “agrees with another on the commission of aggravated money laundering directed at the proceeds of bribery, the acceptance of a bribe, or aggravated EU tax fraud or aggravated subsidy fraud” related to taxation.

133. Finnish authorities argue that criminalisation of conspiracy for the commission of the basic ML offence is against a fundamental principle of Finnish law. The only available authority for this is *Government Proposal 53/2002* which refers to *Government Proposal 180/1992* and states that it is against a fundamental principle of Finnish law to establish conspiracy offences other than conspiracy to commit genocide. These government proposals do not give any further detail for the basis of such a fundamental principle. Further, conspiracy has in fact been criminalised with respect to the aggravated ML offence. Thus, it does not appear that there is any fundamental principle of law prohibiting criminalisation of conspiracy for ML offences.

134. The number of prosecutions for ML offences in Finland is low (see the statistics below). This may be largely due to the burden of proof being relatively high in ML cases - Finnish courts must be satisfied that a predicate offence was committed and that financial benefit was gained from that offence – and to the absence of a self-laundering offence. In addition, the limited scope of the conspiracy provision may be a contributing factor. These factors appear to lead law enforcement authorities to concentrate efforts more on investigating predicate offences and not so much on following the proceeds and the money launderers after the predicate offence has been completed.

Additional elements

135. In order to convict a person for ML, Finnish courts must be satisfied that a predicate offence was committed and that financial benefit was gained through that offence. The predicate offence does not itself need to be proven or prosecuted in order for the ML offence to be prosecuted. However, the need to prove a link to a specific predicate offence puts a relatively high burden on proof on the enforcement and prosecution authorities. While Finnish authorities believe it is thus possible to prosecute for ML in Finland in cases where the proceeds of crime are derived from conduct that occurred in another country which is a predicate offence in Finland but does not constitute a predicate offence in that other country, it is considered very difficult to investigate such offences and difficult to obtain sufficient information to meet the burden of proof for the ML prosecution. Finnish authorities are not aware of any ML prosecutions having been conducted where the predicate offence was committed overseas and does not constitute a predicate offence there.

Recommendation 2

136. Intentional money laundering is punishable in relation to the provisions of chapter 32 of the *Penal Code* which deal with the ML offence (s.6), the aggravated ML offence (s.7) and the ML violation offence (s.10). Negligent money laundering is punishable in relation to the provisions of chapter 32 of the *Penal Code* which deal with negligent ML (s.9) and the ML violation offence (s.10). The acts referred to in the *Penal Code* are only punishable if they are intentional unless imputability of intention is mentioned separately or the provision is also clearly applicable to negligent acts. There must be intent with respect to the entire statutory definition of the offence. In the Finnish content, intent means being aware of all the facts on the basis of which the act is punished, *i.e.* both the circumstances under which the act is committed and the consequences of the act.

137. Under the earlier *Penal Code* provision (s.1(2)(1), chapter 32), a person could be sentenced for ML if he or she received, transformed, conveyed or transferred assets or other property which *he or she knew* to have been gained through an offence or to replace such assets or property, in order to *conceal or launder* its illicit origins or to assist the offender in evading the lawful sanctions provided for the offence. The act was thus punishable only if, firstly, the person was aware that the funds were of illicit origin and, secondly, engaged in concealing the origin of the funds or otherwise assisting the offender. When the *Penal Code* was amended, it was not considered necessary to separately mention this awareness in the legal text, because intent must apply to the entire statutory definition of the offence. Thus, the new ML offence reads: “A person who receives, uses, converts, conveys, transfers or transmits property acquired through an offence, the proceeds of crime or property replacing such property in order to conceal or obliterate the illegal origin of such proceeds or property or in order to assist the offender in evading the legal consequences of the offence...”. There is no mention of awareness of the illegal origin of the property, but the idea remains in the text. The requirement concerning concealment or obliteration and assisting the offender is the same as previously.

138. There is however no requirement in the offence described in s.6, paragraph 2, for particular intent to conceal or obliterate. A person who *conceals or obliterates* the true nature, origin, location or disposition of, or rights to, property can be sentenced for ML. Specific intent is not required; if the concealment or obliteration is a consequence of the offender’s actions, the act will constitute the offence concerned. The intention to launder money can be inferred from objective factual circumstances. Exact information on the details of the preceding offence is not required, but the fact that the offender was aware of the illicit origin of the property, or that it had replaced such property, is sufficient. In Finland, this principle has been adopted in case law.

139. The underlying provisions in relation to corporate criminal liability can be found in chapter 9 of the *Penal Code*, which notes that (s.1): “A corporation, foundation or other legal entity [in the following, a “corporation”] in whose operations an offence has been committed may on the request of the public prosecutor be sentenced to a corporate fine if such a sanction has been provided in this Code.” Section 14 of chapter 32 of the *Penal Code* applies corporate criminal liability to ML and aggravated ML. In Finland, corporate criminal liability does not, as a rule, apply to petty offences. It is considered that in fact, it is unlikely that petty ML offences are committed in corporate activities. Criminal liability is complemented by legal persons’ civil liability for damages caused by the offence, which is also applicable to ML offences.

140. Corporate liability arises where (s.2 of chapter 9) “a person who is part of its statutory organ or other management or who exercises actual decision-making authority therein has been an accomplice in an offence or allowed the commission of the offence or if the care and diligence necessary for the prevention of the offence has not been observed in the operations of the corporation.” The offence is deemed to have been committed in the operations of a corporation if the offender has acted on behalf or for the benefit of the corporation, and belongs to its management or is in a service or employment relationship with it or has acted on assignment by a representative of the corporation (s.3). A corporation, foundation or other legal entity, in the operation of which a ML offence has been committed, may be sentenced to a corporate fine on the request of the public prosecutor. Fines can be imposed on corporations even in cases where the individual offender cannot be identified or is not punished. According to s.5, chapter 9 of the *Penal Code*, a corporate fine is at most EUR 850 000. The corporation does not have the right to compensation from the offender for a corporate fine that it has paid, unless such liability is based on separate provisions on corporations and foundations (s.3).

141. Criminal liability does not preclude liability for damages. Criminal liability is complemented by legal persons’ civil liability for damages caused by the offence, which is also applicable to ML and TF. The amount of damages depends primarily on the amount of the damage caused by the offence. The grounds for sentencing concerning damages provided in the *Tort Liability Act* (412/1974).

142. The penal provisions for the ML offences comprise:

- For ML and negligent ML; a fine or up to two years imprisonment.

- For aggravated ML; imprisonment for at least four months and at most six years imprisonment.
- For conspiracy to commit aggravated ML; a fine or up to one years imprisonment.
- For a ML violation; a fine.

143. Previously, the maximum penalty for the ML offence was 18 months imprisonment. The decision to raise this to a maximum punishment of two years' imprisonment was influenced by the conclusions of the previous FATF Mutual Evaluation of Finland (*Government Proposal 53/2002*, p.22). If only the amount of the proceeds of the crime is taken in consideration, the threshold for aggravated money laundering has been set to approximately EUR 13 000. The maximum punishment for conspiracy seems too low when taken in account the general seriousness of the offence. The maximum fine for corporations should be higher taking in account both the seriousness of offences that may occur and the economic strength of the entities in question.

Statistics

Table 15: STRs received and money laundering investigations, prosecutions and convictions 2003-2006

	STRs RECEIVED	PRE-TRIAL INVESTIGATIONS	PROSECUTIONS	CONVICTIONS
2003	2 716	288	5	
2004	4 315	551	10	5
2005	3 661	385	45	
2006	9 975	779	71	Not known
TOTAL	20 667	2 003	131	

Table 16: Money laundering cases prosecuted 2003-2006

	MONEY LAUNDERING (ML)	ATTEMPTED ML	ML VIOLATION	NEGLIGENT ML	AGGRAVATED ML	ATTEMPTED AGGRAVATED ML
2003	5	0	0	0	0	0
2004	3	0	0	0	7	0
2005	15	0	1	4	21	4
2006	23	0	1	12	33	2
TOTAL	46	0	2	16	61	6

144. The number of convictions for ML offences is low and has not increased as a result of the changes to the *Penal Code* in 2003. The 2002 government proposal to the parliament (RP 53/2002 rd p.8) states that from 1994 until 1999 only 36 persons were convicted for the receiving offence (s.1(2) of chapter 32 of the *Penal Code*) as it existed before and only for half of these convictions could the offence be compared with ML. In 2003-2005, there were five convictions for ML offences; three convictions for aggravated ML (on average 8 months imprisonment) and two for negligent ML (on average 2 months imprisonment). As indicated in the discussion above, a possible reason for the decrease in numbers could be the clearer distinction between the receiving and ML offences and the inability to prosecute "self-laundering".

145. The sentences provided for ML convictions are low. The average sentence handed down for the aggravated ML convictions was eight months imprisonment and the average sentence handed down for the negligent ML convictions was two months imprisonment. All seven of these sentences were suspended. Statistics on convictions in 2006 are not yet available.

2.1.2 Recommendations and Comments

146. It is recommended that Finland review its ML offence to cover all physical elements of the crime, as required in accordance with the *Palermo Convention* and introduce the offence of self-laundering. In addition, the exemption from prosecution for members of a joint household with the offender should be removed. In this review it is also recommended that Finland remove the requirement to prove a connection between the proceeds of crime and a specific predicate offence. The offence of conspiracy should be broadened to apply to the basic offence of ML, in addition to its

application to the offence of aggravated ML, and the penalties for conspiracy offences should be raised. Similarly, the penalties for legal persons convicted of ML offences should be raised.

2.1.3 Compliance with Recommendations 1 & 2

	RATING	SUMMARY OF FACTORS UNDERLYING RATING
R.1	PC	<ul style="list-style-type: none"> • Not all physical elements (mere acquisition, possession and use of property) of the criminal offence of money laundering are covered. • It is not possible to prosecute for self-laundering and this is not due to any fundamental principle of Finnish law. • It is not possible to prosecute for money laundering any person living in a joint household with the offender who only uses or consumes property obtained by the offender for ordinary needs in the joint household. • There is no offence of conspiracy available for the basic offence of money laundering and this is not due to any fundamental principle of Finnish law. • The ML offence has not been effectively implemented as there have been very few convictions for money laundering, and the numbers appear to be decreasing since the latest amendments to the law were made.
R.2	LC	<ul style="list-style-type: none"> • The maximum punishment for conspiracy seems too low when the seriousness of the offence is taken into account. • The maximum corporate fine is very low when both the seriousness of offences that may occur and the economic strengths of the entities in question are taken into account. • Corporate fines are very seldom used.

2.2 Criminalisation of terrorist financing (SR.II)

2.2.1 Description and Analysis

147. The Finnish Parliament approved the *United Nations International Convention for the Suppression of the Financing of Terrorism* (the *Terrorist Financing Convention*) and related legislative amendments in June 2002. The *Act on of the Implementation of the Provisions of a Legislative Nature in the Convention for the Suppression of the Financing of Terrorism*, 558/2002 added s.9b on the financing of terrorism to chapter 34 of the *Penal Code* (559/2002) and s.13 which extended corporate criminal liability to TF. The *Terrorist Financing Convention* entered into force on 28 July 2002 in Finland, as did the required legislative amendments.

148. Terrorist financing (TF) was criminalised under the *Penal Code* on 24 January 2003 when chapter 34a on terrorist offences was added to the *Penal Code*. The penal provisions for TF are laid down in s.5: “A person who directly or indirectly provides or collects funds in order to finance, or aware that these shall finance:

- (1) The taking of a hostage or hijacking.
- (2) Sabotage, aggravated sabotage or preparation of an offence of general endangerment that is to be deemed an offence referred to in the International Convention for the Suppression of Terrorist Bombing (Treaty Series 60/2002).
- (3) Sabotage, traffic sabotage, aggravated sabotage or the preparation of an offence of general endangerment that is to be deemed an offence referred to in the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (Treaty Series 56/1973), the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation (Treaty Series 43/1998), the Convention for the Suppression of Unlawful Act Against the Safety of Maritime Navigation (Treaty Series 11/1999) or the Protocol for the Suppression of

Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf (Treaty Series 44/2000).

- (4) a nuclear explosives offence, endangerment of health, aggravated endangerment of health, a nuclear energy use offence or other criminalised offence directed at a nuclear weapon or committed through the use of nuclear material, that is to be deemed an offence referred to in the Convention on the Physical Protection of Nuclear Material (Treaty Series 72/1989). Or
- (5) murder, homicide, killing, aggravated assault, deprivation of liberty, aggravated deprivation of liberty, kidnapping, taking of a hostage or aggravated disturbance of public peace or the threat of such an offence, when the act is directed against a person who is referred to in the Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, including Diplomatic Agents (Treaty Series 63/1978),

shall be sentenced for the *financing of terrorism* to imprisonment for at least four months and at most eight years.”

149. The offences mentioned above cover the offences that are listed in the annex to the *Terrorist Financing Convention* and thus the requirements of article 2 of the convention are met. However, Special Recommendation II and its interpretative note also require that the TF offence extend to any person who wilfully provides or collects funds by any means, directly or indirectly, with the unlawful intention that they should be used, or in the knowledge that they are to be used by a terrorist organisation or by an individual terrorist. The offence should not require that the funds be linked to a specific terrorist act (or acts). Section 5, chapter 34a, of the *Penal Code* does not cover financing of a terrorist organisation or of an individual terrorist where there is no link to a specific terrorist act or terrorist acts that will occur in the future. The statutory definition of TF requires awareness of the fact that the funds are intended to be used to commit one or several terrorist acts, though it is not required that the funds were actually used for such an act. However, a link between the provision or collection of funds and a terrorist act as defined in s.5(1)(1–5) of chapter 34a of the *Penal Code* must be established. It is difficult to say to what extent Finnish courts will expect such a link to be demonstrated as no TF cases have been tried in Finnish courts, though it is suggested in a *Government Proposal* that it could be possible to accept a remote connection with a specific terrorist offence.

150. The offence covers any kind of property (funds). There is no definition of the term “funds” in s.5, chapter 34a of the *Penal Code*. However, in the government bill (RP 43/2002, p. 27) for approval of the *Terrorist Financing Convention*, the text states that the expression *varat* (property or funds) is well recognised in our modern society and therefore does not need to be further defined. The government bill refers to article 1 of the convention which states that *funds* are every kind of assets that is of any economic value. The assets could be tangible or intangible, movable or immovable. If the origin of the asset in question is of any importance, it is not expressly stated in the bill; however, the reference to the convention linked to the term funds as used in the bill clearly indicate that both licit and illicit assets are covered.

151. Section 5 goes on to provide that a person who directly or indirectly provides or collects funds with the intention that they should be used or in the knowledge that they are to be used in order to commit any of the offences referred to in s.5(1), may also be sentenced for financing of terrorism. An attempt is punishable (s.5[3]). In addition to what is provided in chapter 34a, the provisions of s.3, s.5 and s.6 of chapter 5 (which criminalise complicity, instigation and abetting) also apply to TF. The requirement related to article 2(5) of the *Terrorist Financing Convention* is therefore met.

152. Finland has also established offences of: preparation of an offence to be committed with terrorist intent; directing of a terrorist group; and, promotion of the activity of a terrorist group (sections 2 to 4 of chapter 34a of the *Penal Code*).

153. Suspects are not prosecuted for the TF offence if the act is punishable as the commission of or an attempt to commit an offence referred to in s.5(1)(1–5), as participation in such an offence, or under the provisions of s.1 (offence made with terrorist intent) or 2 (preparation of an offence to be

committed with terrorist intent), or for which a more severe sentence is provided elsewhere in the law. This is because the TF offence is considered a separate offence and thus a person clearly involved in the commission or preparation of a terrorist offence must be convicted for these acts and not for TF.

154. Under s.8(1) of chapter 34a of the *Penal Code*, the provisions on corporate criminal liability also apply to this offence. The financing of terrorism may also result in a legal person’s liability for damages, which is not excluded by criminal liability. The maximum corporate fine available is EUR 850 000. While the maximum punishment (imprisonment for eight years) for individuals involved in terrorist financing is an appropriate level of punishment, the fines available for corporations convicted of TF are very low when the nature of the conduct and the likely impact on a corporation of that penalty are considered.

155. As noted previously with respect to Recommendation 1, under chapter 32 of the *Penal Code*, any offence can be a predicate offence for ML in Finland. Therefore, TF also constitutes a predicate offence for ML. In addition, as part of the measures to strengthen Finland’s approach to countering terrorism, the scope of application of the system for preventing and investigating ML was extended on 1 June 2003 to include, in addition to ML, preventing and investigating the financing of terrorism. As a result, the powers of the MLCH to obtain, record, use and disseminate information, were extended so as to apply in cases of TF.

156. TF is considered an international offence. Thus, under s.7(3) of chapter 1 of the *Penal Code*, regardless of the laws in the State where the activity occurred, Finnish law applies to any chapter 34a offence (terrorist offences) committed outside of Finland.

Statistics (terrorist financing investigation/prosecution data)¹⁹

157. Finland has not, to date, conducted any TF investigations or prosecutions.

2.2.2 Recommendations and Comments

158. The TF offence in Finland criminalises the offences that are listed in the annex to the *Terrorist Financing Convention*. However, these provisions do not cover financing an individual terrorist or providing funds to a terrorist organisation where there is no link to a terrorist act or to terrorist acts that will occur in the future. It is recommended that Finland amend its *Penal Code* to broaden the definition of TF to cover these forms of TF activity, without need to demonstrate a link to a terrorist act. While the maximum punishment (imprisonment for eight years) for individuals involved in terrorist financing seems appropriate, the fines available for corporations convicted of TF are very low when the nature of the conduct and the likely impact on a corporation of that penalty are considered. As with the corporate fines available for ML, it is recommended that Finland increase the penalty available for legal persons convicted for TF. In addition to raising the level of fines which can be levied, terms of imprisonment for responsible senior executives could be introduced.

2.2.3 Compliance with Special Recommendation II

	RATING	SUMMARY OF FACTORS UNDERLYING RATING
SR.II	LC	<ul style="list-style-type: none"> • Funding a terrorist or a terrorist organisation without a specific link to a terrorist act is not punishable in Finland. • The maximum corporate fine is very low.

¹⁹ As related to R.32; see section 7.2 for the compliance rating for this Recommendation.

2.3 Confiscation, freezing and seizing of proceeds of crime (R.3)

2.3.1 Description and Analysis

Confiscation of proceeds

159. General provisions on confiscation or *forfeiture*²⁰, applicable to all offences (with exemptions from proceeds that have been laundered - see below), and not restricted to a certain object, are found in chapter 10 of the *Penal Code*. The aim of these provisions is to provide effective recovery of the instrumentalities of crime and other objects that can be used for committing criminal acts, as well as recovery of the proceeds of crime, from those who commit an offence, participate in it or benefit from it. Chapter 10 provides for confiscation to the state of proceeds of crime, instrumentalities used in the conduct of criminal offences and other property related to criminal offences. Confiscation of proceeds of crime can be ordered on the offender, participant or person on whose behalf or to whose advantage the offence was committed. The net proceeds of crime are ordered forfeit (see also decision of the Supreme Court of Finland 1992:119)²¹. Proceeds of crime include any benefit resulting directly from the offence, as well as a possible reward given for executing the criminal act. In addition to money, an object or right with monetary value is also considered a financial benefit and can be the subject of confiscation. Proceeds may also be in the form of avoided expenses. Any increase in the value of the proceeds of crime, for example through interest earned on proceeds kept in a bank account, can also be confiscated (Government Proposal 80/2000).

160. Confiscation of instrumentalities of crime is possible in accordance with s.4 of chapter 10. The following objects may be ordered forfeit to the State when used in the commission of an offence: a firearm, edged weapon or another similar lethal instrument; and any other object or property the possession of which is punishable. This subsection is applicable to both intentional and negligent offences. Confiscation of any other instrumentality of crime can only occur where it is proven that the offence was committed intentionally. Section 4(2) concerns confiscation of an object or property that has been used in the commission of an intentional offence, as well as confiscation of an instrument of crime that is closely connected to an intentional offence under trial, which has been obtained or prepared solely or mainly for the intentional offence or the characteristics of which make it especially suitable for committing an intentional offence. Under this subsection, an object which has not yet been used for committing an intentional offence but which has been obtained or prepared solely or mainly for this purpose or the characteristics of which make it especially suitable for committing such an offence may be ordered forfeit. Even in this case, confiscation requires that an offence has been committed and that the offence on which confiscation is based and the property to be ordered forfeit are closely connected with each other, *i.e.* there is a material link between them.

161. Confiscation of certain other property is also possible. Under s.5, chapter 10, of the *Penal Code*, an object or property which has been produced, manufactured or brought about by way of an offence, or to which an offence has been directed, may be confiscated if its possession is punishable. This provision is used for confiscations of narcotics, forged material and counterfeit money. In addition, objects may be ordered forfeit: if they are hazardous to health or the environment; in order to prevent further offences; in order to satisfy provisions pertaining to economic regulation, import or export; or in order to satisfy provisions for the protection of the environment.

162. In order to make a confiscation order, the *Penal Code* requires that an offence has been committed and that there is a close connection between the offence and the property to be ordered forfeit. Where an object has not yet been used for committing an intentional offence but was obtained or prepared solely or mainly for this purpose, it too may be the subject of a confiscation order in

²⁰ *Forfeiture* is the term used in the English translations of the *Penal Code* provided by Finnish authorities and therefore will be used from this point forward.

²¹ While a net amount is calculated, expenses arising from the preparation and implementation of an offence are not generally deducted from the gross amount for the purposes of forfeiture orders.

relation to punishment of an attempted crime. For example, if a person is paid for committing a crime or receives an amount of money in order to buy equipment for committing a crime but the crime never been completed, confiscation may occur as part of a prosecution for the offence of attempt to commit the crime. Thus it is not to be possible to confiscate the property unless there is an ancillary offence such as attempt or conspiracy. An attempt to commit any of the offences listed as designated offences in the glossary to the *FATF Recommendations* is in general punishable in Finland. However, conspiracy related to the same categories of offences are only punishable in case of participation in an organised criminal group and racketeering, terrorism and terrorist financing, narcotics offence (preparation) and counterfeiting (preparation).

163. These provisions in chapter 10 of the *Penal Code* provide a means to confiscate fees gained for committing a ML offence or property intended for use in performing the ML offence. However, confiscation is only possible if an offence has in fact occurred. As Finland has not criminalised conspiracy with respect to the basic ML offence, this appears to be a gap in the confiscation provisions in place.

164. The *Penal Code* provides for value-based confiscation. Section 2 in chapter 10 provides for confiscation of proceeds of crime and s.2(2) states that if there is no evidence as to the amount of the proceeds, then the amount may be estimated.

165. Sections 4 and 5 of chapter 10 provide for confiscation of instruments of crime and of property produced, manufactured or brought about by way of an offence, unless (s.6) that property belongs in full or in part to someone other than the offender, a participant or a person on whose behalf or with whose consent the offence has been committed. If for some reason an object or property referred to in s.4 or s.5 cannot be ordered forfeit, a full or partial confiscation of the value of the object or property may be ordered. This value-based confiscation is necessary primarily where confiscation is not possible because the object is the property of a third party (whose possessions cannot be subjected to confiscation), or where the property is hidden or otherwise inaccessible (*e.g.* has been moved abroad). It is not relevant to what end the property was hidden. It is, however, relevant that the person who hid the property may benefit from it later on. The order for full or partial confiscation of the value of the object or property may be directed to the offender or to a participant or person on whose behalf or with whose consent the offence was committed. In addition, the confiscation of value may be ordered on a person to whom the object or property has been conveyed, if, when receiving it, s/he knew or had good reason to believe that the object or property was connected to an offence, or if s/he had received it as a gift or otherwise free of charge (s.8[1]). This value-based confiscation cannot however be ordered if it is shown that the object or property was probably destroyed or consumed.

166. Separate from general confiscation provisions, s.12, chapter 32, of the *Penal Code* specifically provides for confiscation of property that has been the target of an offence referred to in s.6 (ML), s.7 (aggravated ML) or s.9 (negligent ML). Confiscation is not available for ML violations or for conspiracy to conduct aggravated ML. Confiscation with respect to ML violations and conspiracy to conduct aggravated ML may occur only under the general confiscation provisions of chapter 10, which require that the actual property that constitutes the laundered proceeds of crime be located.

167. These special provisions on confiscation relating to certain ML offences were created to ensure the Finnish confiscation system for ML meets international obligations, specifically the fact that such confiscation must be mandatory. In accordance with s.12(1), any property that has been the target of one of these money laundering offences will be confiscated. The meaning of the expression “target of the offence ...” is that the proceeds must be the actual product of the predicate offence. These special provisions in chapter 32 are needed because most of chapter 10 is not applicable to assets that are the target of ML. Other assets (for example, fees given to the perpetrator of the money laundering offence for carrying out that activity) can be confiscated under the general provisions of chapter 10, and this is explicitly provided for in s.12(2) of chapter 32. The effect of these provisions is that the

confiscation of assets of equivalent value is not possible against the perpetrator of the ML offence or any other person if the assets are not directly the proceeds of the predicate offence.

168. A consequence of the requirement that there be a close connection between the offence and the property to be confiscated and the requirement that in order to conduct value-based confiscation the original proceeds of crime must not be able to be located, is that money that has been the target of ML (s.12[1], chapter 32) and that has been mixed with other assets to an extent that it is not possible to determine which are the proceeds of crime cannot be confiscated. This represents a gap in the coverage of Finland's confiscation provisions.

169. In addition to standard confiscation orders, the Finnish *Penal Code* contains provisions on extended confiscation of the proceeds of crime (s.3, chapter 10). Extended confiscation of proceeds is applicable to aggravated offences related to the pursuit of financial benefit. Under s.3(1), a full or partial confiscation of property to the State may be ordered if the person is found guilty of an offence likely to result in considerable financial benefit, and if there is reason to believe that the property fully or partially derives from criminal activity that is not to be considered insignificant. Extended confiscation is thus available for ML convictions. Further, extended confiscation may be ordered against a person who is found guilty of an offence punishable by a maximum penalty of at least four years' imprisonment. As the maximum penalty for TF is eight years' imprisonment, extended confiscation is also available with respect to TF convictions. This form of confiscation differs from the standard confiscation provision in two ways. Firstly, the standard of proof required when establishing a link between the offence and the proceeds is lower; it is sufficient that the property can be assumed to be of illegal origin. Secondly, in addition to the offender, confiscation can, under certain conditions, be ordered against a third party to whom the property was transferred.

170. Under s.1(2)(3) of chapter 10, confiscation orders may be applied to corporations fined in accordance with corporate criminal liability provisions in the *Penal Code* and such orders can be made even if the individuals who committed the offence can not be identified or cannot be prosecuted for some other reason. Thereafter, the provisions in chapter 10 of the *Penal Code* which deal with confiscation do not make a distinction between whether the property is owned by a natural or a legal person. However, s.6(1) of that chapter does provide that property cannot be confiscated if it belongs in full or in part to someone other than the offender, participant or person on whose behalf or with whose consent the offence was committed. This provision may limit the confiscation of property which constitutes instruments of crime or property produced, manufactured or brought about by way of an offence if that property belongs to a legal person.

Provisional measures

171. The prerequisites for restraint of property are noted in s.1 of chapter 3 of the *Coercive Measures Act* (450/1987), and for seizure, in s.1 of chapter 4 of the same act. Under chapter 3, s.1(1) of the *Coercive Measures Act*, if there is a risk that a person suspected of an offence or a person who may be ordered by a court to pay damages or from whom a sum of money may be forfeited to the State tries, by concealing or destroying property, escaping or by other means, to avoid the payment of a fine, damages or the sum of money to be confiscated, a restraint on alienation may be imposed on the person's assets up to a value equivalent to the fine, damages and the sum of money to be confiscated. An object may be seized if there are reasons to presume that it may serve as evidence in criminal proceedings, if it has been taken from someone through a criminal offence, or if the object is likely to be confiscated by a court order. In money laundering cases, the proceeds of the predicate offence are always considered an object, and s.1 of chapter 4 of the *Coercive Measures Act* applies. This section provides that an object may be seized if there are reasons to presume that it will be confiscated. In order for this to occur, the object must be identified. Once the object is identified and a seizure order made, it appears that there are no restrictions from whom such objects may be seized.

172. Similarly, an order for restraint on alienation and sequestration may be imposed on the property of a legal person if there are reasons to suspect that the legal person aims to avoid the payment of a

corporate fine by concealing or destroying their property or by other similar means. In that case, the provisions of s.1(3), chapter 3, of the *Coercive Measures Act* on restraint on alienation and sequestration on a suspect's property apply.

173. Seizure is not available for value-based confiscation. In those cases, property of an appropriate value may be restrained but not seized.

174. Restraint on alienation and sequestration of property may be ordered in response to a request for assistance by an authority of a foreign State (s.6a, chapter 3, *Coercive Measures Act*). An object or a document may also be seized upon the request of an authority of a foreign State, if it may serve as evidence in a criminal matter within the foreign State (s.15a, chapter 4). An object may also be seized where the object has been confiscated or is likely to be confiscated by a decision of a court of a foreign State (s.15a, chapter 4, *Coercive Measures Act*). Further, where a confiscation order has been made by a court of a foreign State, or if such an order is likely to be made, a restraint order or a freezing order relating to the property of the person may be made in Finland upon request by an authority of that State.

Powers to identify and trace property

175. The MLCH at the NBI, acting as the FIU in Finland, as well as other Police authorities are empowered to identify and trace proceeds of crime and property subject to confiscation under the *Pre-trial Investigation Act* (449/1987), *Coercive Measures Act*, *Police Act* (493/1995) and the *Act on Preventing and Clearing ML* (68/1998) (the *AML/CFT Act*).

Protection of bona fide third parties

176. When implementing the *Palermo Convention* in Finland (Government Proposal 32/2003, p. 21), it was believed at the time that Finnish legislation met the requirements on bona fide protection expressed in the relevant paragraph. Under s.6(1), chapter 10, of the *Penal Code*, an instrument of crime or an object or property which has been produced, manufactured or brought about by way of an offence, or to which an offence has been directed, and the possession of which is punishable, cannot be confiscated if it belongs in full or in part to someone else other than the offender, participant or person on whose behalf or with whose consent the offence was committed. However, the object or property may be confiscated from a person to whom it was conveyed after the commission of the offence, if, when receiving it, this person knew or had justifiable reason to believe that the object or property was connected to an offence, or if he or she received it as a gift or otherwise free of charge.

177. In addition, s.11(3) of chapter 10 of the *Penal Code*, which is applicable to confiscation of property laundered in the context of the offences ML, aggravated ML and negligent ML, provides protection for a person who in good faith has obtained a mortgage, a lien or a right of retention to an object or property which has been ordered forfeit. Such a person is entitled to foreclose on the mortgage/lien/right regardless of whether the underlying receivable has become due. Actions to this effect must be brought within a certain period of time however as the court can hold that the mortgage/lien/right of retention has expired.

178. While the rights of bona fide third parties are protected with respect to confiscation actions taken in accordance with chapter 10 of the *Penal Code*, it is not clear they are similarly protected with respect to confiscation of the target of a ML offence under chapter 32. The *Penal Code* provisions are not clear on whether the rights of bona fide third parties would be protected where they have property which has been the target of money laundering and the only prosecution being brought is for a ML offence as chapter 10 provisions, exempt from section 11(3), are not applicable in such cases.

179. The rights of bona fide third parties in situations other than referred to above may be settled according to general legal principles. According to Finnish law, nothing prevents person from bringing suit against the State for the superior right to an object which has been confiscated. If a

person can prove that s/he is a bona fide third party who owned the property which was the target of a predicate offence, he has a superior right to it and the State must return it to him/her.

Authority to void actions and contracts

180. Authorities are not specifically authorised to take steps to prevent or void actions, whether contractual or otherwise, where the persons involved knew or should have known that as a result of those actions the authorities would be prejudiced in their ability to recover property subject to confiscation.

Additional elements

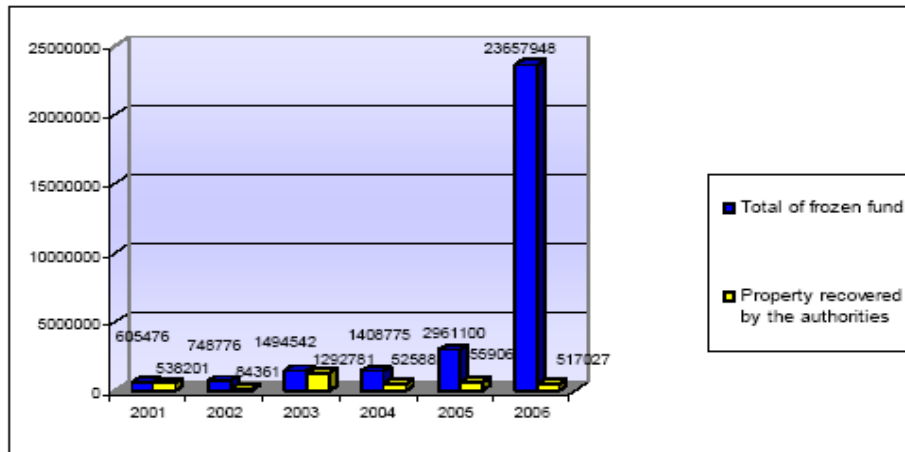
181. Finland does not have a separate civil confiscation system. Property may only be ordered forfeit to the State by a judgment rendered in a criminal case.

Statistics

182. It is difficult to get a complete picture of the amount of property which has been confiscated in Finland. The authorities are able to recover property in different ways, not only by confiscation. It was not possible for authorities to determine for the evaluation team how much of recovered property is related to money laundering. The following figures are however available:

- From 1998 to 2006 the MLCH gave a total of 102 decisions on suspension of transactions with a combined value of EUR 38 891 169. From this, property to a total value of EUR 9 763 586 was recovered. Thirteen of these 102 decisions to suspend transactions were taken in 2006, relating to a total value of EUR 23 657 948. As a result of those 13 orders, the authorities recovered EUR 517 017 in criminal proceeds.
- In 1998-2006 the MLCH seized, using the interim measures of the *Coercive Measures Act* and orders on suspending a transaction, property to the value of EUR 18 431 339. In 2006 the total of the criminal proceeds recovered by the MLCH was EUR 1 316 110.

Figure 2: Orders on suspending transactions and the recovered criminal proceeds, 2001 - 2006



183. In 2005, the reported financial benefits and damage caused to victims seen in the cases forwarded for investigation was EUR 91 million. Property was seized that year in connection with suspected financial offences to a total value of EUR 49 million and property to a value of almost EUR 47 million was forfeited to the State.

Table 17: Seizures and confiscations, 2002-2005 (in millions of Euros)

	2002	2003	2004	2005
Financial crime damage	68.6	77.0	105.5	91.5
Property seized	48.7	17.4	72.2	49.3
Property forfeited	32.4	25.2	35.3	46.8

184. The amount of recovered property has not in any significant way increased in recent years. This suggests that Finland's system for recovering proceeds of crime has not improved and has not been the subject of reform or increased effort over the past five years. It is impossible to evaluate how much recovered or forfeited property is related to ML or to some sort of money laundering behaviour. Based on the number of convictions for ML and the total amount of recovered property, it appears that the recovery of related assets is generally effective but with respect to ML is low.

2.3.2 Recommendations and Comments

185. In ML cases, authorities have the power to use provisional measures but only when the proceeds of crime can be identified and when a connection to the offence from which the proceeds were derived can be proven. This limits the scope of application of the provisional measures. There are also gaps in the confiscation provisions in Finland: it is not possible to confiscate property of organisations that are found to be primarily criminal in nature without a specific link to a certain crime; confiscation of property that has been the target of ML is not possible if the object is completely mingled with licit assets; it is not possible to void actions where the persons involved knew or should have known that as a result of those actions the authorities would be prejudiced in their ability to recover property subject to confiscation.

186. It is recommended that Finland conduct a review of its provisional measures to close these gaps. Provisions on confiscation of the proceeds of crime, and on confiscation of instrumentalities and other property should be harmonised to make confiscation of equivalent value possible in connection with assets that have been the target of ML. It is also recommended that the restriction be removed regarding the confiscation of equivalent value when the property has likely been destroyed or consumed.

2.3.3 Compliance with Recommendation 3

	RATING	SUMMARY OF FACTORS UNDERLYING RATING
R.3	LC	<ul style="list-style-type: none"> • It is not possible to confiscate property of value corresponding to the laundered proceeds. • It is not possible to confiscate laundered proceeds that are mingled with licit assets to such an extent that the licit / illicit origin cannot be distinguished. • It is not clear that the rights of bona fide third parties would be protected in all circumstances. • Provisional measures are not often used due to the high burden of having to demonstrate a material link between the property and an offence and the likelihood that there would be flight or removal of the property. • Due to a lack of detail in statistics held on confiscation it is difficult to assess effectiveness in this area.

2.4 Freezing of funds used for TF (SR.III)

2.4.1 Description and Analysis

General

187. The United Nations Security Council (UNSC) has established specific obligations regarding the freezing of funds used for terrorist financing, which form the basis for and are completed by the requirements of FATF Special Recommendation III. EU member States have agreed to establish an EU mechanism for implementing these requirements at the national level. As a member of the European Union, Finland is bound by the EU freezing mechanism. The EU has adopted two regulations and a *Common Position* to implement S/RES/1267(1999) and its successor resolutions, and S/RES/1373(2001). The EU regulations and the *Common Position* lay out the basic framework for freezing funds used for terrorist financing; however, they do not fully cover the requirements of the UNSC Resolutions or Special Recommendation III.

188. Obligations imposed by the UNSC are implemented in Finland directly by the EU regulations. The *Act on the Enforcement of Certain Obligations of Finland as a Member of the United Nations and of the European Union* (659/1967), as amended by Acts 824/1990, 705/1997, 191/2000, 882/2001 and 364/2002) provides the legal basis for the direct application of these measures in cases where the regulations are adopted on the basis of article 60, 301 or 308 of the Treaty establishing the European Community. The *Sanctions Act*, together with the *Penal Code*, provides for the sanctions to be imposed for violations of UNSC resolutions or Council regulations.

189. Freezing of terrorist assets is part of the EU Common Foreign and Security Policy (CFSP), also sometimes referred to as the “second pillar”. The main features are: exclusive focus on foreign policy (article 11, EU Treaty) and a unanimous decision-making process. The Council of the European Union²² (“the Council” or “the Council of Ministers”) is the highest decision-making authority for the CFSP. The Council is the meeting of the competent ministers of all EU member States. For the CFSP, the competent ministers are the ministers of foreign affairs.

190. The principal legal instruments used in the CFSP are the *Common Position* (CP) and *Regulations*. The *Common Position* is unique to the CFSP. EU member States are required to comply with and uphold such common positions which have been adopted unanimously by the Council. The second legal instrument, the regulation, is also used in other policy areas. A regulation is binding in its entirety and is directly applicable in all EU member States (article 249 of the *Treaty Establishing the European Community*). Regulations therefore do not need any further implementing instruments. This is in contrast to EU Directives that bind EU member States as to results to be achieved and must be transposed into the national legal framework.

Obligations implemented under S/RES/1267(1999) and its successor resolutions

191. Obligations imposed by UNSC Resolution S/RES/1267(1999) are implemented by means of Council Common Position 2002/402/CFSP and Council Regulation (EC) No 881/2002. Article 2 of the council regulation provides for an obligation to freeze all funds and economic resources belonging to, or owned or held by, a natural or legal person, group or entity designated by the UNSC 1267 Committee. Article 2 also prohibits the making available of funds or economic resources, directly or indirectly, to, or for the benefit of, the designated persons, groups or entities. The designated natural and legal persons, groups and entities are listed in Annex I of the council regulation. The Commission, as authorised by article 7 of the council regulation, amends or supplements Annex I on

²² The Council of the European Union should not be confused with the European Council (term used to describe the regular meetings of the heads of state or government of the EU member States) or the Council of Europe (a separate international organisation based in Strasbourg of 46 member States in the European region that focuses on human rights, democracy and the rule of law) and that also hosts MONEYVAL, an associate member of the FATF.

the basis of determinations made by either the UNSC or the 1267 Committee. Council Common Position 2002/402/CFSP has been amended by Common Position 2003/140/CFSP concerning exceptions. Council Regulation (EC) No 881/2002 has been amended several times.

Obligations implemented under S/RES/1373(2001)

192. The obligation to freeze the terrorist assets imposed by the UNSC Resolution S/RES/1373(2001) is implemented by means of Council Common Position 2001/931/CFSP and Council Regulation (EC) No 2580/2001. Article 2 of the Council Regulation provides for an obligation to freeze all funds, other financial assets and economic resources belonging to, or owned or held by, a natural or legal person, group or entity listed by the Council. Article 2 also prohibits the making available of funds, other financial assets and economic resources, directly or indirectly, to, or for the benefit of the listed persons, groups or entities. Further article 2 imposes a prohibition on the provision of financial services to, or for the benefit of, listed persons, groups or entities. The list of persons, groups and entities to which these provisions apply is maintained by the Council acting by unanimity. The Council reviews and amends the list of targeted persons, groups and entities in accordance with article 1(4) to 1(6) of Common Position 2001/931/CFSP²³.

193. The EU regulation does not cover persons, groups and entities having their roots, main activities and objectives within the European Union (EU-internals). The list in Council Regulation 2580/2001 includes only the names of the persons and entities linked or related to third countries as well as those who otherwise are the focus of the CFSP aspects of Common Position 2001/931/CFSP (cf. recital 13 of the Regulation). Hence, persons and entities having their roots, main activities and objectives within the EU may only be listed in Common Position 2001/931/CFSP. In the Common Position, they are marked with an asterisk that indicates that they are only covered by article 4 (commitment of member States to afford each other Police and judicial co-operation), and thus they are not subject to the requirement of asset freeze, nor included in the list of the Council Regulation. Finland cannot therefore take administrative freezing measures against EU-internals. In respect of the requirements in Special Recommendation III, this is a significant loophole in Finland's ability to effectively freeze and seize terrorist-related assets.

194. States that are not members of the EU can make proposals concerning the designation of persons, groups and entities, which may lead to a listing in accordance with Council Common Position 2001/931/CFSP and Council Regulation (EC) No 2580/2001. When a proposal is made by a third state, the criteria for listing in article 1 of Common Position 2001/931/CFSP, have to be fulfilled. Requests from non-EU members for freezing must be sent to the EU and are considered not by Finland but by the EU Council, which must agree unanimously to act on the request. Thus, it is possible that a request may be made to Finland which Finland believes should be actioned, but nonetheless the request is not actioned as another EU member has voted against doing so.

195. Finland does not have any other laws or procedures, besides ordinary procedures and measures intended for investigating and prosecuting offences, which make it possible to freeze funds unless this is decided unanimity among the EU member States (see below).

196. The special position of the EU-internals in Common Position 2001/931/CFSP exists because existing EU treaties do not provide a legal basis for extending restrictive measures to persons, groups and entities within the EU. The draft EU Constitutional Treaty concluded in 2004 contains an article that would have provided a legal basis for EU-wide asset freeze of any persons, groups and entities involved in terrorist attacks. In June 2007, the European Council agreed to convene an Inter-Governmental Conference (IGC) to settle the Union's treaty reform process quickly as a priority. The draft mandate of the IGC foresees that the regime concerning freezing of assets to combat terrorism

²³ See http://europa.eu.int/comm/external_relations/cfsp/sanctions/measures.htm.

will be streamlined, and the draft Reform Treaty contains an article for that purpose²⁴. During this time, the question of possible amendment of the *Sanctions Act* in order to broaden the powers of asset freezing to persons, groups and entities listed by the EU Council under CP 931 and marked with an asterisk has been examined by a working party of the MOFA, the Ministry of Justice and the Ministry of Finance. A possible national procedure involving the State Council has been formulated and it is envisaged that the Finnish Parliament will be informed of these issues later in 2007.

Definition of funds

197. The European Council regulations cover all funds and economic resources. Article 1 of both Council Regulation 2580/2001 and Regulation 881/2002 defines the funds and economic resources to which freezing may be applied. The Regulations do not explicitly cover funds owned, “directly or indirectly” by designated persons, or those controlled directly or indirectly, by designated persons. In addition, the limited nature of the TF offence in Finland is such that it does not include funds for individual terrorists or terrorist organisations where there is no link to a specific terrorist act.

System for communicating designations to the financial sector

198. After each EC designation, the Ministry for Foreign Affairs (MOFA) immediately informs the Financial Supervisory Authority (FSA) and the Insurance Supervision Authority (ISA) of the obligation to freeze the assets and economic resources and requests them to provide information to MOFA on any accounts of designated individuals or entities. The FSA and the ISA inform, respectively, the banks, other financial institutions and insurance companies. The Ministry for Foreign Affairs also informs the Ministry of Finance, the Money Laundering Clearing House (MLCH) of the National Bureau of Investigation (NBI), the Bank of Finland (BOF) and the Finnish Banks Association. Banks, other financial institutions and insurance companies are reminded of their obligation to freeze the assets and economic resources as well as of the prohibition on making available funds or economic resources and are requested to provide information either through their supervisor or directly to MOFA.

199. The FSA maintains an Internet page directed to the financial institutions and accessible for all. The web page underlines the obligations based on the sanctions regulations and includes information concerning, for instance, the status and legal effects of Council and Commission Regulations and the division of responsibilities between the government offices, as well as clear instructions for the financial institutions. Moreover, the web page includes a list of the sanctions in force and a link to the EU list of financial sanctions in force²⁵.

200. The FSA arranges in co-operation with other authorities (importantly including the MLCH, the NBI, MOFA and the ISA) annual training seminars for the financial institutions on AML and CFT issues. Compliance with and procedures relating to the financial sanctions and freezing of assets are included in these training seminars. The Ministry of Finance and the FSA have also arranged separate meetings with banks on this issue.

Guidance to financial institutions and DNFPBs

201. Finland has issued little guidance to financial institutions and other persons or entities that may be holding targeted funds in Finland. The FSA Standard 2.4, *Customer identification and customer due diligence - Prevention of money laundering, terrorism financing and market abuse*, in chapter 5.5,

²⁴ According to the draft Treaty, article 67a: "Where necessary to achieve the objectives set out in Article [III-257], as regards preventing and combating terrorism and related activities, the European parliament and the Council, acting in accordance with the ordinary legislative procedure, shall define a framework for administrative measures with regard to capital movements and payments, such as the freezing of funds, financial assets or economic gains belonging to, or owned or held by, natural or legal persons, groups or non-State entities."

²⁵ <http://www.rahoitustarkastus.fi>

briefly describes the various international sanctions mechanisms with respect to TF and recommends that supervised entities monitor changes in financial sanctions and check their customer register on a regular basis to ensure that they are not offering services to parties that are under financial sanctions. In the event that supervised entities find they have a customer with identification details similar to a listed entity, the FSA recommends that the supervised entity notify the MOFA or the FSA. FSA staff have also provided information on obligations with respect to funds used for TF to financial institutions during training seminars. Notifications of changes to the lists are sent by the FSA and the ISA to compliance officers in financial institutions via mail and email. No guidance has been issued for DNFBPs and, while they could access information on the lists via the FSA website and its link to European Commission's webpage on sanctions and freezing of terrorist assets, there is no procedure for notifying DNFBPs of changes to lists.

Mechanisms for de-listing, unfreezing and challenging measures

202. There is no established national procedure for the purpose of considering delisting requests. This is considered unnecessary by Finnish authorities as there are no Finnish citizens or permanent residents on the Al Qaeda/Taliban list or the EU terrorist list. With regard to both the Al Qaeda/Taliban list and the EU terrorist list, the designated persons and entities also have the right to institute proceedings before national courts or the European Court of Justice.

203. Whenever a person, group or entity is delisted, information on the amendment of the respective Council regulation is circulated to institutions in Finland by the FSA and ISA in the same way as notifications of additions to these lists (see above under *Guidance to financial institutions and DNFBPs*). As this system covers only the entities supervised by the FSA and ISA, not all entities which may be holding property of interest will be notified of the delisting.

204. There is no national procedure in Finland for unfreezing, in a timely manner, the funds or other assets of persons or entities inadvertently affected by freezing mechanism upon verification that the person or entity is not designated person. Guidelines on procedures applied to unfreezing for cases of mistaken identity are included in the *EU Best Practices for the effective implementation of restrictive measures* and Finnish authorities advise that they would apply these best practices if such a situation arose. In the only case to date in Finland where a person has sought unfreezing of assets, the institution holding the frozen funds notified the FSA of the customer's request for unfreezing. FSA passed this information to MOFA which is bringing the case to the UN for consideration.

Authorising access to funds for certain expenses

205. The Council regulations lay down exceptions to the application of financial sanctions. Council Regulation (EC) No 561/2003 introduced a new article 2a on exceptions into Council Regulation (EC) No 881/2002 and thereby implemented the S/RES/1452(2002). There are also exceptions included in Council Regulation No 2580/2001, articles 5 and 6. As set forth in the annexes to the Council Regulations, the Ministry for Foreign Affairs is the competent authority in Finland to grant authorisations referred to in the provisions on exceptions.

Freezing, seizing and confiscation in other circumstances

206. Finnish law enforcement authorities may apply certain other measures in the context of a criminal investigation or prosecution to freeze, seize or confiscate assets suspected or proven to be related to terrorist financing. These measures include:

- Financial and other institutions and professionals covered by the *AML/CFT Act* can suspend or decline a transaction for the purpose of carrying out further inquiries, provided that there is reason to suspect that the funds or other possessions involved in the transaction are used for the financing of terrorism. A Police officer in charge at the MLCH may order a freeze of five business days during which period the business transaction may not be concluded. After the

five-day period, the business transaction must be allowed to take place unless further inquiries have led to criminal investigation (s.11 *AML/CFT Act*).

- A court can seize property or place it under restraint or freezing order in connection with the preliminary investigation related to terrorist offences (including financing of terrorism). The Police officer in charge of the investigation may give a similar order, as a provisional measure in urgent situations. The measures require that there is probable cause to believe that the person has committed a terrorist offence (s.3, chapter 3, *Coercive Measure Act*).
- The court may also seize property or place it under restraint or freezing order upon a request for international legal assistance (chapters 3 and 4 of the *Coercive Measures Act*).

Protecting bona fide third parties

207. Any person or entity complying with the obligations under the Council Regulation 881/2002 cannot be held liable vis-à-vis a designated person or entity for any damage that may be suffered by the latter as a result. This is also indicated in the *EU Best Practices for the effective implementation of restrictive measures*. According to article 6 of Council Regulation (EC) No 881/2002, "[t]he freezing of funds, other financial assets and economic resources, in good faith that such action is in accordance with this Regulation, shall not involve the natural or legal person, group or entity implementing it, or its directors or employees, in liability of any kind unless it is proved that the freezing was due to negligence." In this case, an indemnity may be provided. In the case of assets frozen under Council Regulation 2580/2001 (S/RES/1373(2001)), there is no indemnity.

Monitoring compliance with freezing obligations

208. The relevant Council regulations impose an obligation on banks, other financial institutions and insurance companies as well as other bodies and persons to provide information facilitating compliance with the regulations, such as accounts and amounts frozen, to the competent authorities of the member States. In Finland this is the Ministry for Foreign Affairs. See article 5 of Council Regulation (EC) No 881/2002 and article 4 of Council Regulation (EC) No 2580/2001.

209. In Finland, banks, other financial institutions and insurance companies are requested to report either through their supervision body or directly to MOFA on the implementation of sanctions. Financial institutions may also, at their own discretion, contact their supervisory body or MOFA in the case of any close matches to the information on the lists. In these cases MOFA has forwarded the information to the Security Police and the NBI for them to determine whether the person/entity concerned is in fact the designated person. The authorities informed the evaluation team that financial institutions and others also contact the MLCH in the cases of close matches to the names on the lists. Such contacts often result in a disclosure to the MLCH, which is then considered as a TF disclosure (see also section 2.5). It should be noted that until now none of these disclosures has resulted in a pre-trial investigation into possible TF offences. Furthermore, the MLCH has not yet used its power to postpone a transaction on the basis of such a disclosure.

210. The *Sanctions Act* (659/1967), together with the *Penal Code*, provides for sanctions to be imposed for violations of Security Council resolutions or EU Council regulations. According to s.1(11), chapter 46, of the Finnish *Penal Code*, a person who violates or attempts to violate a regulatory provision in a regulation adopted on the basis of article 60, 301 or 308 of the *Treaty establishing the European Community*, may be convicted of a regulation offence and sentenced to a fine or to imprisonment for at most four years.

Additional elements

211. Under article 5 of Council Regulation 2580/2001, EU member States may on occasion and under appropriate conditions authorise the use of frozen funds to meet essential human needs (food, medicine, rent, etc.) and to pay taxes, compulsory insurance premiums, utility fees and charges due to

a financial institution for the maintenance of accounts. Finland has not elaborated how this would work in practice.

Statistics (TF freezing data)²⁶

212. No terrorist assets have been frozen in Finland pursuant to the UN or EU sanctions.

2.4.2 Recommendations and Comments

213. Finland applies the EU mechanisms to implement UN obligations with respect to freezing of funds used for TF. These mechanisms in themselves do not fully implement the requirements of Special Recommendation III. Finland should implement a national mechanism to give effect to requests for freezing assets and designations from other jurisdictions and to enable freezing funds of EU internals (citizens and residents). Finland has not established a TF offence which meets all requirements of Special Recommendation II. It is recommended that Finland enact measures to allow for freezing funds or other assets where the suspect is an individual terrorist, belongs to a terrorist organisation or is otherwise involved in terrorism unconnected with a terrorist act. It is also recommended that a national de-listing process be established as part of these measures.

214. The Finnish authorities should consider providing clear and practical guidance to financial institutions and other entities that may hold terrorist funds concerning their responsibilities under the freezing regime and provide procedures for authorising access to funds/assets that are determined to be necessary on humanitarian grounds in a manner consistent with S/RES/1452(2002).

2.4.3 Compliance with Special Recommendation III

	RATING	SUMMARY OF FACTORS UNDERLYING RATING
SR.III	PC	<ul style="list-style-type: none"> • Finland does not have a national mechanism to consider requests for freezing from other countries or to freeze the funds of EU internals. • The definition of funds in the EU regulations does not explicitly cover funds owned 'directly or indirectly' by designated persons or those controlled directly or indirectly by designated persons. • Finland does not have an established national procedure for the purpose of considering delisting requests. • Due to the limited nature of the terrorist financing offence, it is not clear how Finland would freeze funds or other assets where the suspect is an individual terrorist or involved in a terrorist organisation without a link to a specific terrorist act. • Finland has issued little specific and clear guidance to financial institutions and other persons or entities that may be holding targeted funds in Finland.

Authorities

2.5 The Financial Intelligence Unit and its functions (R.26)

2.5.1 Description and Analysis

215. The Money Laundering Clearing House (MLCH), Finland's financial intelligence unit (FIU), was established on 1 March 1998 under the *Act on Preventing and Clearing Money Laundering 68/1998 (AML/CFT Act)*. It is an independent unit with its own budget and accountability for performance. The MLCH is situated within the Criminal Intelligence Division of the National

²⁶ As related to R.32; see section 7.2 for the compliance rating for this Recommendation.

Bureau of Investigation (NBI) of the Finnish Police. As such, it is a unit within the Finnish Police, possessing the Police powers afforded by the *Police Act* and the *Pre-trial Investigation Act*.

216. For the four years prior to establishment of the MLCH, suspicious transaction reports (STRs) were sent to the Financial Supervisory Authority (FSA), which investigated and screened the STRs, and passed on those reports which it felt were truly suspicious to the Money Laundering Intelligence Desk at the NBI for further investigation. Since 1 March 1998 however, the MLCH has been the sole authority in Finland empowered to receive suspicious transaction reports (STRs) under the *AML/CFT Act* and, based on the reports, to decide if a pre-trial investigation must be launched. Originally the MLCH's role related solely to ML but this was expanded to encompass TF in June 2003. In addition to receipt and analysis of the STRs, the MLCH is also involved in pre-trial investigations of ML and TF offences, and forwards cases to the prosecutor for consideration of charges.

217. The duties of the MLCH are laid down in the *AML/CFT Act*. The MLCH is responsible for:

- Receiving and recording STRs.
- Examining these reports.
- Promoting co-operation between authorities and parties involved in combating ML and TF.
- Co-operating with international authorities in ML and TF investigations.
- Monitoring the progress of AML and CFT efforts in Finland and preparing annual reports.
- Conducting pre-trial investigations into ML and TF and referring cases to the prosecutor.

218. The MLCH receives STRs. Finland does not have a system for receiving disclosures of any types of transactions other than STRs and this is not envisaged for the near future. However, a system is in place whereby businesses providing currency exchange and transfer services disclose all STRs above a threshold to the MLCH. These businesses have determined a threshold above which they consider any transaction to be suspicious as compared to the normal profile of transactions conducted by their customers. These disclosures are therefore considered STRs. Such businesses also provide STRs to the MLCH related to transactions below the threshold amount. As at the time of the on-site visit, many of these reports had not been inputted to the MLCH database as the format in which they were provided was inappropriate for the database and thus required some manual handling.

Table 18: STRs from currency exchange, money remittance and gaming sectors, 2006

REPORTING ENTITY	THRESHOLD REPORTS	STRs	TOTAL
Currency exchange and money remittance	6 933	218	7 151
Gaming sector (excluding Casino sector)	1 635	140	1 775

219. When making a suspicious transaction report, parties subject to the reporting obligation must provide the MLCH with all the information and documents that might be significant to the matter (s.10 *AML/CFT Act*). In practice, the scope and accuracy of the information to be submitted to the MLCH depends on the situation in each case and on the nature of the business of the reporting entity.

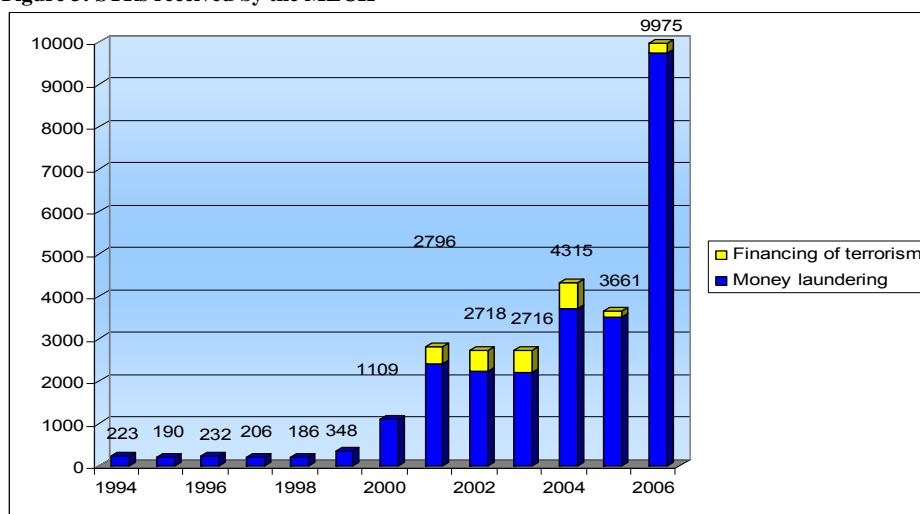
220. According to s.5 of the *AML/CFT Act*, the public authorities and other supervisory bodies are also obliged to provide disclosures to the MLCH when, during the conduct of their supervisory or other duties, there are reasons to suspect that the assets or other property involved in a transaction are of illegal origin or that these are used to commit an offence or a punishable attempt of such an offence. The MLCH only receives a very small number of such disclosures each year. The MLCH may also receive voluntary information from other law enforcement agencies, such as from Customs, and this information is regarded as a disclosure.

221. On 15 June 2007 the *Act on controls of cash entering or leaving the European Community* (653/2007) entered into force and the MLCH immediately began to receive reports of individuals importing or exporting currency or monetary instruments of EUR 10 000 or more into the EU and

cross-border cash seizure reports in accordance with that act. Between 15 and 27 June 2007²⁷ the Finnish Customs had received 11 such reports and had transmitted them to the MLCH electronically.
STR analysis and dissemination

222. In 2006, the MLCH received approximately 13 000 STRs and entered 9 975 reports into its database. As at the time of the on-site visit, the MLCH was working with a five-month backlog of reports yet to be entered into its database²⁸. This equates to approximate 5 000 reports which at that time had not been entered into the database. 2006 saw an increase in the number of reports entered into the MLCH database, an increase of 6 480 (or 65%) compared to 2005. This is largely due to implementation of a semi-electronic reporting system used by businesses providing currency exchange and transfer services as well as the relevant parties in the gambling sector (except the Grand Casino Helsinki) to submit reports of transactions over a certain threshold above which they consider transactions to be suspicious. The online reporting involves transaction details incorporated in an Excel spreadsheet – sent to the MLCH by email – which allow it to include the data, after manual processing, in its database. In addition to this system, one of the largest Finnish banks has begun to use a secure electronic reporting system which is accessible via the MLCH website. Two other banks are considering implementation of this reporting system in their institutions.

Figure 3: STRs received by the MLCH



223. Very few disclosures are received on the basis of suspicion of TF and these are almost entirely due to possible name matches with persons and entities on the UNSCR and EC lists of persons and entities suspected of being involved in terrorism. The information provided has not yet resulted in the MLCH referring a TF disclosure for a pre-trial investigation.

Table 19: Reporting parties and STRs entered into MLCH database, 2004 - 2006

REPORTING ENTITIES	2004	2005	2006	2006 %
Banks	449	482	616	6.3
Investment firms	2	3	5	0.1
Insurance companies	6	4	20	0.2
Real estate businesses and apartment rental agencies	1	1	7	0.1
Operators practising betting, totalisator betting or casino activities	1 061	871	1 822	18.1
Currency exchange companies	2 072	2 052	7 152	73.4
Businesses or professions performing external accounting functions	5	5	-	-
Businesses or professions carrying out auditing duties	3	2	1	0.1

²⁷ 27 June 2007 is 2 months after the end of the onsite visit for this evaluation and thus in accordance with the *Methodology for Assessing Compliance with the FATF 40 recommendations and the FATF 9 Special Recommendations*, February 2007, is the end of the period being considered in this evaluation.

²⁸ In August 2007, the MLCH advised that inputting to the database was up to date and this backlog no longer existed.

REPORTING ENTITIES	2004	2005	2006	2006 %
Lawyers	1	2	8	0.1
Dealers in precious stones or metals, work of art or vehicles	1	2	4	0.1
Pawnshops	-	-	-	-
National Police authorities	5	4	10	0.1
Other national authorities	89	53	72	0.7
Foreign Police authorities	8	1	5	0.1
Other foreign authorities	2	1	1	0.1
Other sources	17	12	19	0.2
TOTAL	3 722	3 495	9 742	100

224. Among the obliged parties, banks submitted more STRs in 2006 than in the previous years. 88% of the 616 reports received from banks in 2006 originated from the 3 largest banks (out of a total of 15 banks). Since 1 June 2003 a number of new entities became subject to the obligation to report, such as businesses and professions performing external accounting or audit; lawyers; and, dealers in precious goods. These amendments to the *AML/CFT Act* have not increased the number of reports as expected, and only 10 – 11 reports from these entities have been received annually.

225. In 2006, the MLCH received 72 reports from national authorities other than the Police, *i.e.* from the Customs and the Border Guard. The number of reports from other parties remained at the same level in 2006 as in previous years.

226. In general obliged parties file STRs within 1 to 2 days of completion of the transaction. Some STRs are filed before executing the transaction however, which allows the MLCH to use, if necessary, its power to suspend a transaction (see below). The institutions and persons subject to the reporting obligation often seek the advice of the MLCH before making a disclosure.

Guidance on reporting

227. The *Money Laundering Clearing House Best Practices* of 2004 provides guidance for the obliged parties. The purpose of this document is to provide practical information to the obliged parties with respect to implementing the obligations on them under the *AML/CFT Act* and the *AML/CFT Decree*²⁹, and to establish a harmonised operating procedure. The MLCH has developed a specific reporting form for obliged parties to submit STRs and obliged parties may complete this online or alternatively may print it and send it to the MLCH via fax, email or post. In addition, the *Money Laundering Clearing House Best Practices* gives an overview of the different categories of information that need to be included in STRs. The MLCH has not developed indicators of suspicious transactions, as it seeks to avoid the risk that obliged parties might use such a list of indicators as an exhaustive list of considerations when deciding whether or not to submit an STR.

228. Co-operation with the obliged parties is one of the priorities of the MLCH. The MLCH provides extensive training to the obliged parties and persons and uses these occasions to enhance general co-operation with them. During 2006 the MLCH trained approximately 1 500 employees of authorities and obliged parties. Of these persons, 1 190 were representatives of obliged parties and 310 were from the Police and other law enforcement authorities. In 2005, 1 745 persons were trained by the MLCH; 1 200 from obliged parties and 500 from other authorities. The training has focused on the legislation concerning ML and TF and related international conventions, as well as on the identification and tracing of proceeds of crime and the obligation to report suspected ML and TF. The training is based on practical examples. Obligated parties also seek the advice of the MLCH on a more ad hoc basis and appear to appreciate the guidance and assistance they are provided. As part of this ad hoc advice, the MLCH provides feedback from time to time to the obliged parties about the quality

²⁹ The *AML/CFT Decree* incorporates further provisions on the obligations to identify, keep records, conduct customer due diligence, reporting of STRs, suspension of transactions, refusal to conduct transactions, enhanced identification requirements and related obligations in s.6 to s.11 and s.11a of the *AML/CFT Act* and on the detailed content of the notification of payments transfer activity referred to in s.13a(2) of the act.

of the information in the disclosures. At present, it is only during these ad hoc discussions that the MLCH provides feedback to obliged parties on specific cases and reporting issues.

229. In addition to its *Money Laundering Clearing House Best Practices* which was published in 2004, the MLCH publishes a biannual report on ML in Finland. It also gathers information on ML sentences and confiscations and in 2003 published these in *Money Laundering Offences in Legal Praxis (Rahanpesurikokset oikeuskäytännössä)*, which was updated in 2006. These publications are available on the MLCH website which also contains other useful information on preventing and investigating ML and TF³⁰. Further, the FIU provides general information to supervisory authorities about the number and the nature of disclosures received from the sectors they supervise.

Access to additional information

230. As a Police FIU, the MLCH has a wide range of powers to obtain information for the purpose of its analysis and investigation powers granted by the *AML/CFT Act*, the *Pre-trial Investigation Act* and the *Police Act* at its disposal. Section 12(1) of the *AML/CFT Act* gives the MLCH the right to obtain free of charge from an authority or a body assigned to perform a public function, information and documents necessary for clearing ML and TF. As a matter of procedures, this information must be requested by a commanding Police officer working at the MLCH.

231. The MLCH has direct access to the following databases:

- Police databases: Criminal incident database; criminal intelligence database; arrested persons; Police alarm database; personal identification register; personal identification register for foreigners; driver's licence database; passport database; identification card database; disappeared persons and unidentified deceased persons; stolen and found property; and the firearm permit database.
- Frontier Guard: FG intelligence database; people travelling to and from Finland with a visa; and licence plates of the cars driving to and from Russia.
- Customs Authority: Criminal incident database; and customs criminal intelligence database.
- Ministry of Justice: Decisions of appeal and high court; past convictions of a person (criminal history); prisoners database; business prohibition database; debt arrangement register; and the bankruptcy register.
- Execution authority: Execution register.
- Ministry of Foreign Justice: Visa database; and residence and working permits.
- Other: Ground vehicle database; boat register; company database; loan arrangements register; real estate database; population register; and the 'residents of an apartment' register.
- International databases: European business register; Europol information system; Interpol I-24/7; Schengen information system; and Europol financial crime information centre.

232. Upon request the MLCH may obtain information from:

- Ministry of Justice: Decisions of the prosecutor and the local court; and local court convictions.
- Tax authority: Tax databases.

233. In practice, upon receipt of an STR, the analytical team at the MLCH checks three Police databases: criminal reports (RIKI database); intelligence reports – including ML and TF (EPRI database); and legal assistance requests (NBIAKJ database). The decision to check other databases or to request further information from the prosecutor or tax authorities depends on the characteristics of the STR received and the results of the basic checks and is taken by one of the investigation teams.

234. Under s.12(3) of the *AML/CFT Act*, the MLCH has the right to obtain, on written request, any information necessary for clearing money laundering from a private institution or person,

³⁰ www.rahanpesu.fi

notwithstanding any secrecy provisions. Such requests for information are at the discretion of the MLCH investigation teams when enquiring further into an STR. The MLCH can thus obtain, upon receipt of a disclosure, any additional information it deems useful for full analysis of the case from all obliged parties; not just from the obliged party which submitted the STR. With the powers defined in the *AML/CFT Act* and the *Police Act*, the MLCH may, when examining STRs, carry out register checks, interviews, surveillance, technical surveillance and monitoring, telecommunications monitoring, pseudo purchases and undercover activities.

235. It is not the policy of the MLCH to request additional financial information for each STR received. However, if a decision is taken to ask for more financial information and when necessary, a general request is sent to all banks, investment firms, mutual fund companies, exchange offices and money remittance companies for any information they may have on the entities of interest. Often, initial responses are received from these institutions within a few hours of receipt of the request for information. Where details exist, for example in relation to the financial activities of an existing customer, this information is provided to the MLCH within a few days of receipt of the initial request for information. The MLCH also provides *Advance warnings* about persons or entities to the obliged parties. These *Advance warnings* indicate that the persons or entities concerned are of interest to the MLCH. The warnings simply list the identification data for the entities of interest.

Suspension of transactions

236. In addition, under s.11(3) of the *AML/CFT Act*, the MLCH has the ability to suspend transactions which are the subject of an STR. After receiving a suspicious transaction report, a commanding Police officer working at the MLCH may give an order to refrain from carrying out the transaction for up to five working days, if this is considered necessary to progress the inquiries. This power can be used to suspend transactions in any institution, not just in the institution that forwarded the STR. It should be noted that until now only transactions reported by banks have been suspended. The other obliged parties have never disclosed transactions before executing them.

Table 20: Orders to suspend transactions and the recovered criminal proceeds, 2002 - 2006

YEAR	NUMBER OF CASES	TOTAL EUR AMOUNT	VALUE OF PROPERTY RECOVERED
2002	4	748 776	84 361
2003	16	1 494 542	1 292 781
2004	25	1 408 775	525 882
2005	11	2 961 100	559 067
2006	13	23 657 948	517 027
TOTAL	69	30 271 141	2 979 118

Protection of information

237. Section 12(4) of the *AML/CFT Act* states that “The information [received by the MLCH from obliged parties] may be used and disclosed only for the purpose of preventing and clearing money laundering”. On the basis of this provision, the information included in the STRs and any additional information collected by the MLCH are forwarded to relevant authorities for pre-trial investigation. In order to protect the disclosing institutions and persons, the MLCH does not however forward the STR itself to the pre-trial investigation authorities. Instead, all relevant details of the disclosure, other than the identity of the reporting institution and reporting person are extracted from the MLCH’s database and forwarded for pre-trial investigation. The courts can request receipt of this identity information if they deem it necessary for a trial.

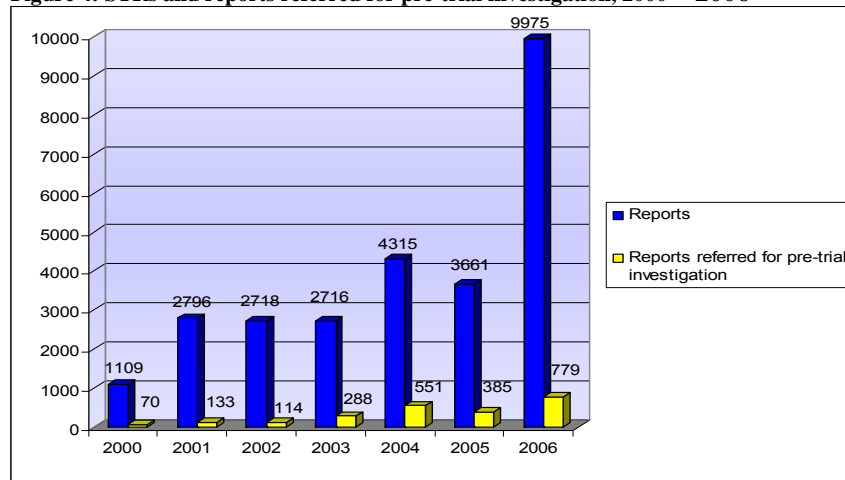
Dissemination of STRs

238. The MLCH may conduct pre-trial investigations in accordance with the *Pre-trial Investigation Act* (449/1987) if there is reason to suspect an offence. The MLCH investigates some cases and directly refers these to the prosecutor for the consideration of charges. However, the resources at the MCLH and its focus on investigating the most complex ML cases, only allow it to conduct two or

three extensive pre-trial investigations each year. In more than 90% of the cases which progress to pre-trial investigation, another competent authority is in charge of the investigation. In order to support other pre-trial investigation authorities with necessary AML/CFT expertise, members of the MLCH often participate in pre-trial investigations by other authorities.

239. Instead of numbers of cases, FIU Finland keeps statistics on the number of STRs received. As a consequence, the MLCH has statistics on the number of STRs forwarded to pre-trial investigation, but not on how many cases were involved. Sometimes, a large number of STRs are linked to each other and as a result, a large number of STRs can be forwarded at one time. In 2006, 779 STRs were referred for pre-trial investigation, double the number referred the year before. However, most pre-trial investigations do not commence from referral of an STR.

Figure 4: STRs and reports referred for pre-trial investigation, 2000 – 2006



240. The number of suspicious transaction reports forwarded for pre-trial investigation as suspected ML changes from year to year. Although all disclosures are received on the basis of suspicions of ML or TF, only a relatively small number of them are forwarded to pre-trial investigation for investigation of ML offences. In 2006, 104 of the 779 reports forwarded for pre-trial investigation were forwarded with ML as the suspected offence. This represents 13.4% of all the reports referred for pre-trial investigation. This low level of referrals to investigate ML can be explained by the fact that self-laundering is not an offence in Finland and, as a result, law enforcement authorities appear to concentrate their efforts more on investigating the predicate offences than on ML. See also Table 21 “Reports referred to the provinces, NBI and local Police for pre-trial investigation, 2003-2006” in section 2.6 below. In 2006, 18% of the STRs received were referred to the NBI, which, along with the MLCH, is the primary unit investigating ML, and 60% were referred to Police districts in the Province of Southern Finland.

241. Initial feedback is obtained from the pre-trial investigation authorities at times by use of feedback forms sent to the pre-trial investigation authorities along with the dissemination of the STR and associated analysis. In 2004 the MLCH sent 150 such feedback forms along with its disseminations. These forms seek information on how useful the disseminated information was for the pre-trial investigation. It is difficult however for the MLCH to obtain feedback on the final results of the cases it forwards to the pre-trial investigation authorities. Further, the MLCH’s database in its current form does not allow for storage and analysis of feedback received or other information on the final outcomes of matters disseminated by the MLCH.

242. Information obtained under the *AML/CFT Act* is confidential. The STRs are recorded in the Money Laundering Data File, which is a database used by the Finnish Police and managed in accordance with s.6(2)(1) of the *Act on the Processing of Personal Data by the Police* (761/2003).

While this is part of a Police intelligence database used by many units, only the personnel of the MLCH are able to access and use the information in the money laundering data file.

243. The money laundering data file is however connected to the general Police intelligence database so that when Police officers search the intelligence database for information about an entity which is recorded in the money laundering data file, they receive an automated message noting that the MLCH has information and they should contact the MLCH for further information. The MLCH can provide more details or alternatively has the authority to refuse to provide information if it considers that the information is not requested for the purpose of preventing and clearing ML and TF.

244. As mentioned previously, the MLCH gives “advance warnings” to the disclosing institutions and persons. Further the FIU provides details about the number and the general content (including the nature of the transactions) of the disclosures (no identification data or other details of the suspicious transactions) to the supervisory authorities.

Public reports

245. The MLCH publishes *biannual reports*, which include general information and statistics on suspicious transaction reports received and forwarded for pre-trial investigation. It examines efforts taken to combat both money laundering and terrorist financing. The biannual reports also include general information on the MLCH, its processes and international co-operation. The reports are published in Finnish and in Swedish, sometimes also in English. They do not include information concerning trends and typologies. However, its *Money Laundering Offences in Legal Practice*, which was most recently updated in 2006, contains information on current techniques, methods and trends, case law and criminal legislation concerning money laundering. The information provided in this report is based primarily on information received from the judicial authorities, even if it should be noted that the feedback from law enforcement and prosecutorial authorities is rather poor. Since obtaining this information can be difficult, updating the report is an intensive project carried out as resources allow. Currently most of the cases in the *Money Laundering Offences in Legal Praxis* relate to convictions for the previous ML offence, as it was before 2003. Thus the cases used in this report to describe the *current* techniques, methods and trends are not the most recent ones. This report will be updated later in 2007.

Egmont Group

246. The MLCH became a member of the Egmont Group in 1998. Since that time it has participated actively in the Egmont Information Technology and Operational Working Groups. An important tool for the MLCH’s daily work is the Egmont Secure Web (ESW). The MLCH actively shares information with Egmont member FIUs via this system. The MLCH can exchange information without a memorandum of understanding (MOU) with the counterpart FIU, but it is able to sign an MOU where the counterpart requires one. Therefore, the MLCH has signed MOUs to underpin the exchange of financial intelligence with the FIUs of Albania, Belgium, Bulgaria, Canada, France, Latvia, Lithuania, Luxembourg, Poland, Russia, Spain, Switzerland and South Korea. The MLCH takes into account both the *Egmont Group Statement of Purpose* and its *Principles for information Exchange between Financial Intelligence Units* when working with and exchanging information with other FIUs. In 2006, the MLCH sent/received 368 messages via the ESW.

Resources (FIU)³¹

Structure, funding, staffing and training

247. The MLCH is an independent division within the NBI, with its own budget and accountability for results to the Chief of the NBI and the Ministry of Interior. The budget allocation for the MLCH

³¹ As related to R.30; see section 7.1 for the compliance rating for this Recommendation.

for 2007 is EUR 1 400 000. However, due to special funding received for two persons specialised in the recovery of proceeds of crime and 195 000 EUR deferred from 2006, the total budget for 2007 is 1 756 968 EUR. Salaries represent the largest part of the MLCH's expenses.

248. The FIU currently has 24 members of staff who are allocated to the Analysis Unit, the Investigation Units and the Specialist Unit (see *Annex 6* for the MLCH organisation chart). The MLCH also has a legal advisor and four secretaries, giving a total of 29 staff members. From time to time it also hosts law graduates for short-term attachments. The structure of the FIU was recently reviewed in 2005 in order to better balance the workload in the MLCH and in order to be prepared for analysis and pre-trial investigation of TF cases. The Analysis Unit is closely involved in developing the analytical functions of the MLCH and it is in charge of receipt and acknowledgement of STRs, input of the STRs into the database, and checks of 3 Police databases: RIKI, EPRI and NBIKJ (see above). This unit then hands the STRs, together with the results of these database checks, to one of the investigation teams. The Analysis Unit also provides analytical support to the investigative units and supports other enforcement units when there is need to merge STR database information with the information of other databases. In addition, the Analysis Unit is responsible for developing statistics.

249. The MLCH investigators evaluate the information received from the Analysis Unit and decide whether to make further inquiries into the STR, potentially leading to a pre-trial investigation, or to close it. The MLCH has two Investigation Units in order to conduct various inquiries and pre-trial investigations simultaneously and to ensure that there is always an active investigation team working at the FIU, while satisfying the requirements of the *Labour Act*. These Investigation Units are in charge of inquiries in the intelligence phase as well as conduct of pre-trial investigations where the MLCH decides not to refer the pre-trial investigation to another authority. Both of the Investigation Units are headed by a Chief Inspector, who has the authority to exercise various powers provided under the *Coercive Measures Act* and the *Police Act* in addition to the *AML/CFT Act*.

250. The members of the Specialist Unit are trained to efficiently tackle terrorist financing. The MLCH has since 2002 focussed on building expertise in terrorist financing cases through domestic and international liaison, training and examination of best practices. The Specialist Unit receives STRs relating to TF from the Analysis Unit and decides whether to make further inquiries into the STR or to close it. As with the Investigation Units, the Specialist Unit is also able to conduct some pre-trial investigations. Further, the members of this unit actively follow the TF threats in Finland and exchange information with other competent authorities in this regard and the unit conducts extensive international liaison due to the international nature of this activity. To date, no TF STRs have been referred for pre-trial investigation. However, the evaluation team noted that all measures and procedures are in place to investigate TF offences once they are detected. Finally, the Specialist Unit is also in charge of the international exchange between the Finnish FIU and foreign counterparts.

251. The MLCH seeks to recruit experienced and highly qualified officers. The majority of its staff members are sworn Police officers with a number of years experience in investigating financial and economic crimes. Most of the civil servants have a Master's level degree and relevant background in the financial sector, the prosecuting authorities or tax and Customs authorities, and a number of its senior Police staff members are currently pursuing studies toward advanced degrees. There are 11 Detective Sergeants and three Senior Detective Constables. In addition, the MLCH has four secretaries. MLCH staff are provided with training annually, hundreds of hours every year. Most staff members also possess good language skills.

252. The members of staff of the FIU receive on-the-job training. Further Police officers follow 2 special courses of 3 days every year as part of the training of the Police academy. These training sessions do focus among others on ML and assets tracing. When the Specialist Unit was established, four of its investigators were trained in relation to TF and investigations overseas (France, Spain and the UK). They received also training on a national level from partner agencies and attended international conferences in neighbouring countries, Europe and other countries. They in turn passed

on this expertise by training all members of personnel in the MLCH and actively participating in the EU-US TF seminar under the Finnish EU Presidency in 2006.

Professional standards

253. Integrity and professional standards are expected of the MLCH staff as employees of Finnish Police and as employees of the Finnish government. Several legal provisions (e.g. *State Civil Servants Act*) provide the basic principles of good governance and transparency. Under s.23(3) of the *Act on the Openness of Government Activities*, persons in the service of an authority are prohibited from using confidential information for personal benefit, for the benefit of another, or for the detriment of any person. This prohibition is also mentioned in s.43 of the *Police Act*. In addition to the general obligation to observe secrecy imposed on public authorities, the personnel of the MLCH are bound by a strict secrecy obligation concerning information obtained when handling and investigating reports on suspicious transactions. Under s.12 of the *AML/CFT Act*, such information may only be used and disclosed for preventing and investigating ML and TF. Any breach of official secrecy is criminalised in Finland under s.5, chapter 40, of the *Penal Code* which provides that a person convicted of breach of official secrecy may be sentenced to a fine or imprisonment of up to two years and may also be dismissed from his/her employment.

Information technology resources

254. The MLCH has information technology hardware and software to carry out its core functions. Its staff are equipped with computers with access to adequate secure storage space on network drives. The unit employs appropriate analytical software for the processing of STRs. Although the software tools for STR analysis are in a range of moderate to good, the use of them is hindered by data access problems. The MLCH's database was created as a part of the criminal intelligence database of the Finnish Police. The MLCH has had no other access to this database than a standard user interface, which was built for handling STRs case by case and entity by entity. However, development of more sophisticated tools for STR analysis is underway. Although the software tools for STR analysis are adequate for the Finnish Police they are not sophisticated or tailored to the specialist work of an FIU.

255. One of the MLCH's priorities for 2007 is to commence creation of a separate database from the Police systems and to implement tools for data mining and mass analysis of STRs. The MLCH has some budget for the development of a new database. It is expected that this new database will also assist the FIU in providing more detailed feedback to the obliged parties and will allow for better follow-up of STRs referred to authorities for pre-trial investigation. Further, the MLCH has begun to receive information from Finnish Customs detailing the disclosures of cross border movement of currency. Full analysis and integration of this information into the MLCH systems will require different functionality from that of the current database. To this end, discussions are already taking place in the national FATF Working Group with a view to making the databases of the competent authorities more compatible in order to support systematic exchange of information.

Statistics (FIU)³²

256. The MLCH produces the following statistics relating to ML and TF :

- The numbers of STRs received.
- Breakdown of STRs analysed and referred for pre-trial investigation
- Breakdown of reports by institution type.
- Breakdown of the nature of the suspicious transactions in STRs received³³.

³² As related to R.32; see section 7.2 for the compliance rating for this Recommendation.

³³ These statistics are incomplete since the current database only allows indication of one piece of information on the nature of the transaction, while many reports in fact relate to transactions of different types.

- Overview of the funds involved in the STRs.
- The numbers of STRs with transfers of funds to and from Finland.
- Breakdown of the areas of origin of the natural persons.

257. Statistics collected by the FIU are limited at present; this is in part due to the lack of supporting IT for that function, including the absence of a management system that can collect detailed information in relation to STRs and subsequent ML investigations. While the MLCH is aware of the total number of pre-trial investigations commenced from STRs, there is limited information available about the number of STRs resulting in ML or TF or predicate offence investigations, prosecutions or convictions and this is due to a lack of feedback from the enforcement and prosecution authorities. Further, the current IT capacity of the MLCH does not allow for storage of this kind of information and its analysis. This information is an important tool for measuring the effectiveness of the MLCH's activities. Similarly, there is currently limited information available about requests for assistance from foreign FIUs and other bodies, action taken on these requests as well as the number of occasions when the MLCH spontaneously provided information to domestic and international authorities.

Additional Elements

258. At the end of 2006 pre-trial investigation was still on-going in relation to 1 466 reports of the total of 2 498. The investigation had been completed in 177 reports without referring the case to the prosecutor for consideration of charges. The investigation had been referred abroad in 18 reports. The investigation had been completed and the reports referred to the prosecution for consideration of charges and in court hearing both in 49 reports. A decision not to prosecute had been made in 170 and a court decision had been given in 569 reports.

2.5.2 Recommendations and Comments

259. The FIU meets many of the requirements of Recommendation 26 and clearly plays a key role in the AML/CFT system in Finland. However, there are several factors that diminish the FIU's effectiveness. As at the time of the on-site visit, there was a backlog in the inputting of STRs into the MLCH database. This was in part due to the thousands of reports received from remittance services which are in the nature of STRs over a threshold amount determined to be suspicious and in part due to receipt of reports which were not in a form compatible with the FIU's IT systems. As the MLCH has now begun to receive information from disclosures of cross border movements of cash in addition to STRs, it is recommended that the MLCH treat its development of a new database as a priority and that the Finnish Police fully resource this project.

260. As 88% of the reports received from banks originate from the 3 largest banks it is recommended that the MLCH (in co-operation with other stakeholders such as the supervisory authorities) pay more attention to the reasons why only a limited number of institutions submit STRs and how the reporting behaviour in general can be improved. In order to encourage effective and quality STR reporting, it is recommended that the MLCH improve the guidance provided to all types of obliged parties and provide feedback to assist with STR reporting. A list of indicators of suspicious activity or indicators for different sectors may also assist in this regard. The current situation where one member of personnel acts as the central contact point for all obliged parties and is responsible for training all obliged parties is not realistic.

261. The MLCH should pay more attention to the development of trends and typologies related to the STRs received and matters forwarded to pre-trial investigation. It is recommended that more experienced members of personnel involved in the day-to-day work of the MLCH focus on development of typologies, guidance and support to work with the reporting institutions. Similarly, it is recommended that the MLCH strengthen mechanisms to obtain information on the outcomes of matters disseminated and examine the statistics and feedback from investigators and prosecutors with a view to improving its understanding of the effectiveness of the AML/CFT system in Finland.

2.5.3 Compliance with Recommendation 26

	RATING	SUMMARY OF FACTORS UNDERLYING RATING
R.26	LC	<ul style="list-style-type: none"> • There was at the time of this assessment a five-month backlog in inputting STRs to the FIU's database. • Little written guidance has been provided to obliged parties regarding the manner of reporting and these parties have made limited use of the ability to submit STRs electronically. • The feedback provided to obliged parties by the FIU and the analysis conducted by the FIU are limited by insufficient human and technical resources.

2.6 Law enforcement, prosecution and other competent authorities – the framework for investigation and prosecution of offences and for confiscation and freezing (R.27 & 28)

2.6.1 Description and Analysis

262. The *Police Act* (493/1995) and the *Coercive Measures Act* (450/1987) lay down provisions on policing. The provisions on information gathering methods, laid down in the *Police Act*, are applied to the prevention of crime and detection of committed offences, whereas the coercive measures provided for in the *Coercive Measures Act* are applied in the investigation of committed offences. The coercive measures are not used until a pre-trial investigation into the case has been launched. The coercive measures included in the *Coercive Measures Act* may not be applied during preliminary enquiries for establishing whether a pre-trial investigation should be launched or not. At that stage the preliminary enquiries provided for in the *Police Act* are applied. Exceptions to this are undercover activities and pseudo purchases. The provisions on these measures are laid out in full in the *Police Act*, including for instances where these measures may be applied to preliminary investigations.

263. Under s.2(1) of the *Pre-trial Investigation Act* (449/1987), the Police or another pre-trial investigation authority is obliged to carry out a pre-trial investigation when, on the basis of a report made to it or otherwise, there is cause to suspect that an offence has been committed. Under s.13 of the same act, pre-trial investigations are conducted by the Police unless otherwise stipulated by law. The Finnish Police is the general pre-trial investigation authority. Pre-trial investigations are usually led by a Police officer, the head of inquiry. A prosecutor may lead a pre-trial investigation when the suspect is a Police officer. Special pre-trial investigation authorities are the Customs, Border Guard and military authorities. They are competent under certain legal provisions to carry out investigation into some offences in the framework of the duties legally assigned to them. Special provisions with respect to conduct of pre-trial investigations can also be found in the *Customs Act* (1466/1994).

264. Some of the investigation powers provided in the *Coercive Measures Act* may only be applied to crimes which are punishable by relatively higher penalties. Under s.6, chapter 32 of the *Penal Code*, a person may be sentenced for ML to fine or imprisonment for at most two years. Under s.5, chapter 34a of the *Penal Code*, a person may be sentenced for TF to an imprisonment for at least four months and at most eight years. These penalties are above the limits set in all provisions relating to investigation powers and thus the measures under the *Coercive Measures Act* are applicable to investigations of ML or TF.

265. Provisions on the responsibilities of pre-trial investigation authorities are currently being reviewed. Besides Police responsibilities, these reforms concern also the functions of other security authorities, such as the Border Guard, Defence forces and Customs, with regard to maintaining public order and security as well as the pre-trial investigation of offences.

Recommendation 27

266. The general policing provisions are in the *Police Act* (493/1995). Under s.1 of the *Police Act*, the duty of the Police is to secure judicial and social order, maintain public order and security, prevent and investigate crimes and forward cases to a prosecutor for consideration of charges. Under s.2(1) of the *Pre-trial Investigation Act*, the Police or other pre-trial investigation authority is authorised to carry out a pre-trial investigation when there is cause to suspect that an offence has been committed. The *Police Administration Act* (110/1992) and its associated decree (158/1996) define the division of tasks between different Police units. Under s.7 of the *Police Administration Act*, the local Police conduct pre-trial investigations. It is however the duty of the national units, *i.e.* the NBI, the Security Police and the National Traffic Police, to investigate certain offences.

Designated investigation authorities

267. **Local Police:** The local Police investigate most offences which come to the attention of the Police. At present there are 90 local Police offices. In 13 state local districts the Police station is an independent office and in other districts it is a part of the state local office. Regional crime investigation units have been established with responsibility for surveillance and investigation of narcotics and financial crimes as well as crime scene investigation. The local Police investigate ML and TF offences when they receive STRs referrals from the MLCH. In 2006, the MLCH referred 779 STRs to investigative agencies for pre-trial investigation (see *table 21* below). Most cases of ML are however found through criminal investigations into other offences rather than due to STRs referred by the MLCH. This can be attributed partly to the fact that self-laundering is not a crime in Finland.

Table 21: Reports referred to the provinces, NBI and local Police for pre-trial investigation, 2003 – 2006

	2003	2004	2005	2006	2006 %
NBI	94	186	138	140	18
Province of Southern Finland	68	99	96	289	37
Helsinki PD	78	188	87	168	21.6
Province of Western Finland	26	36	33	75	9.7
Customs	5	26	23	65	8.4
Province of Oulu	3	6	5	6	0.7
Province of Eastern Finland	6	9	2	29	3.7
Province of Lapland	8	1	1	7	0.9
TOTAL	288	551	385	779	100

268. **National Bureau of Investigation:** The NBI has a significant role as a pre-trial investigation authority. The NBI is a national Police unit whose duty is to combat and investigate the most serious professional, organised and international crimes and to provide specialist services in combating crime to all law enforcement authorities. In practice, the investigations carried out by the NBI concentrate on the prevention of professional organised crime, aggravated crime targeted at individuals, financial crime and narcotics crime, crime related to ML, computer crime and aggravated property crime. The NBI and the Security Police have joint responsibility for the investigation of terrorist offences. The NBI is the national centre for the international operational Police co-operation in Finland.

269. **ML Clearing House MLCH (FIU):** The MLCH at the NBI is the only public authority in Finland empowered to receive STRs from which it determines whether there is cause to launch a pre-trial investigation. The duties of the MLCH include the prevention and detection of ML and TF. It also carries out pre-trial investigation into cases of ML and refers cases to the prosecutor. (See the previous discussion of the role and functions of the MLCH under Recommendation 26).

270. **Security Police:** The main duties of the Security Police are to provide an intelligence service and an investigative authority in relation to terrorism. The Security Police work to prevent unlawful intelligence gathering in Finland by foreign powers. The Security Police are responsible for counter-terrorist intelligence as well as for the strategic analysis and forecasting of emerging threats. Analyses of emerging threats are also produced by the defence administration. They investigate

terrorism and provide assistance to other pre-trial investigation authorities in the investigation of terrorist acts in Finland. The Security Police also investigates internal security threats and carries out preventive security work. With respect to investigations of TF, the Security Police and the NBI have arrangements to conduct such investigations jointly. The Security Police can be considered as Finland's intelligence service.

271. **Customs authorities:** The duties of Finnish Customs are defined in s.2 of the *Customs Act*. They are responsible for the control of goods imported to and exported from the country, the customs control of cross border traffic and other customs measures as well as customs and excise tax, as separately provided for. The Customs is, in addition to the Police, a law enforcement and pre-trial investigation authority. In accordance with s.7 of the *Customs Decree* (1543/1994) the pre-trial investigation into customs offences is carried out by Finnish Customs, Police or Border Guard authorities depending on which authority's commenced the inquiry, unless the authorities otherwise agree. The Ministry of the Interior has given an order to the Police for the co-ordination of the Police and customs duties. Under that order, the Finnish Customs investigates customs offences. Under s.43(2) of the *Customs Act*, a customs officer has the same powers to take investigative measures in a pre-trial investigation as a Police officer during a pre-trial investigation carried out by the Police authorities. According to s.3 of the *Customs Act*, a customs offence is defined as an offence which constitutes violation of any act that the Customs is responsible for supervising and enforcing as well as unlawful dealing in imported stolen goods, the receiving offence referred and any other infringement involving the import and export of property. The reference to the *Penal Code's* receiving offence is now outdated, but ML, including import or export of goods, is in practice considered a customs offence referred to in the *Customs Act*.

272. The **Border Guard** is responsible for control of the Finnish borders and persons entering and departing at the border-crossing points. Under s.41 of the *Border Guard Act* the Border Guard is a pre-trial investigation authority referred to in the *Pre-trial Investigation Act* and it conducts pre-trial investigations in cases relating closely to its sphere of duties. The Border Guard takes measures for the prevention and investigation of offences and for their referral to the consideration of charges independently or together with other authorities. The Border Guard takes part in the combating of terrorism by assisting the Police authorities in certain situations. Under s.22 of the *Border Guard Act*, the Border Guard may at the request of a commanding Police officer offer equipment, personnel or specialist services to the use of the Police, if it is necessary for a special threat in order to prevent any terrorist offence (which includes TF).

273. The role and position of **prosecutors** are defined in s.1 of the *Act on Public Prosecutors*. In most European Union member States, the pre-trial investigation is headed by a prosecutor or an examining magistrate. The Police authorities have extensive powers with respect to the pre-trial investigation. Prosecutors are often consulted during the course of investigations but they do not direct pre-trial investigations. They head pre-trial investigations only where the matter involves investigating Police offences. Prosecutors are not a listed pre-trial investigation authority, but they have been given certain means to affect the pre-trial investigation (*Pre-trial Investigation Act* sections 15, 3[3], 4[3], 5[1], 10[2] and 32[2]). The public prosecutors (the Prosecutor-General, the Deputy Prosecutor-General, a State Prosecutor, a District Prosecutor and a Prosecutor for the Åland Islands) prosecute all offences in Finland. A prosecutor is independent in the assessment of the charge in a case being considered by him or her. The Office of the Prosecutor-General, which is the central administration for the prosecution service, is responsible for the prosecution of terrorist offences (s.7, chapter 34, of the *Penal Code*). In 2003, the Office appointed one of its state prosecutors as responsible for the prosecution of offences related to organised crime and terrorism. The said state prosecutor regularly participates in strategy and investigation meetings organised by the Police and functions as a national EUROJUST contact person.

274. There have been only a small number of investigations and prosecutions of ML offences in Finland, in part due to a tendency to focus investigations on the predicate criminal activity. The legal system seems to focus more on prosecuting predicate crimes and the various investigative authorities

have greater experience with such investigations than with investigations into the relatively new ML offences. Further, the fact that self laundering is not criminalised limits the number of investigations and prosecutions possible for ML in Finland.

Table 22: STRs received and ML investigations, prosecutions and convictions 2003-2006

	STRS RECEIVED	PRE-TRIAL INVESTIGATIONS	PROSECUTIONS	CONVICTIONS
2003	2 716	288	5	
2004	4 315	551	10	5
2005	3 661	385	45	
2006	9 975	779	71	Not known
TOTAL	20 667	2 003	131	

Postponement / waiving of arrest and seizure

275. Section 5 of the *Police Act* contains provisions on the right of the Police to postpone a measure or refrain from taking it. Under s.5(1), when carrying out information gathering measures referred to in chapter 3 (technical monitoring, surveillance, technical surveillance, undercover activities, pseudo-purchase, telecommunications monitoring and interception, human intelligence source activities), a Police officer may postpone involvement in a crime being committed which does not cause serious and immediate threat to other people’s life, health or freedom or direct immediate threat to the environment or property and if the postponing of the measure is necessary in order not to disclose the intelligence activities or to secure the result of these activities. Under s.5(2), the Police have the right to refrain from taking measures, if completion of the measure could lead to unreasonable consequences compared with the outcome sought.

276. In practice, Finnish Customs may postpone arrests and seizures in the interests of advancing investigations, although no such provision exists in the *Customs Act*. It is anticipated that an explicit provision comparable to the one in the *Police Act* will be included in the *Customs Act* when it is next amended. Under s.45 of the *Customs Act*, a customs officer can refrain from bringing the guilty party to court if the punishment expected would not be more severe than a fine and the offence is a misdemeanour. In such cases a customs officer can give an admonition to the person instead.

Additional elements

Special investigative techniques

277. In Finland, telecommunications interception, telecommunications monitoring and technical surveillance, as laid down in chapter 5a of the *Coercive Measures Act*, are defined as covert coercive measures. Telecommunications interception may only be targeted at persons suspected of offences mentioned in s.2, chapter 5a, of the *Coercive Measures Act*, such as aggravated ML, terrorist offences, manslaughter, murder, aggravated narcotics offence and aggravated fraud. It is also required that the information to be obtained through telecommunications interception can be assumed to be very important to the investigation of the offence.

278. Both the *Police Act* and the *Coercive Measures Act* lay down provisions on telecommunications monitoring. Under s.3, chapter 5a of the *Coercive Measures Act*, telecommunications monitoring may be targeted at persons suspected of an offence punishable by a maximum penalty of four years’ imprisonment, e.g. aggravated ML, offence directed at an automatic data processing system committed by using a telecommunications terminal equipment, pandering, threatening of a person to be heard in the administration of justice, menace or narcotics offence, a punishable attempt of these offences, or of preparation of an offence to be committed with terrorist intent. In addition, the Police may use telecommunications monitoring for preventing or exposing an offence, as laid down in the *Police Act*. The use of telecommunications monitoring also requires that the information to be obtained can be assumed to be very important to the investigation of the offence.

279. The *Coercive Measures Act* provides that technical surveillance may be conducted in investigation of offences listed in s.4 to s.4b, chapter 5a of the *Coercive Measures Act*. Interception may be used for investigating offences for which the maximum punishment is at least four years' imprisonment, narcotics offences, punishable attempts of these offences, and the preparation of offences to be committed with terrorist intent. The *Coercive Measures Act* provides that technical observation and technical tracking may be used when investigating offences punishable by more than six months' imprisonment. In addition, s.29 of the *Police Act* authorises technical monitoring (listening to members of the public, drivers of vehicles or pedestrians with the help of a technical device, and recording the voice or image) in order to prevent an offence and s.31 authorises technical observation and technical tracking in relation to offences for which the maximum punishment is more than six months' imprisonment. A further condition in the s.31 for technical interpretation is that it is possible to conclude from a person's behaviour or otherwise that he is likely to commit an offence for which the maximum punishment is at least four years' imprisonment, narcotic offences, punishable attempts of these offences and the preparation of offences to be committed with terrorist intent.

280. When carrying out a pre-trial investigation, Finnish Customs also have the right to apply telecommunications interception, telecommunications monitoring, technical monitoring and technical surveillance under the same conditions as the Police. When taking preliminary measures to establish if a pre-trial investigation may be launched, Finnish Customs may not take coercive measures under the *Coercive Measures Act*, but preliminary measures under the *Customs Act* apply. Sections 20a to 20i of the *Customs Act* lay down provisions on the methods of gathering information by Finnish Customs, which are quite similar to the corresponding provisions of the *Police Act*.

281. In Finland, Border Guard and military authorities do not have the right to apply telecommunications interception or telecommunications monitoring. However, Border Guard authorities may obtain location information on mobile stations under the new *Border Guard Act*.

Controlled delivery

282. If necessary, Finnish Customs may use controlled deliveries. Provisions on controlled deliveries are in the *Convention on Mutual Assistance and Co-operation Between Customs Administrations* (Naples II) drawn up on the basis of article K.3 of the *Treaty on European Union*. According to article 22.1 of the Explanatory Memorandum on the Convention (adopted 28 May 1998), a controlled delivery is an investigation where suspicious or illegal consignments of goods are not seized at borders, but kept under surveillance until they reach their destination. Separate provisions on controlled delivery are also included in the *Convention on Mutual Legal Assistance between the member States of the European Union* and in several bilateral agreements.

Other coercive measures

283. Coercive measures are means with which the legally protected rights of an individual may be intervened even with physical force in order to secure undisturbed criminal proceedings and substantially correct result. The *Coercive Measures Act* lays down general provisions on coercive measures. These provisions are applied in the pre-trial investigation conducted by the Police or other pre-trial investigation authorities. Some special provisions are included in the Acts providing for the activities of other pre-trial investigation authorities, such as the *Border Guard Act* and the *Customs Act*. Provisions complementing those of the *Coercive Measures Act* are also included in certain other acts (such as the *AML/CFT Act*, whose s.11 provides for certain measures, e.g. suspending and refusing to conduct a transaction). Section 14 of the *Customs Act* gives Customs officers fairly extensive powers to apply measures comparable to coercive measures.

284. Chapters 1 and 2 of the *Coercive Measures Act* authorise the use of five additional types of measures: apprehension, bringing of a person, arrest, detention and travel bans. Apprehension and bringing of a person may last for 24 hours at most, arrest for four days at most and detention for weeks, even for months. In these cases the person subjected to the coercive measure is taken into the

custody of the Police or another pre-trial investigation authority at their premises. The purpose of these coercive measures is to identify, start and secure a pre-trial investigation or to secure the final stage of a pre-trial investigation, criminal proceedings or enforcement of a sentence. As noted previously under Recommendation 3, the *Coercive Measures Act*, in chapters 3 and 4 also incorporates provisions authorising seizure, restraint and confiscation.

Customs measures

285. *Customs Act* s.3 defines a ‘customs measure’ as any measure taken within the competence of the Customs, with the exception of pre-trial investigation of customs offences. Customs measures must be justifiable in proportion to the importance and urgency of the task and the factors affecting the overall assessment of the situation. Every person is obliged to submit to any customs measure and co-operate with the authorities (s.13[2]). Under s.14(1)(2) of the *Customs Act*, Finnish Customs or another competent authority has the right to stop and search a person arriving in or departing from the customs territory, visiting a means of transport or another place where goods are unloaded, loaded or stored and, for special reasons, elsewhere within the customs territory.

286. Under s.15 of the *Customs Act*, a frisk or other search than that of a person's luggage or outer garments may, in cases referred to in s.14(1)(2), be carried out without preliminary investigation if there is probable cause for suspecting that the person is involved in a crime for which the maximum penalty is more than six months imprisonment. Under s.16 of the *Customs Act*, a customs officer has the right to search a person in connection with a frisk, capture, detention or taking into custody referred to in s.15 in order to assure that the said person does not carry objects or substances with which he might jeopardise the search or custody or cause danger to himself or to others.

287. In order to carry out a customs measure, a customs official or other competent authority also has the right under s.14 of the *Customs Act* to:

- Stop and check a vehicle.
- Retain and take into possession an object which has not been appropriately customs cleared.
- Access premises where the objects are manufactured, stored or sold and conduct checks.
- Check correspondence, accounting material and the money the person has on him in order to expose ML (as referred to in s.6, chapter 32a, of the *Penal Code*).
- Obtain necessary documents and information concerning the holder of the goods and any party involved, goods, vehicle, passenger or personnel of a vehicle.
- Give orders on the unloading, loading, handing over, transporting and storing of goods.
- Place a customs seal, customs lock or other identification on vehicles/goods/storage/locations.
- Cordon off, close or empty a manufacturing, loading or unloading place or other checkpoint of the goods or an area or vehicle, if it is necessary in order to maintain public safety and carry out a customs measure as well as prohibit or restrict moving in such a place, area or vehicle.
- Prevent the export of goods from the Finnish customs territory in accordance with Finnish legislation and international conventions.

288. Under s.14(3) of the *Customs Act* a customs official may retain a good taken from or into the country if there is justified reason for the prevention or investigation of an offence. The authority deciding on seizure must immediately be notified on the retention.

Undercover operations

289. Under s.28(1)(4) of the *Police Act*, undercover activities means continuous or repeated gathering of information on certain persons or groups of persons or on their activities and infiltration in which misleading or covert information or register entries are used or false documents prepared or used in order to prevent the information gathering and infiltration from being exposed. Police officers have the right to undertake undercover activities if these are necessary for preventing, detecting or

investigating criminal activity referred to in s.2, chapter 5a, of the *Coercive Measures Act*, and if the behaviour of the persons on whom information will be gathered or other circumstances give justifiable cause to suspect that they could commit the offence in question. Undercover activities may be carried out to prevent, detect or investigate, for example, aggravated ML, terrorist offences under chapter 34a of the *Penal Code*, murder, aggravated forgery, aggravated narcotics offences and aggravated fraud. Undercover activities may be undertaken in a dwelling if the person occupying the dwelling actively assists the entry or stay. However, the provisions on search of premises laid down in the *Coercive Measures Act* would then also apply.

290. In accordance with s.28(1)(5) of the *Police Act*, pseudo purchase means a purchase offer, or a purchase of an object, substance or property that is considered a sample lot, made by a Police officer in order to prevent, detect or investigate an offence or to recover proceeds from crime. Police officers have the right to make a pseudo purchase if this is essential to prevent, detect or investigate a receiving offence, theft or offence for which the maximum punishment is two years' imprisonment, or in order to find an object, substance or other property illegally possessed or sold or to recover the proceeds of such offences.

291. Section 36a of the *Police Act* provides that the Police may use persons other than those involved in Police administration as human intelligence sources to perform their duties, including their duties to prevent and investigate ML and TF. Human intelligence sources may be used for the investigation of any offence. The Finnish Customs use human intelligence sources in a similar way to the Police even though the *Customs Act* is silent on the use of human sources. An explicit provision authorising this is expected to be included in the reforms of the *Customs Act* during the coming year.

292. Other pre-trial investigation authorities may not carry out undercover activities or make pseudo purchases, as only Police officers who have undergone specific training approved by the Ministry of the Interior may be appointed to exercise such measures.

Specialised investigative structures and co-operative investigations

293. There are permanent units specialised in investigating the proceeds of crime in almost every division of the NBI. It is noteworthy that in addition to Police authorities, these units include representatives of tax and enforcement authorities. Further, the local Police have teams or divisions focusing on tracing and detecting the proceeds of crime at regional level. In Finland, there are five Customs Districts, which carry out operational intelligence and investigative measures also in ML cases. Each Customs District may decide how to take such measures. In the Southern Customs District, for example, the investigation of the proceeds of crime is assumed by persons specialised in that particular task. In 2006, the National Board of Customs also made efforts to provide Customs Districts with assistance in supervisory duties relating to such investigation. The aim has been to organise the activity so as to have within the Customs investigators in charge, investigators and intelligence officers specialised in investigating the proceeds of crime.

294. Under articles 40 and 41 of the *Schengen Convention*, officers of one of the Contracting Parties who are pursuing in their country an individual caught in the act of committing or of participating in an offence have the right to continue pursuit, apprehend the person and carry out a security search in the territory of another Contracting Party. Officers who, as part of a criminal investigation, are keeping under surveillance in their country a person who is presumed to have participated in an extraditable criminal offence also have the right to continue their surveillance in the territory of another Contracting Party. National provisions concerning the powers of foreign Police officers in Finland are in s.22a and s.30a of the *Police Act*.

295. The *Joint Investigation Teams Act* (1313/2002), which provides for the setting up of joint investigation teams for the purpose of conducting pre-trial investigation into criminal offences, also includes provisions on the powers of foreign officials.

296. In Finland, an act implementing the *Council Framework Decision on the execution in the European Union of orders freezing property or evidence* was enacted in 2005 (540/2005). Under the Framework Decision, member States may execute in their territory orders freezing property or evidence issued by the judicial authorities of other member States. In Finland, such orders are executed by competent prosecutors referred to in s.5 of the act implementing the Framework Decision. The safeguards concerning persons subject to such orders have been ensured by providing that the persons may bring the orders before a District Court.

297. Chapter 3, s.6a of the *Coercive Measures Act* provides for restraint on alienation and sequestration orders pursuant to requests for mutual assistance by foreign States. Under certain conditions, a restraint on alienation or sequestration order may be imposed on the property of persons against whom a confiscation order has been or is likely to be issued by a criminal court of a foreign State. Decisions on these interim measures are taken by District Courts. Chapter 4, s.15a of the *Coercive Measures Act* provides for seizures pursuant to requests for mutual assistance by foreign States. Objects or documents may be seized pursuant to requests for mutual assistance if they may serve evidence in a criminal case, if they have been taken away from someone illegally or if a confiscation order has been or is likely to be issued on them by a criminal court of a foreign State.

298. In Finland, the *United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances* was taken into account when drafting the national *Act on International Legal Assistance in Criminal Matters*. The Convention includes detailed provisions on the execution of confiscation orders in the territory of another Party to the Convention, and on the use of such measures as searches, freezing orders and seizures, in particular, pursuant to requests for mutual assistance. The confiscation may concern, for example, narcotic drugs, or their value, funds used for financing the offences concerned and proceeds derived from the offences. The Finnish Customs also apply, as appropriate, the above mentioned acts and conventions, including the Schengen Convention.

299. The legal basis for international co-operation by Finnish Customs is provided by international instruments such as the *Naples II Convention*, the *MLA Convention* and the *Council Regulation (EC) 515/97*. In addition, Finnish Customs has concluded several bilateral agreements, and agreements between law enforcement authorities also apply, the Finnish Customs being a competent authority along with the Police. Under article 21 of the *Naples II Convention*, officers of the customs administration of one of the member States may continue their observation in the territory of another member state where the latter has authorised cross-border observation in response to a request for assistance which has previously been submitted. In particularly urgent cases and where certain conditions are met, the observation may continue beyond the border without prior authorisation of the other member state. Controlled deliveries are also carried out with other customs authorities.

300. The Finnish Police, Finnish Customs and Border Guard carry out close co-operation with each other. They also collaborate with other authorities, such as the Security Police and the defence forces, in the field of criminal investigation and intelligence, where necessary. In support of the co-operation between enforcement and prosecution authorities, there are currently two major on-going projects which aim to further improve the preconditions for co-operation: (1) The VIRKE project aims to improve prevention of the black economy and financial crime by gathering, analysing and distributing financial crime data. It will produce an overall picture of the black economy in Finland and assess the impact of various financial crime prevention strategies. (2) The Police, Finnish Customs and Border Guard authorities have been actively conducting joint investigative action with respect to the import and export of goods; the entry and departure controls of individuals and the monitoring the stay of foreigners within the country; as well as international co-operation. Regional PCB units (comprising staff from all three authorities) have been established in provinces, a national PCB unit at the NBI in Helsinki and certain border-crossing points have their own criminal intelligence points. This close co-operation and exchange of information between authorities is also aimed at optimising the efficiency of counter-terrorist activities by the available resources.

Review of money laundering / terrorist financing methods, techniques and trends

301. In Finland, the task of reviewing ML methods, techniques and trends is assumed by the authority responsible for combating ML and TF, namely the MLCH at the NBI. Related information and analyses are disseminated widely between the competent authorities, although it should be mentioned that this kind of review by the MLCH needs to be improved (see also section 2.5).

Recommendation 28

302. In general, it is the duty of other authorities, legal and natural persons to provide pre-trial investigation authorities with information necessary for the investigation, including for those dealing with ML and TF. There are some exceptions to this, relating to publicity of documents, legal professional privilege and secrecy.

303. Section 36(1) of the *Police Act* provides that the Police have the right, notwithstanding the obligation to observe secrecy, to obtain information from private organisations or persons. Section 36(2) lays down a special provision under which the Police may obtain contact information from certain businesses, such as information from telecommunications organisations concerning subscriptions that are not listed in a public directory, if the information is needed in an individual case to carry out a Police duty. In accordance with s.36(1), the Police may similarly obtain any information free of charge from an authority or a body assigned to perform a public function any information and documents necessary to carry out an official duty unless disclosing such information or documents to the Police or using information as evidence is prohibited or restricted by law. These powers are interpreted broadly as encapsulating requests for information relating to CDD, account files and business correspondence. In practice, when asked for information, compliance officers at financial institutions work well with law enforcement officials and provide all information sought. The investigative authorities do not experience difficulties with obtaining information.

304. Provisions relating to searches of premises can be found in s.1 to s.8, chapter 5, of the *Coercive Measures Act* and provisions on search of persons are in s.9 to s.13. The following types of searches are authorised by the act and may be carried out during pre-trial investigations or investigations into ML, TF and most predicate offences: search of premises for the purpose of finding an object (s.1); search of premises in order to reach a person (s.2); frisk (s.10); body search (s.11); and, body search in order to determine DNA profile (s.11[2]).

305. In addition, separate provisions have been given on the right of the MLCH to obtain information necessary for preventing and investigating ML and TF. Section 12 of the *AML/CFT Act* provides that, notwithstanding any secrecy obligations, MLCH has the right to obtain from a private institution or person any information necessary for clearing ML. That section also provides that the MLCH has the right to obtain free of charge any information and documents necessary for clearing ML from an authority or a body assigned to perform a public function, notwithstanding the provisions on the confidentiality of information subject to business and professional secrecy or the financial circumstances or financial status of an individual, institution or foundation.

306. As regards Border Guard authorities, s.17 and s.18 of the *Act on the Processing of Personal Data by the Border Guard (579/2005)* lay down similar powers to obtain information from public authorities and private persons as those in s.35 and s.36 of the *Police Act*.

307. Finnish Customs is entitled to obtain information for the purpose of customs control and taxation under s.14(1)(6) and s.18 of the *Customs Act*. The National Board of Customs may oblige parties who do not fulfil the obligations in s.18(1) of the *Customs Act* or article 14 of the *Customs Code* to meet the obligations or pay a fine. In 2003, provisions were added to s.28(3) of the *Customs Act* concerning the right of the Customs to obtain from private organisations and persons information necessary for preventing or investigating customs offences, notwithstanding any business, banking or insurance secrecy. In addition, under s.28(4), Finnish Customs can obtain information on

telecommunications connections for the purpose of preventing and investigating customs offences. Section 28(1)(1) authorises Finnish Customs to obtain information from the Tax Administration and the registers of the Finnish Vehicle Administration as necessary. Further, s.28(1)(3) to (4) authorises Customs to obtain information from registers meant for national use by the Police and from the Border Guard's registers on aliens' entry into and departure from the country.

308. Where parties refuse to disclose requested information, the Police may take a number of measures to obtain the information. Firstly, s.39 of the *Police Act* provides that persons who may have information required in a Police investigation are obliged, when summoned, to attend the Police investigation. If a person summoned to a Police investigation does not comply with the summons without a valid reason, he or she may be brought there. Under these provisions, the MLCH may, to ensure the conduct of a Police investigation concerning ML or TF, summon persons who have information on the case to assist the investigation, and bring them there, if necessary, before a pre-trial investigation is launched. To conduct a Police investigation, Police officers also have the right to gain access to the place or area in which the incident under investigation took place, to examine objects or documents which may be important for conduct of the investigation. If a pre-trial investigation has commenced, the party may be interviewed as a witness. If the party refuses to give a statement, in certain cases this refusal may be brought before the court following the procedure under s.28 of the *Pre-trial Investigation Act*, to consider if there are legal grounds for the refusal. In some cases, if the information is in a document or in electronic form, a seizure may also be carried out, as provided in chapter 4 of the *Coercive Measures Act*.

309. Under s.17 of the *Pre-trial Investigation Act*, persons who can be assumed to provide clarification of the offence are obliged, if summoned, to be present at the pre-trial investigation in the Police district of their place of residence. If a person summoned to a pre-trial investigation fails to respond to the summons without a valid reason, he or she may be brought to the investigation under s.18 of the act. Similarly, in addition to the powers under the *Pre-trial Investigation Act*, under s.43(4) of the *Customs Act* the Finnish Customs can, when investigating customs offences, summon persons who are assumed able to provide clarification of the customs offence to attend the nearest Finnish Customs office to be heard for the pre-trial investigation.

310. When investigating customs offences, the Customs have the right to carry out interviews and record related witness statements, as laid down in the *Customs Act* and the *Pre-trial Investigation Act*. These measures may also be used in the pre-trial investigation and prosecution of ML offences.

Resources (Law enforcement and prosecution authorities only)³⁴

Structure, funding, staffing and training

311. The ***Finnish Police*** service operates under the direction of the Ministry of Interior. The organisational chart of the Finnish Police can be found in *Annex 6* of this report. Local policing operates administratively within the state local districts, which are subordinate to the provincial Police commands. Finland has 90 local districts, each with its own Police department. The local Police provide approximately 280 customer service points across Finland. The Police authority of the Åland islands is an independent unit answerable to the Åland islands administrative authorities. Policing in the Åland islands on national matters is managed by the Åland islands unit within the NBI.

312. Approximately 11 000 persons work for the Finnish Police, most of them Police officers. The average age of Police officers has risen in recent years. Therefore, more students have been accepted to Police training establishments to meet needs created by relatively high level of retirement of officers. In 2005, women accounted for 25.9% of the personnel of the Finnish Police. Out of Police officers, women accounted for 11.3%. By international standards, the number of Police officers in Finland is relatively small in proportion to the population.

³⁴ As related to R.30; see section 7.1 for the compliance rating for this Recommendation.

313. In 2005, the budget of the Police was EUR 635.1 million, of which personnel accounted for almost 80%. In 2005, EUR 0.8 million were used for furnishing offices. The costs of vehicles and data processing equipment purchased for the Police were about EUR 9 and 5.8 million, respectively. Other investments were made for approximately EUR 4 million.

314. The National Police School of Finland and the Police College of Finland, which come under the Ministry of the Interior, organise Police training. The Ministry's Police Department is responsible for directing Police training and research. The Police School provides basic Police training and training for the Police Sergeant's Examination. It also provides specialised professional training and trains trainers. In addition, the Police School conducts studies in relation to training projects on improving Police administration. The Police College provides higher-level Police training and carries out research and development. It provides training for senior Police officers, including that related to the Senior Police Officer's Degree, which is a polytechnic degree. It also provides management and leadership training. In addition, the Police College provides specialised professional training, organises training in partnership with universities and participates in improving policing. The Police School and the Police College will merge from the beginning of 2008.

315. Police officers are provided the opportunity to take two special courses of three days duration each year as part of their ongoing training at the Police academy. These sessions cover ML and tracing proceeds of crime in addition to other matters. The MLCH also provides training for the other authorities involved in AML/CFT in Finland, including the Police. These courses focus on: ML and TF legislation; related international conventions; identification and tracing the proceeds of crime; and, the obligation to report STRs. This is primarily delivered using practical examples of cases.

Table 23: Number of staff of Finnish authorities trained by the MLCH, 2004 – 2006

	2004	2005	2006
Police	690	400	330
Prosecutors	70	60	18
Execution authorities (court enforcement authorities)	42	40	4
Taxation authorities	100	120	10
Border Guard and Customs	23	17	10
TOTAL	925	637	372

316. The *Finnish Customs* controls international flows of goods to promote legal trade and prevent illegal trade. It is administratively subordinate to the Ministry of Finance. In 2005, it collected about EUR 9.5 billion in taxes and charges, which amounts to almost a third of the total tax levy of Finland. Approximately 2 600 persons work for the Finnish Customs. The Customs control duties are performed by the enforcement departments of the National Board of Customs and Customs Districts (see the organisation chart in *Annex 6* of this report). The departments are divided into basic control and crime combating duties. Approximately 400 persons, of the total 2 600 Customs employees, perform law enforcement duties. The Customs Districts carry out operational intelligence and investigation, also in ML cases. Customs Districts come under the management and supervision of the National Board of Customs, but they may decide on concrete operational measures independently, taking account of their resources. The Customs Districts are, thus, operationally independent.

317. The department responsible for intelligence at the National Board of Customs also has a technical team, which acts as the technical specialist team of the Enforcement Department and provides Customs units with technical services. The team is in charge of technical surveillance, information systems, co-operation in selecting targets for combating serious crime, functions relating to coercive measures affecting telecommunications, and control techniques.

318. In 2005, the Finnish Customs launched a personnel training programme on combating customs offences, and a special training programme for investigators in charge. With these programmes, Customs aim to improve the expertise of their crime combating personnel. The personnel involved in combating customs offences also comprise a significant number of officers with Police training. As

regards training in ML, tracing the proceeds of crime and the financing of terrorism, the personnel of the Customs participate in relevant training organised by the Finnish Police. The two authorities have agreed on reserving a certain quota of participants for the Customs for the training organised by the Police, with the aim of ensuring that special training is also available to the Customs and that the different pre-trial investigation authorities in Finland have similar practices.

319. In Finland, *prosecutors* are part of the judicial administration (see the organisation chart in *Annex 6* of this report). They are however independent so as to ensure the just, expeditious and economical conduct of legal proceedings. The *Constitution* provides that a Prosecutor General heads the prosecution service. The Finnish prosecution service is a two-tier organisation, comprising the Office of the Prosecutor General, which is the central authority, and the local prosecution units. It has a total of 540 members of personnel, of which 330 are prosecutors. The local units operate either at distinct District Prosecutor's Offices or at the prosecuting departments of State Local Offices, which are 70. In addition, there is a provincial prosecutor's office in the Åland Islands. Most criminal cases are dealt with by district prosecutors at local level. There are two prosecutors who specialise in ML cases and 25 prosecutors who specialise in economic crime.

320. Sixteen co-operation areas have been established for a number of prosecution units. The aim is to support the work of the units, especially when their caseload is so heavy that they cannot deal with it alone, or when there is a need to balance their workload for some other reason. Further, a system of key prosecutors has been created to meet the need for specialisation within the prosecution service and to allocate the resources effectively. Key prosecutors deal with cases requiring special expertise, such as environmental, computer, financial and international crime cases. They are competent to act as prosecutors in cases pertaining to their field of expertise throughout the country.

321. All prosecutors have a university degree in law, in addition to which most have performed a judicial traineeship and are thus qualified to sit on the bench. The Development Unit of the Office of the Prosecutor General is responsible for training prosecutors and other personnel of the prosecution service. In 2005, the number of training days it provided was 92, with 1 0 056 participants trained. In addition to basic training, prosecutors are provided with further training to improve their special expertise. For example, an extensive and comprehensive further training programme has been available for financial crime prosecutors for several years now. Further training for prosecutors includes seminars on ML, tracing the proceeds of crime and confiscation, procedural questions and accounting issues. Further, key prosecutors are provided with targeted training organised for smaller groups. Training in co-operation between the Police and the prosecution service in pre-trial investigations is arranged together with the National Police School of Finland. Such training aims to find feasible forms of co-operation and clarify the roles of the parties.

Professional standards

322. Government employees are required to act in accordance with law. They must not, for example, disclose classified information or documents during or government employment and must not accept bribes. However, corruption among government employees is extremely rare in Finland. Training and legislative measures are in place to ensure the integrity of government employees.

323. Section 2 of the *Constitution* of Finland (731/1999) provides that the exercise of public powers must be based on an act of parliament. Public authorities must act in accordance with law, impartially and properly so that citizens can have confidence in them. In addition to the *Constitution*, provisions on governance are, for example, in the *Administrative Procedure Act* (434/2003), *Act on the Openness of Government Activities* (621/1999) and the *State Civil Servants Act* (750/1994). Further, the fundamental principles of good administration lay down the ethical basis for good governance (s.6 of the *Administrative Procedure Act*): "An authority shall treat the customers of the administration on an equal basis and exercise its competence only for purposes that are acceptable under the law. The acts of the authority shall be impartial and proportionate to their objective. They shall protect legitimate expectations as based on the legal system." Following these principles was

already one of the requirements for good governance, laid down by case law, before the entry into force of the *Administrative Procedure Act*. The requirement for good administration is also mentioned in the *State Civil Servants Act*, under which government employees must behave in such a way as required by their position and duties. In addition, they must refrain from any behaviour that could undermine trust in the activities of public authorities.

324. According to Transparency International's Corruption Perception Index, Finland was the least corrupt country in the world in 2006. Finland was also ranked first from 2000 to 2004, and second in 2005. Corruption mainly manifests itself as bribery. In Finland, government employees or persons related to the public administration may not accept a bribe or otherwise use their position inappropriately, as laid down in the *Penal Code* and the *State Civil Servants Act*. The bribery provisions concerning government employees contained in chapter 40 of the *Penal Code* aim to ensure the correctness of the activities of government employees, to promote the legality, impartiality and independence of public administration and to maintain the confidence of citizens in the legality of the activities of public authorities. The provisions on bribery are contained. Similarly, s.7 and s.8 in chapter 30 of the *Penal Code* criminalise bribery and acceptance of bribes in the private sector.

325. Finland has ratified several international instruments relating to corruption. The 2003 *United Nations Convention against Corruption* was signed, ratified and implemented in 2006. The Council of Europe *Criminal Law Convention on Corruption and Civil Law Convention on Corruption*, signed in Strasbourg in 1999, concerns i.e. active and passive bribery of both domestic and foreign public officials as well as bribery in the private sector and liability, compensation for damage, limitation periods and protection of employees. Both Conventions came into force in Finland in 2003. The Council of Europe Group of States against Corruption (GRECO), of which Finland is also a member from the beginning of 2003, was established to follow up compliance with the Conventions and other relevant international instruments against corruption. In 1998 Finland ratified the following additional international instruments on corruption: *Council Act of 27 September 1996 drawing up a Protocol to the Convention on the protection of the European Communities' financial interests*; *Council Act of 26 May 1997 drawing up, on the basis of article K.3 (2)(c) of the Treaty on European Union, the Convention on the fight against corruption involving officials of the European Communities of officials of member States of the European Union*; and, the *OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*.

Transparency

326. Section 3 of the *Act on the Openness of Government Activities* provides that the objectives of the right of access and the duties of the authorities provided in the act are to promote openness and good practice on information management in government, and to provide private individuals and corporations with an opportunity to monitor the exercise of public authority and the use of public resources. However, in certain cases, particularly criminal matters, the right of access must be restricted owing to very important public or private interests.

327. Document secrecy may only be based on a specific legal provision. Section 23(1) of the *Act on the Openness of Government Activities* provides that a person in the service of an authority and an elected official shall not disclose the secret content of a document, nor information which would be secret if contained in the document, nor any other information obtained in the service of the authority, where covered by a duty of non-disclosure provided in an act. The secrecy obligation also includes a prohibition of use: Under s.23(3) of the *Act on the Openness of Government Activities*, persons in the service of an authority shall not use secret information for personal benefit or the benefit of another, nor for the detriment of another. In addition, secrecy provisions are contained in the various acts concerning pre-trial investigation authorities, such as in s.43 of the *Police Act* and s.25 of the *Customs Act*. The breach of official secrecy is criminalised in Finland under s.5, chapter 40 of the *Penal Code*.

328. In addition to the general obligation to observe secrecy imposed on public authorities, the personnel of the MLCH are bound by a secrecy obligation concerning information obtained when handling and investigating STRs. Under s.12 of the *AML/CFT Act*, such information may only be used and disclosed for preventing and investigating ML and TF. As with all personnel of the Finnish Police, MLCH staff must undergo an internal screening procedure before taking up a position of employment and this screening occurs periodically during the course of employment.

Additional elements

329. In Finland, judges and prosecutors may take part in training organised by pre-trial investigation authorities. They are also provided with special training through their professional organisations. In 2005, a national training programme was launched to enhance co-operation between prosecutors and pre-trial investigation authorities. This training programme also provides prosecutors with necessary information, for example on the activities of pre-trial investigation authorities in relation to ML.

*Statistics*³⁵

330. Apart from the MLCH, which holds limited statistics on investigations conducted, the pre-trial investigation authorities do not maintain statistics on ML and TF investigations. The prosecution authorities have only maintained statistics on convictions for ML since 2004. Statistics are available on the number of convictions for the receiving offences (before ML became a separate offence) but this information does not indicate which of these matters related to ML and which to the receiving offences. There are some limited statistics on the property frozen, seizures and confiscations.

331. The MLCH has used special investigative techniques 53 times from January 2002 to April 2007, comprising use of telecommunications interception and monitoring powers (23) and use of technical surveillance powers (30). These special investigation techniques related to the aggravated receiving offence (s.2, chapter 32, *Penal Code*) on 35 occasions, the aggravated ML offence (s.7, chapter 32, *Penal Code*) on 14 occasions, the aggravated taxation fraud offence (s.2, chapter 29, *Penal Code*) and to the aggravated dishonesty by a debtor offence (s.1a, chapter 39, *Penal Code*) on one occasion. There are no statistics available in relation to use of special investigation techniques by other enforcement authorities.

332. Information on measures that may be connected to ML are entered in the control information systems of the Customs Service. If such measures are detected, they are reported to the MLCH, which enters the reports in their statistics. Finnish Customs does not compile specific statistics on ML. The investigation and executive assistance data and related archive data, which form the technical part of the Data System for Police Matters and are considered a personal data register of the Customs Service under s.23 of the *Customs Act*, include information on all offences into which a pre-trial investigation was launched. However, the information system does not contain information on the progress of the cases forwarded to a prosecutor. Therefore, the Finnish Customs does not know in how many ML cases investigated by them charges were brought or the suspects sentenced for the offences concerned.

2.6.2 Recommendations and Comments

333. Finland has designated authorities to investigate ML and TF offences, but there are very few convictions for ML and no convictions for TF (see table 15 in section 2.1 above). The pre-trial investigation authorities and prosecutors mainly pursue predicate offences as self-laundering is not punishable. However, the number of cases pursued in relation to third-party money launderers is also very limited. Further, prosecutors may be obliged by legislation to pursue charges on predicate offences if the criteria for those charges appear to be met. It is recommended that Finland develop a more proactive approach to pursuing ML charges.

³⁵ As related to R.32; see section 7.2 for the compliance rating for this Recommendation.

334. Flexibility for prosecutors to pursue ML and TF charges and the possibility to allow for prosecution of self-laundering are recommended. There appears not to be a lack of resources with regard to prosecuting authorities but the resources could be focussed more on ML and TF matters.

335. More strategic analysis and the development of typologies, trends and indicators would be beneficial to support the LEA and prosecuting authorities in their activities and to draw the attention of policy makers to problems that currently occur when pursuing ML and TF. Further awareness raising would complement the ongoing training initiatives of the MLCH. To assist this, investigative and prosecutorial authorities should give feedback to the MLCH on the results of the pre-trial investigations started on the basis of an STR.

336. Statistics should be collected on a systematic basis concerning the ML and TF investigations, prosecutions, convictions and types of sanctions (criminal and administrative) imposed for ML and TF as well as on property frozen, seized or confiscated.

2.6.3 Compliance with Recommendations 27 & 28

	RATING	SUMMARY OF FACTORS UNDERLYING OVERALL RATING
R.27	LC	<ul style="list-style-type: none"> Insufficient attention is being paid to pursuing ML and TF offences; authorities are instead focussing their efforts on predicate offences and recovery of proceeds of crime. Due to a lack of statistics it is difficult to evaluate the effectiveness of the system.
R.28	C	<ul style="list-style-type: none"> This Recommendation is fully observed.

2.7 Cross border declaration or disclosure (SR.IX)

2.7.1 Description and Analysis

337. At the time of the evaluation team’s on-site visit to Finland, Finland did not operate a disclosure or declaration system for cross-border movements of cash. However, the *EU Council Regulation 1889/2005*: “the Cash Controls Regulation”, entered into force in Finland on 15 June 2007. Under article 3 of the EU regulation, any natural persons entering or leaving the European Community (but not between Finland and another EU country) must declare any cash that they are carrying if it amounts to EUR 10 000 or more (or the equivalent in other currencies). The cash controls regulation provides for the declaration to be made either orally, electronically or in writing.

338. The regulation requires supplementary national provisions, as it leaves certain issues to be dealt with at the national level, such as designation of a national competent authority for this system. The preparation of national legislation required by the regulation had commenced in Finland at the time of the on-site visit and the *Act on the controls of cash entering or leaving the European Community (653/2007)* came into force on 15 June 2007. According to the national legislation the competent authority referred to in Article 2 of the Regulation is the Finnish Customs. The Police and the Border Guard are also competent authorities when they are performing customs tasks.

339. Almost immediately after Council Regulation 1889/2005 and the Finnish national legislation came into force on 15 June 2007, the National Board of Customs issued instructions to the public concerning cross-border declaration requirements.

340. According to article 3 of the EU regulation, any natural person entering or leaving the European Community and carrying cash of a value of EUR 10 000 or more must declare that sum to the competent authorities of the Member State through which he is entering or leaving the

Community in accordance with the Regulation. The obligation to declare is deemed not to have been fulfilled if the information provided is incorrect or incomplete.

341. According to the Finnish national legislation – the *Act on the controls of cash entering or leaving the European Community* (653/2007) – the declaration referred to in article 3 of the Council regulation must be made to the competent authority referred to in section 2.

342. The content of the declaration has been defined in the article 3.2 of the EU regulation. The declaration referred to in paragraph 1 shall contain details of: (a) the declarant, including full name, date and place of birth and nationality; (b) the owner of the cash; (c) the intended recipient of the cash; (d) the amount and nature of the cash; (e) the provenance and intended use of the cash; (f) the transport route; (g) the means of transport.

343. Customs administrative powers have been defined in section 5 of the *Act on the controls of cash entering or leaving the European Community*. In order to control the obligation to declare provided for in article 3 of the EU regulation, the competent authority has the right to stop a person and to search his or her outer clothing and luggage when he or she is entering or leaving the European Community, and to stop and inspect a vehicle (subsection 1). In order to control the obligation to declare provided for in article 3 of the EU regulation, the competent authority has the right to carry out a frisk other than that referred to in subsection 1, when there is probable cause to suspect that a person has failed to comply with the obligation to declare provided for in article 3(2).

344. Section 6 contains provisions concerning the possible seizures of cash. According to s.6(1) the competent authority has the right to detain and seize cash entering or leaving the Community if the obligation to declare provided for in article 3 of the EU regulation has not been fulfilled, and if the measure is necessary in order to establish whether there is cause to carry out measures regarding the cash on the basis of other legislation. A customs officer who has the right to decide on a frisk referred to in s.15 of the *Customs Act*, a commanding Police officer, a Border Guard official with the power of arrest, or a Border Guard officer who at least holds the rank of major shall decide on the measure. According to s.6 (2), if not otherwise provided by law, the cash must be made available to the person concerned or returned to him or her no later than five working days after the seizure in a manner separately agreed on by the person concerned and the competent authority.

345. Section 9 provides penalties for persons who make a false declaration or who fail to make a declaration. In these cases the person shall be sentenced to a fine for violation of declaration of cash, if a more severe punishment is not provided for elsewhere. However, s.8, chapter 16 of the *Penal Code* does not apply here and consequently the possible amount of such a fine is not clear.

346. Thus, as of 15 June 2007, Finnish national law imposes an obligation on natural persons to declare financial assets (cash and bearer negotiable instruments) and authorities are able to obtain further information on the origin of the cash or its intended use on administrative grounds. Authorities can also detain cash and bearer negotiable instruments on administrative grounds for a short period of time (no longer than 5 days).

347. In connection with implementation of the EU regulation and the new national legislation, there have been discussions on arranging co-operation between the Finnish National Board of Customs and the MLCH, among others. The system for transmitting information to the MLCH and to other authorities has been agreed upon. Arrangements for co-operation are also being made with the Border Guard, which is also a competent authority with respect to cross-border movements of currency in addition to Finnish Customs when Border Guard is performing customs tasks.

348. Finnish Customs is able to conduct preliminary inquiries and pre-trial investigations where there is suspicion of a ML offence. Once this suspicion is formed, the provisions of the *Pre-trial Investigation Act* and the *Coercive Measures Act* apply. Thus it is possible for Finnish Customs to seize financial assets in the possession of someone suspected of involvement in ML. However, the

Finnish Customs is not a designated authority for investigation of TF matters. This is the competence of the BI and the Security Police. Finnish Customs is however working closely with the Police and Border Guard via joint investigation teams at the national airport and other key border control points (see further to description in section 6.10 of the PCB co-operation).

349. Finnish Customs is able to exchange information and to otherwise co-operate with foreign customs authorities and other authorities on the basis of the national provisions in force and of international agreements. The *Customs Act* provides for the personal data registers of Finnish Customs. In compliance with s.27, Finnish Customs is permitted to disclose information stored in the customs personal data registers and other information to foreign countries as follows:

- To the World Customs Organisation (WCO) on such customs offences for which the penalty can be imprisonment.
- To a customs authority in order to prevent, investigate and prosecute crime or to bring it into consideration of charges.
- To be entered into the European Union Customs Information System on the mutual assistance between the administrative authorities of member States and co-operation between the administrative authorities of member States and the Commission in order to ensure impeccable application of the legislation on customs and agricultural matters as defined in the Council Regulation (EC) 515/1997.
- To other than customs authorities if the data is necessary to prevent or investigate an offence which, if committed in Finland, would be punishable by imprisonment.

350. Finland has made bilateral agreements on customs co-operation with Russia, the United States, Great Britain, France, Germany, other Nordic countries and with the Baltic countries. Bilateral agreements signed with EU member States are still in force.

351. Gold, other precious metals and stones imported to Finland must be declared at import or export in the same manner as other goods. For the purpose of regulating the entry of rough diamonds to the international market and ensuring legal diamond trade, the so-called Kimberley process has been established. With Regulation (EC) No. 2368/2002 the European Union has, on 1 February 2003, implemented a certification scheme for the international trade in rough diamonds in the import, export and transit of diamonds. In the event of Finnish Customs discovering unusual import or export of precious metals or stones they may, within their competence, investigate the backgrounds of the import or export activity. They may also give other authorities information on import and export on the basis of international agreements on exchange of information.

*Statistics (Customs)*³⁶

352. Information is now being kept on physical cross-border movements of currency or bearer negotiable instruments entering or leaving the European Union. From 15 June when this declaration system commenced until 27 June (2 months from the end of the on-site visit) Finnish Customs had received 11 such declarations and carried out 2 inspections. The amount of cash (as defined in article 2 of the EU regulation) declared and/or revealed through inspections was EUR 1 707 517³⁷. More than half of these declarations/inspections related to persons leaving Finland for the Russian Federation. The available statistics do not make a distinction between the cash declared as compared to that revealed in inspections. Similarly, the available statistics do not provide a distinction between inbound and outbound movements of currency or bearer negotiable instruments. Further, the trigger which prompted Finnish Customs to conduct the inspections is not known.

³⁶ As related to R.32; see section 7.2 for the compliance rating for this Recommendation.

³⁷ From 15 June 2007 to 23 August 2007, Finnish Customs received declarations and carried out inspections on 88 occasions. The amount of cash declared and/or revealed through inspections was approximately EUR 26 106 447.

2.7.2 Recommendations and Comments

353. Finland has a new declaration system in place. The *Act on the controls of cash entering or leaving the European Community* (653/2007) came into force on 15 June 2007. As the title of the relevant legislation indicates, it covers only the transfer of cash or bearer negotiable instruments when entering or leaving the European Union territory and not between Finland and another EU member state, which is a requirement of Special Recommendation IX. According to the EU regulation, any natural person entering or leaving the Community and carrying cash of a value of EUR 10 000 or more shall declare that sum to the competent authorities of the member state through which s/he is entering or leaving the Community.

354. There is a need for co-ordination between the customs, immigration and other related authorities in order to fully implement the EU regulation and national legislation in order to meet the requirements of Special Recommendation IX. These authorities may benefit from collecting and analysing more detailed statistics on the declaration system.

2.7.3 Compliance with Special Recommendation IX

	RATING	SUMMARY OF FACTORS UNDERLYING RATING
SR.IX	PC	<ul style="list-style-type: none">• Measures are very new; coming into force almost 2 months after the date of this assessment and thus it is too early to ascertain the effectiveness of this system.• The EU regulation and relevant national legislation do not cover the transfer of cash or bearer negotiable instruments between Finland and another EU member state.

3. PREVENTIVE MEASURES - FINANCIAL INSTITUTIONS

General

355. Finland's AML measures are based on its first AML law which came into effect in 1994 when Finland joined the EEA. Several legislative amendments have since taken place, the latest in June 2003, when *Directive 2001/97/EC of the European Parliament and of the Council of 4 December 2001 amending Council Directive 91/308/EEC on prevention of the use of the financial system for the purpose of money laundering* (the *Second Directive*) was transposed into Finnish legislation. The amendments of 1 June 2003 to the *AML/CFT Act* widened the parties to which Finnish AML/CFT obligations apply, incorporating independent legal professionals, external accountants and auditors, dealers in vehicles, dealers in precious metals and stones and auctioneers of works of art as obliged parties. The obligation to report suspicious transactions was also amended so as to apply also to transactions where TF is suspected and a registration obligation was implemented for businesses or professions practicing other payments transfer services outside that referred to in the *Credit Institutions Act* (i.e. money transfer services). The customer identification, record keeping and due diligence requirements remain largely as they were in 1998. Finland is currently in the process of amending the AML/CFT legislation and regulations and the new *AML/CFT Act* is expected to enter into force in December 2007.

356. The *AML/CFT Act* applies the same customer identification, due diligence, suspicious transaction reporting and record keeping obligations on all of the 'obliged parties'. According to s.3 of that act, the AML/CFT preventative measures apply to the following types of obliged parties:

- Credit and financial institutions (including money exchange services).
- Investment firms and institutions which are not investment firms but which are professionally engaged in activities referred to in s.16 of the *Investment Firms Act*.
- Fund management companies and custodian companies.
- Holding companies of credit institutions' and investment firms' consolidation groups.
- The Finnish Central Securities Depository.
- Book entry registrars and registrars' agents.
- Parent companies of financial and insurance conglomerates providing financial services.
- Central bodies as referred to in the *Act on Co-operative Banks and Other Co-operative Credit Institutions*.
- Entities pursuing limited credit institution activities.
- Pawnshops.
- Finnish branches of foreign credit or financial institutions. Finnish branches of foreign investment firms and fund management companies.
- Life insurance companies, insurance brokers and non-life insurance companies.
- Businesses or professions practicing payments transfer services other than payment intermediation referred to in the *Credit Institutions Act* (i.e. money transfer services).
- Businesses or professions carrying out duties referred to in s.1(1) of the *Auditing Act* (e.g. external auditors).
- Businesses or professions practicing external accounting.
- Businesses or professions selling or dealing in precious stones or metals, works of art or vehicles.
- Businesses or professions holding auctions.
- Businesses or professions providing assistance in legal matters.
- Real estate businesses and apartment rental agencies.
- Institutions engaged in casino, betting or totalisator betting activity.

357. In addition to the *AML/CFT Act*, which is the central piece of AML/CFT legislation in Finland, the Ministry of Interior has issued a *Decree on Preventing and Clearing Money Laundering* (the *AML/CFT Decree*) which contains provisions relating to fulfilment of the *AML/CFT Act*. The following laws, regulations and decrees also incorporate provisions relating to customer identification, customer due diligence:

- Ministry of Interior *AML/CFT Decree (No 890/2003)*.
- Sections 50, 51, 94 and 95 of the *Credit Institutions Act (No 1607/1993)*.
- Section 48 and 49 of the *Investment Firms Act (No 579/1996)*.
- Section 144 of the *Mutual Funds Act (No 48/1999)*.
- Section 24 of the *Act on Operation of a Foreign Credit and Financial Institution in Finland (No 1608/1993)*.
- Section 16 of the *Right of Foreign Investment Firms to Provide Investment Services in Finland Act (No 580/1996)*.
- Section 29b of the *Book Entry System Act (No 826/1991)*.
- Section 4 of the *Insurance Companies Act (No 1062/1979)*.

358. Supporting guidance has also been issued by the MLCH and the two supervisory authorities, the FSA and the ISA, in support of the *AML/CFT Act* and the *AML/CFT Decree*. Importantly, this includes:

- FSA Standard RA2.1, *Notification of suspicious securities transactions and other suspect transactions*, 1 September 2005.
- FSA Standard 2.4, *Customer identification and customer due diligence - Prevention of money laundering, terrorism financing and market abuse*, 1 September 2005.
- FSA Standard 4.1, *Establishment and maintenance of internal control and risk management*, 1 May 2003.
- FSA Standard 4.4b: *Management of operational risk*, 1 January 2005.
- *Money Laundering Clearing House Best Practices*, 2004.
- ISA *Instruction for Preventing Money Laundering and Terrorism Financing: Finnish insurance companies and foreign insurance companies' agencies in Finland*, 1 December 2006.
- ISA *Instruction for Preventing Money Laundering and Terrorism Financing: Insurance Intermediaries*, 1 December 2006.

359. Customer due diligence obligations generally require identification of the customer and monitoring for unusual or suspicious transactions. The extent of the due diligence may vary based on the nature and risk profile of the institution and the customer, although minimum obligations are prescribed in the *AML/CFT Act* as well as by some supervisory agencies. The *AML/CFT Act* states that violations of these due diligence obligations can result in criminal prosecution and fines.

360. While the FSA standards incorporate both binding obligations and guidance, other than with respect to customer due diligence matters where certain pieces of legislation have conferred on the FSA the ability to issue binding rules (constituting other enforceable means), the binding content in the FSA standards are transpositions from law or regulation, reiterated and expanded upon in the standards documents. The documents issued by the ISA and MLCH are in the nature of guidance.

3.1 Risk of money laundering or terrorist financing

361. The application of the Finnish AML/CFT measures to the financial system and to DNFBPs is not based on risk assessment in the manner contemplated in the revised FATF *40 Recommendations*.

Implementation of a risk-based approach is one of the expected features of the new AML/CFT legislation. However, the current FSA standards do require supervised entities to conduct risk assessments of their customers, business, products and services. The ISA regulations and Instructions for insurance companies and pension funds concerning internal controls and risk management similarly require that the insurance company assesses and manages all the risks it faces. The focus of these standards and guidance is operational risk, of which ML and TF are considered a part.

3.2 Customer due diligence, including enhanced or reduced measures (R.5 to 8)

3.2.1 Description and Analysis

Recommendation 5

362. Numbered accounts are not provided by institutions in Finland. Financial institutions are prohibited by the *Credit Institutions Act* to open anonymous accounts or accounts under fictional names. Section 51 of the *Credit Institutions Act* provides "When opening an account a written agreement must be signed, the customer must be identified and the account must be in the customer's name. A certificate of deposit must be written in the name of the account holder." The *Securities Markets Act* and the *Insurance Contracts Act* also contain similar obligations which state that when commencing a customer relationship with a securities company or when taking out an insurance policy, a written contract must be signed by the institution and the customer. Accounting and taxation laws and laws on protection of the deposit guarantee fund and the investor guarantee fund similarly require that each customer must be specified in the accounts by individual identification data. The prohibition on anonymous customer relationships is also clear from the customer identification rules set out in the *AML/CFT Act* and *AML/CFT Decree*.

363. Further, s.95 of the *Act on Credit Institutions* provides that a credit institution or a financial institution belonging to a consolidated group must ascertain the identity of its customers and know the quality of the business operations of its customers as well as the grounds for using the financial services. If it is probable that the customer is acting on behalf of another party, the identification should also be extended to that person as far as this is possible with the means available. The identification of customers is also governed by the provisions of the *AML/CFT Act*, most importantly in s.6 and s.7 of that act. The *Act on Credit Institutions* also authorises the FSA to issue further orders on the procedure to be complied with in the identification of customers.

364. Financial institutions have the authority to turn down any legal or natural person as a customer. However, while it is always acceptable for financial institutions to turn down a legal person as a customer, they may only refuse to offer basic banking services to a natural person where there is a 'weighty reason' to do so (s.50a of the *Credit Institutions Act*). A weighty reason can be defined as any situation where a customer cannot be identified, where there is a risk that the account could be used for ML or other criminal purposes, or where the customer already has a bank account. This protection for natural persons is part of Finland's strong social policies and recognises that many payments, including social benefits payments, are only made into bank accounts.

365. Obligated parties are required to identify their customer when:

- They enter a permanent business relationship (s.6(2) *AML/CFT Act*). This provision does not apply to pawnshops, casinos and other gaming operators, though s.15, chapter 4, of the *Pawnshops Act* (1353/1992) requires that identification be carried out by pawnshops for all transactions.
- They conduct a single transaction (or several connected transactions) with a non-permanent customer for a total amount in excess of EUR 15 000 (s.6(2) *AML/CFT Act*). This provision does not apply to pawnshops, casinos and other gaming operators, though as noted above, pawnshops must always identify their customers.

- Customers conducting occasional transactions which are wire transfers. Remitters must be identified according to article 5.4 of *Regulation (EC) No. 1781/2006 of the European Parliament and of the Council of 15 November 2006 on information on the payer accompanying transfers of funds* (which is applicable directly in Finland, without need for internal act or regulation for its implementation) where the transfer of funds is made with cash and the amount exceeds EUR 1 000 or involves several transactions which appear to be linked and together exceed EUR 1 000.
- Regardless of the transacted amount, when the obliged party has reason to suspect ML or TF (s.6(1) *AML/CFT Act*).
- When there are doubts about previously obtained identification information. In that respect, s.13 of the *AML/CFT Decree* states: "This decree also applies to customers whose business relationship with a party obliged to report has begun before the entry into force of the decree. If the customer or person for whom the customer probably acts has not been identified previously or is not otherwise known to the party obliged to report, the party obliged to report must identify such a customer and person before conducting a new transaction."

366. According to s.2 of the *AML/CFT Decree*, obliged parties must ascertain a natural person's identity from a document issued by an authority or, for special reasons, from some other document form which identity can be reliably ascertained. They must establish the full name and date of birth; the Finnish personal identity code or, in the case of alien, the nationality and the number of an alien's passport or other travel document, or some other identification data. A list of valid identification documents which may be used by financial institutions has been issued in FSA standard 2.4, *Customer identification and customer due diligence - Prevention of money laundering, terrorism financing and market abuse* (section 5.2.3, paras 23 – 25) and as guidance for all obliged parties in the *Money Laundering Clearing House Best Practices* (section 3.3). The identification documents that are accepted include: a) Finnish driving licence; b) identity card issued by a Police authority; c) passport; d) A photographic SII-card (Sickness Insurance Card); or e) electronic ID card issued by a Police authority. In exceptional circumstances, other documents that reliably determine the identity of the customer may be acceptable.

367. There are no specific requirements for foreign natural persons in the *AML/CFT Act* or its related decree. Section 5.2.4 of FSA standard 2.4, *Customer identification and customer due diligence - Prevention of money laundering, terrorism financing and market abuse*, which applies to financial institutions (not to insurance companies), recommends that identification document to use for a foreign natural person who does not have a Finnish social security number, is generally a valid passport (or an alien passport). Refugee travel documents are also accepted as identification documents. The identity of Nordic citizens can also be established by using an official ID card.

368. After verification of identification is conducted by checking valid identity documents, institutions may cross-check the data against records held in the Population Register and the register for foreigners resident in Finland. These registers are official registers, owned and regularly updated by the public authorities; the Ministry of Interior and the Ministry of Trade and Industry. While it appears that it is common practice for institutions to check these registers, there is no requirement to do so in any legal instrument.

369. Identification of a legal person is established by using a registration document confirming the existence of the company, which is usually a registration extract issued by the National Board of Patents and Registration (the company / trade register) and when necessary, by checking a copy of minutes of the company's board meeting that verifies those persons authorised to operate the account. This is provided in s.3 of the Ministry of Interior *AML/CFT Decree*, section 5.2.4 of FSA standard 2.4, *Customer identification and customer due diligence - Prevention of money laundering, terrorism financing and market abuse* and in section 3.3 of the *Money Laundering Clearing House Best Practices*. In effect, the obliged party must check the documents pertaining to the founding and

administration of the company and the persons signing for the company name. At least the following identification data of the legal person must be established and kept in the obliged party's records:

- Full name of the legal person.
- The legal person's registration number, if the legal person has one, the registration date and registration authority.
- Full names, dates of birth and nationalities of the members of the legal person's board of directors or corresponding decision-making body.

370. Section 3 of the *AML/CFT Decree* states as a binding rule for all obliged parties: "When identifying a legal person in accordance with sections 6 and 7 of the *Act on Preventing and Clearing Money Laundering*, the party obliged to report must obtain an account required to ascertain the identity from an official register of, for special reasons, from some other source from which an account can be reliably obtained." Paragraph 26, section 5.2.3 of FSA standard 2.4 *Customer identification and customer due diligence - Prevention of money laundering, terrorism financing and market abuse* states as a binding rule for financial institutions, that identification of any legal person is to be verified with a valid extract from the trade register or a corresponding extract from an official register which establishes the existence and legal capacity of the legal person.

371. When enhanced due diligence is being conducted in accordance with s.10(3) of the *AML/CFT Decree*, issued by the Ministry of Interior, the identity of a natural person acting on behalf of a company must be ascertained in the same way for all natural persons which are customers. In addition, s.7 of the *AML/CFT Act* provides that "If it is likely that a customer is acting for another person, the identity of this person shall also be established by all available means. FSA guidance for financial institutions in section 5.2.3 of FSA standard 2.4, *Customer identification and customer due diligence - Prevention of money laundering, terrorism financing and market abuse* also clearly notes that the identity of a person acting on behalf of a legal person must be established by the same means as the identity of a personal customer. Also paragraph 16 of chapter 5.2.1 of that standard notes that "A person acting on behalf of a legal person or natural person must be identified and it must also be ascertained (verified) that they are authorised to carry out legal actions on behalf of a natural or legal person. If attempts are made to conceal the true identity of a customer or beneficiary, persons who stand to gain from the assignment or transaction or who can exercise real control over the customer must also be identified (beneficial owner)". Since the FSA standards draw from the *AML/CFT Act* and *AML/CFT Decree* for their legal basis (and are non-binding guidance where they go further than the provisions of the act and decree), financial institutions are not obliged to identify the natural person acting on behalf a legal person except when conducting enhanced due diligence. The *AML/CFT Act* does not require institutions to identify the owners of legal persons. Section 3 of the *AML/CFT Decree* does however provide that the identities of the members of the legal person's board of directors or similar decision-making body must be checked.

372. There are no specific requirements for identification of foreign legal persons in the *AML/CFT Act* or its related decree. The forms of legal person the CDD requirements apply to is not defined and Finnish authorities advise that it is therefore interpreted as applying to all forms of domestic and international legal persons. However, assuming the identification obligations do apply, it is unclear exactly what identification would entail for foreign legal persons and arrangements which are not recognised in Finland, particularly trusts

373. There are no provisions in any legal instruments with respect to the identification of legal arrangements or identification of beneficial owners of legal persons, other than a requirement in s.10(2) of the *AML/CFT Decree* for identification of "the owners of the legal person or other persons exercising controlling power in it" as part of enhanced due diligence procedures. There is also an FSA recommendation, which is in the nature of non-binding guidance, for financial institutions which notes that: "It may be necessary to establish, on a risk sensitive basis, the corporate and ownership structure of the legal person as well as the bodies who exercise actual decision-making power or who are the beneficiaries, business partners or customers of the company." (Para 32, section 5.3 FSA

standard 2.4, *Customer identification and customer due diligence - Prevention of money laundering, terrorism financing and market abuse*).

374. Section 7 of the *AML/CFT Act* does require identification of the natural or legal person on whose behalf a transaction is being made: "If it is probable that a customer is acting on behalf of another person, the identity of this other person shall also be established by all available means". This is intended to cover situations where a person acts "openly" on behalf of a natural or legal person and situations where there is an attempt to conceal the true identity of the beneficiary. The authority to act on behalf of a customer and the identity of the beneficial customer must be checked using reliable, independent source documents, data or information.

375. In the insurance sector, obliged parties must, when a new business relationship commences, carry out identification procedures including clarifying the background of the new company or natural person. The *ISA Instruction for Preventing Money Laundering and Terrorism Financing* for insurance companies and *Instruction for Preventing Money Laundering and Terrorism Financing* for insurance intermediaries refer to this requirement. In addition to the information which can be found on the Finnish Trade Register, the ISA has information of all insurance companies and representative offices who are acting in Finland. The *Insurance Contracts Act* (s.47 and s.48, part IV) provides that a policyholder may designate a person who is entitled, on behalf of the policyholder or the insured, to the benefits payable under the policy (*i.e.* a beneficiary). A beneficiary clause, its cancellation or amendment is null and void unless delivered to the insurer in writing. Identification of the beneficiary, as required by the *AML/CFT Act* and its related decree, takes place when the benefits under the policy are paid out.

376. Section 9 of the *AML/CFT Act*, while not clearly requiring obliged parties to understand the ownership structure of their customers, is considered by authorities to require obliged parties to have such an understanding in order to satisfy the customer due diligence obligation it specifies: "Parties subject to the obligation to report shall examine with due diligence the grounds for and the purpose of the use of their services if they consider that transactions are unusual in respect of their structure or extent or the size or office of the party subject to the obligation to report, or if they have no apparent financial purpose or if they are inconsistent with the customer's financial position or business activity." Section 95 of the *Credit Institutions Act* and corresponding sections in the *Investment Firms Act* and the *Mutual Fund Act* require that the institution must know their customers' business, purpose and scope. Non-binding FSA guidance also encourages supervised entities to understand the ownership structure of a customer as part of understanding and managing operational risk. In order to clearly evaluate the risks involved in the customer relationship, institutions are expected to be aware of their customers' background information and activities to the extent required by the potential ML or other risks of the customer relationship. This approach is evident in the FSA standards on customer identification and due diligence (standard 2.4), management of credit risks (standard 4.4a) and reporting of large exposures (standard RA4.1) which stress that institutions should be familiar with their customers' ownership structure.

377. In Finland there is a national trade register, operated by the National Board of Patents and Registration (PRH) (under the Ministry of Trade and Industry), which contains information on businesses obtained from notifications filed by businesses and courts of law. The obligation to send notifications to the trade register and the required content of the trade register is established in the *Act on the Trade Register* (129/1979, s.4 to s.13d). While the PRH does conduct some checks on the information in the trade register, this control is limited. The trade register contains information on the board of directors and external auditors of legal persons. Register entries are accessible by both the public (including the private sector) and by government authorities.

378. The *Companies Act* provides that each limited liability company must maintain records of its owners. A share register and an alphabetical register of shareholders is managed by the company itself and this information on the ownership of Finnish companies, corporations and foundations is public, in accordance with the *Limited Liability Companies Act* (s.10 and s.12, chapter 3). If the

company's shares are subject to trading in a regulated market, the company must incorporate its shares in the book-entry system, kept at the Central Securities Depository, which consists of book-entry accounts and up-to-date lists of the owners of book entries registered in the accounts. The entry made on the holder of a right includes his name, contact details, payment address, taxation information and Finnish personal identity number, or in the absence thereof, an identification code in compliance with the regulations of the Central Securities Depository (*Act on Book-Entry Accounts*, s.3 and 4). This ownership information is also public information.

379. Information on major shareholdings in companies subject to trading on a regulated market also has to be disclosed. Pursuant to s.9, chapter 2, of the *Securities Markets Act* a shareholder is required to inform the company and the FSA about his ownership when it reaches, exceeds or falls below 5%, 10%, 15%, 20%, 25%, 30%, 50% or 66.7% of the voting rights or share capital of the company. The company is required to publish this information (s.10, chapter 2). Information also has to be disclosed when a shareholder or a person corresponding to a shareholder is party to a contract or other arrangement which, when effected, results in the said threshold being reached or exceeded or in the portion of holdings falling below the said threshold.

380. Finnish owners of securities must always use their own name. Foreign citizens may hold nominee registrations, however this means they have no voting rights. When the nominee registered owners wish to exercise their right to vote at annual shareholders' meetings, their ownership in the company must first be registered. In addition, under s.5a of the *Act on Book-Entry Accounts*, book-entry securities owned by a foreign individual, corporation or foundation may be entered in a special book-entry account (custodial nominee account) administered by a custodial account holder on behalf of a beneficial owner on the basis of an authorisation. Such accounts contain information on the custodial account holder instead of the beneficial owner and include a mention that the account is a custodial nominee account.

381. According to s.28 of the *Act on Book-Entry System*, s.28, the nominee registration custodian has to if so requested by the FSA provide the FSA with the name of the beneficial owner of the book entries, as well as the number of the book entries held by the owner. If the name of the beneficial owner of the book entries is not known, the nominee registration custodian is obliged to notify the FSA of corresponding information on the representative acting on behalf of the owner (i.e. custodial account holder) as well as to submit a written declaration to the effect that the beneficial owner of the book entries is not a Finnish legal or natural person. A custodial nominee account may also be used for the keeping of book-entry securities owned by more than one beneficial owner. Such accounts are administered by custodial account holders, which are usually foreign custody banks. Foreign custody banks keep their registers of beneficial owners outside the jurisdiction and the information on the beneficial owners is thus not accessible by Finnish authorities.

382. Pursuant to laws and regulations governing financial services, institutions are required, in addition to identifying their customers, to take measures to know the nature, scope and purpose of their customer relations and transactions. Relevant laws and regulations are the *Act on Book Entry Systems* (s.29b), *Credit Institutions Act* (s.95), *Insurance Contract Act*, s.22, *Act on Investment Firms* (s.49) and the *Act on Mutual Funds* (s.144). Section 29b of the *Act on Book Entry Systems* provides that "An account operator, an agent and the Central Securities Depository as well as a financial institution belonging to their consolidation group shall ascertain the identity of its regular client and be familiar with the nature of the business operations of the client as well as with the grounds for using the service. If it is likely that the client is acting on behalf of another, the identification shall be extended also to this person as far as this is possible with the means available. The provisions of the Act on the Prevention and Investigation of Money Laundering (68/1998) shall also apply to the identification of clients." The FSA has also issued guidance on the procedures to be complied with in this respect and these provisions can be found in the FSA standards on: customer identification; due diligence; prevention of money laundering and terrorist financing; and, market abuse. The FSA standards are applied to those entities which are supervised and regulated by the FSA: banks and other credit institutions, including; investment firms; mutual fund companies; and branches of foreign

institutions situated in Finland. Similarly, the ISA regulations and instructions, particularly the *Instruction for Preventing Money Laundering and terrorism Financing* for insurance companies (at 4.2.11.3.2) and the *Instruction for Preventing Money Laundering and terrorism Financing* for insurance intermediaries (at 13.3.2), recommend that supervised institutions must know their customers' business, its nature and scope, financial status of the customers' business and the purpose for applying insurance cover. There are no provisions for money remitters and foreign exchange companies to know the nature, scope and purpose of their customer relations and transactions.

383. Finnish legislation does not establish a requirement to conduct ongoing due diligence on the business relationship. FSA standard 2.4, *Customer identification and customer due diligence - Prevention of money laundering, terrorism financing and market abuse*, and the *Money Laundering Clearing House Best Practices* do recommend that identification data be regularly updated, but these are in the nature of non-binding guidance. Pursuant to the *Data Protection Act*, it is a general requirement in Finland that personal data records be kept up to date. Citizens are obliged to notify the Population Register Centre of any change of address. The Population Register is a government owned register, under the control of the Ministry of Interior, containing information on all Finnish citizens and aliens that reside permanently in Finland. It is customary, though not required, that large financial institutions and insurance undertakings update the address information for their customers directly from the Population Register Centre. It is also customary banking practice in Finland to seek identification when a customer is conducting a financial transfer.

384. Section 9 of the *AML/CFT Act* provides that obliged parties must examine 'the grounds for and the purpose of the use of their services' if they consider a transaction by the customer to be unusual. In order to comply with s.9, obliged parties do in practice have to conduct some ongoing due diligence and have an understanding of the customer's business, its background, and the nature and scope of customer's services in order to successfully determine whether any transactions being carried out are unusual. In addition, s.95 of the *Credit Institutions Act* (1607/1993) requires credit institutions to "know the quality of the business operations of its customer as well as the grounds for the using of a service", s.49 of the *Act on Investment Firms* (579/1996) requires that investment firms "be familiar with the nature of the business operations of the client as well as with the grounds for the using of the service", s.29(b) of the *Act on the Book-entry System* (826/1991) requires that institutions dealing in shares "be familiar with the nature of the business operations of the client as well as with the grounds for using the service" and s.144 of the *Act on Common Funds* (48/1999) requires that managers and custodians of common funds ascertain "the quality of his business operations as well as the grounds for common-fund investing". The FSA standard 2.4, *Customer identification and customer due diligence - Prevention of money laundering, terrorism financing and market abuse* and *ISA Instruction on Preventing Money Laundering* also provide supporting guidance on this obligation to monitor services and transactions on a regular basis.

385. The current laws and regulations do not require institutions to perform enhanced due diligence for higher risk categories of customers other than for NCCT-listed countries or jurisdictions. Pursuant to s.11a of the *AML/CFT Act* and s.9 to s.11 of the *AML/CFT Decree*, enhanced customer due diligence measures are applied to business relationships having a link to countries on the FATF NCCT-list and where the FATF has encouraged countries to impose counter-measures. There are no requirements in the *AML/CFT Act* regarding PEPs, private banking or correspondent banking. The FSA standards do however require risk assessment of the customers, business, products and services that financial institutions provide. Relevant in this context are FSA Standard 2.4, *Customer identification and customer due diligence - Prevention of money laundering, terrorism financing and market abuse* and FSA Standard 4.4b, *Management of operational risk*.

386. An exemption from customer identification measures is provided in the *AML/CFT Act* for certain specific customers from EEA countries. Pursuant to s.6(3) of the *AML/CFT Act*, obliged parties do not need to identify their customer if it is:

- A credit institution, financial institution, investment firm or life insurance company authorised in a member state of the EEA.

- A branch of a credit institution, financial institution, investment firm or life insurance company authorised in a State outside the EEA but operating in a member State of the EEA.

387. The rationale for this exemption is that the members of the EEA have harmonised criteria for licensing and supervision of the institutions mentioned above, which reduces the risk faced by obliged parties which have one of these institutions from an EEA member as a customer. While this provision amounts to an exemption, in practice identification stills occurs through provision of simplified documentation about the institution.

388. In addition, the identity of a customer need not to be ascertained if the customer is a credit institution, financial institution, investment firm or life insurance company authorised in a State whose AML/CFT system meets the international standards, or a branch of a credit institution, financial institution, investment firm or life insurance company authorised in another State but operating in such a State (*AML/CFT Act* s.6[5]). However, in practice this provision is not in effect, as Finnish authorities have not issued a list of equivalent third countries.

389. Some exemptions from customer identification are also allowed for the insurance sector (*AML/CFT Act* s.6[3]). Insurance companies, insurance brokers, and representative offices of foreign insurance companies do not need to identify their customer when:

- The commission agreement on an insurance policies premium for the insurance period does not exceed EUR 1 000 or the single premium does not exceed EUR 2 500.
- The commission agreement concerns such a statutory employment pension insurance policy or such a pension insurance policy of a self-employed person that does not include a repurchase clause and that cannot be used as a security for a loan.
- The premium of an insurance policy is paid to the policy holder's account with a credit institution or financial institution authorised in a member state of the EEA, or from an account with a branch of a credit institution or financial institution authorised in a State outside the EEA but operating in a member state of the EEA.

390. These exemptions and simplified CDD measures are not acceptable whenever there is suspicion of ML or TF or where specific higher risk scenarios apply (s.6 *AML/CFT Act*).

391. Pursuant to s.5 of the *AML/CFT Decree*, identification must be carried out before a business relationship commences and at the latest when the customer gains control over the financial or other assets involved in a transaction or before a single transaction has been completed. If the obligation to identify arises from the fact that the aggregate value of transactions reaches EUR 15 000, identification must be carried out when that limit is reached. Paragraph 19 of FSA standard 2.4, *Customer identification and customer due diligence - Prevention of money laundering, terrorism financing and market abuse* and section 3.3 of the *Money Laundering Clearing House Best Practices* note that the customer relationship should not be commenced if the identification cannot be carried out. The ISA *Instruction for Preventing Money Laundering and Terrorism Financing* for insurance companies also recommends (at 4.2.11.3.1) that the identification process be carried out before the customer is able to use the products or services provided by the insurance company. The beneficiary of an insurance policy should also be identified before the beneficiary exercises any rights under the policy, including receipt of benefits.

392. There is a specific requirement in s.13(2) of the *AML/CFT Decree* for obliged parties to update the identification data relating to customers with whom a business relationship commenced before the *AML/CFT Act* and its decree came into force on 1 November 2003. Identification must be conducted before proceeding with further transactions if the customer, or person for whom the customer probably acts, has not been identified previously, where there is doubt that the customer was identified properly or is not otherwise known to the obliged party.

Recommendation 6

393. Currently there are no CDD requirements with respect to Politically Exposed Persons (PEPs) and no requirements that obliged parties obtain senior management approval for establishing business relationships with PEPs. The new *AML/CFT Act* which is currently being drafted is expected to implement CDD measures specifically relating to PEPs. In section 5.3, the FSA Standard 2.4, *Customer identification and customer due diligence - Prevention of money laundering, terrorism financing and market abuse* recommends that FSA-supervised entities to be aware of the risks associated with counterparties and customer relations and adapt their operating procedures and risk management systems accordingly to reflect the special characteristics of their customers.

394. Finland has signed (10 December 2003) and ratified (20 June 2006) the *United Nations Convention against Corruption*, UN General Assembly Resolution 58/4 of 31 October 2003.

Recommendation 7

395. Currently there are no CDD requirements with respect to correspondent banking and no requirements that obliged parties obtain senior management approval before establishing correspondent relationships. It is expected that this will be introduced in the new *AML/CFT Act*. In section 5.3, the FSA Standard 2.4, *Customer identification and customer due diligence - Prevention of money laundering, terrorism financing and market abuse* recommends that FSA-supervised entities be aware of the risks associated with counterparties and customer relations and have operating procedures and risk management systems which reflect the special characteristics of their customers.

396. In practice, Finnish banks have risk procedures in place when entering into cross-border correspondent relationship. Banks only have correspondent relationships with banks in countries where their corporate customers need payment or other services and do business (export / import / production of goods). Finnish banks have internal rules and limits with respect to what is an acceptable correspondent bank to establish such a relationship with. These include consideration of location of the institution, its bank rating (given by external rating agencies) and reputation. Banks use external sources such as the Bankers' Almanac and rating agencies to assist with this analysis. Correspondent banking relationships are fully documented and approved customer relationships as required by the institution's internal rules. All transactions are kept in the records. Further, banks are regularly advised by the FSA of the UN, EU and other authorities' decisions or designations on financial sanctions.

397. Finnish banks do not offer "payable-through-accounts" for their customers or correspondent banking relations.

Recommendation 8

398. There are no requirements for obliged parties to have measures in place for prevention of the misuse of technological developments in ML or TF. FSA Standard 4.4b, *Management of operational risk* does however require that banks and other credit institutions, investment firms, fund management companies pay attention and take measures to prevent risks that may arise from new technology and new products. This does not specifically relate to ML and TF matters, but more broadly to operational risks associated with technological developments and in particular the risk of fraud. Section 5.2 of that standard provides that the senior management of such institutions are responsible for the development and maintenance of procedures for the management of operational risks related to supervised entities' products, services, functions, processes and systems. Institutions' management of risks associated with technology is inspected by the FSA.

399. Section 4 of the *AML/CFT Decree* deals specifically with procedures for remote identification. It notes that "If persons or parties acting for them or as their representatives are not present when identity is ascertained, they must identify themselves electronically by using a quality certificate or

some other protected evidential identification technology. Parties obliged to report may, for special reasons, ascertain a person's identity through remote identification by obtaining the account required for identification from sources from which an account can be reliably obtained." These qualified certificates are regulated in s.12 of the *Electronic Signatures Act* which provides that a certification-service-provider providing qualified certificates to the public must verify the identity of the person applying a qualified certificate as well as any other data relating to the person applying for the certificate necessary for the issuing and maintenance of the qualified certificate.

400. In support of this, FSA standard 2.4 *Customer identification and customer due diligence - Prevention of money laundering, terrorism financing and market abuse*, at paragraph 21, notes that: "Establishment of identity must be performed in meeting the customer face-to-face or it must be based on a certificate that fulfils the criteria of an electronic signature, at least when a customer opens the first bank account or when an Internet banking agreement is signed and the customer receives their first electronic user codes and passwords which enable them to enter into agreements with other service providers." That standard also contains, in section 5.2.2, recommendations on non-face-to-face identification of customers. Non-face-to-face identification is permitted provided that the institution is confident that the identification is reliably established and adequate checks have been conducted. Remote identification may also be performed by an agent or other party to which customer identification responsibilities may have been outsourced or by a postal office. The standard further recommends that some low-risk services may allow non-face-to-face establishment of customer's identity, basing identification on data provided by the customer and on payment and settlement details.

401. In practice it appears that financial institutions almost always require face-to-face identification at the commencement of a customer relationship, even where it is an internet banking account that is being established. Due to the nature of their business, which involves a relatively high level of one-off customers, remittance services appear however to primarily conduct face-to-face transactions but they are only required to identify their regular customers or those who are making a transaction, or linked transactions, to a value of EUR 15 000 or more. Some remittance services do accept customers remotely and process transactions for them without the customer ever presenting at an office of the remittance service.

402. The requirements for licensing of financial institutions are provided in the *Decree of the Ministry of Finance on the accounts to be appended to the application for authorisation of an investment firm* (658/2003), the *Decree for authorisation of management company and custodian* (234/2004) and the *Decree for authorisation of a credit institution* (659/2003). Section 11 of those decrees (they are identical in this respect) notes that it is a licensing prerequisite for financial institutions that they present to the FSA their customer identification and due diligence programmes and procedures. This provision states: "The application shall be appended with an account and internal instructions approved by the management for the identification and due diligence of customers and for the manner in which compliance with the due diligence and suspicious transactions reporting obligation contained in the act and regulations on the prevention of money laundering and combating of terrorist financing. The application shall also include an account of the record keeping of identification documents, the persons in charge and the personnel training programme." CDD procedures are checked in detail by the FSA as part of the licensing process. The licensing requirement is stipulated in each relevant law; s.1(a) *Credit Institutions Act*, s.4 *Investment Firms Act*, and s.3 *Mutual Fund Act*. Based on these laws, the Ministry of Finance has issued a decree on the information and accounts to be appended to financial institutions' applications for authorisation (license). The FSA standard 1.1, *Market Entry*, 18 April 2006 supports these acts, by providing more detailed guidelines for applicants.

403. In the insurance industry, it is not common to purchase insurance products over the Internet. Where this does occur, the Internet customer is usually asked to attend a location where s/he will be identified. The identification requirements are the same as for all customers. Once the customer

relationship is established, insurance premiums must be paid to the insurance company via a bank account using customer's bank codes and passwords.

3.2.2 Recommendations and Comments

Recommendation 5

404. It is recommended that the new AML/CFT Act strengthen the existing identification requirements by requiring obliged parties to take and keep a copy of the identification documents presented by their customer as these records are important, for instance, to permit the Police to progress investigations even where false documents are involved.

405. Finland should regulate the general obligation to identify the beneficial owner and verify the information about him/her in legal persons and arrangements. This is particularly necessary when a foreign trust operates in Finland. They should include a general provision about this issue in the act to extent the requirement to all the situations, not only in case of suspicion, in order to cover all the obliged parties. Finland should implement measures to make sure that the review of the information of the customers is performed, especially in cases of enhanced due diligence. The monitoring of transactions should be established clearly in the AML legislation for all obliged parties. Finland should implement a domestic list of territories that don't comply with international standards and should extend enhanced due diligence to other high risk categories such as for PEPs, private banking and foreign trusts.

406. It is recommended that Finland provide an effective simplified CDD obligation where appropriate rather than an exemption. Finland could implement a list of low risk categories where this "simplified CDD measures" could be applied. Finland should consider including an obligation to reject an existing customer when the CDD obligations can't be fulfilled; and, in this cases, consider making an STR.

407. In the new *AML/CFT Act*, it is recommended that Finland establish more clearly the obligation to identify the person who is acting on behalf the legal person in general terms, not only in case of enhanced due diligence and ensure this applies to obliged parties, including insurance, money remitters and foreign exchange companies.

Recommendation 6

408. Finland should implement legislation which specifically provides for enhanced due diligence with respect to politically exposed persons. While special provisions about this issue are expected to be included in the new legislation according to the Third EU Directive obligations and FATF Recommendations, Finland will still have to take into account the differences between the EU Directive requirements and the FATF Recommendations.

Recommendation 7

409. Finland should implement legislation which specifically deals with correspondent banking. Special provisions about this issue are going to be included in the new legislation according to the Third EU Directive obligations and FATF Recommendations. They have to take into account the differences between the EU Directive requirements and the FATF Recommendations.

Recommendation 8

410. Finland should establish provisions about non face to face transactions (ongoing due diligence) for all sectors and with respect to establishing that financial institutions must have policies to deal with the misuse of technological developments.

3.2.3 Compliance with Recommendations 5 to 8

	RATING	SUMMARY OF FACTORS UNDERLYING RATING
R.5	PC	<ul style="list-style-type: none"> • There are no requirements to identify the beneficial owners of legal persons. • There are no general requirements to understand the ownership and control structure of the customer, other than as part of enhanced due diligence. • The identification process to be conducted in relation to legal arrangements is unclear. • There is no requirement to conduct ongoing due diligence on the business relationship. • There are no clear requirements for money remitters and foreign exchange companies to know the nature, scope and purpose of their customer relations and transactions. • Some CDD exemptions are in place in the banking and insurance sectors. • The enhanced due diligence obligation is very narrow in scope; covering only NCCT-listed countries.
R.6	NC	<ul style="list-style-type: none"> • There are no CDD requirements with respect to politically exposed persons.
R.7	NC	<ul style="list-style-type: none"> • There are no CDD requirements with respect to correspondent banking relationships.
R.8	PC	<ul style="list-style-type: none"> • There are no requirements for obliged parties to have measures in place for prevention of the misuse of technological developments in ML or TF. • Limited provisions are in place with respect to the risks associated with non-face to face business relationships and transactions.

3.3 Third parties and introduced business (R.9)

3.3.1 Description and Analysis

411. Currently there are no specific provisions on introduced business or third party relationships in the *AML/CFT Act* or its related decree. In practice, reliance on third parties is permitted in Finland only when performed by another member of the same financial services group or by an agent or where the third party is the postal service, which offers customer identification services for public authorities and courts. In paragraph 10, chapter 5.2, the FSA standard 2.4 *Customer identification and customer due diligence - Prevention of money laundering, terrorism financing and market abuse* notes that: "Supervised entities are responsible for ensuring that their customers are reliably identified. Customers must be identified by the supervised entity or by an agent or other third party." 'Other third party' is intended to refer to the postal offices. Chapter 11 of that standard goes on to recommend that: "When using an agent or otherwise outsourcing their functions, supervised entities must ensure that the agent or the party to whom functions have been outsourced complies with the rules on customer identification and customer due diligence that have been issued by authorities and by the supervised entity. The procedures to be employed and access by the supervised entity to the relevant identification documents must be agreed on in the contract between the agent and the supervised entity. The FIN-FSA retains its right of access to information and supervision."

412. Section 25 of the *Credit institutions Act*, s.16b *Investment Firms Act*, s.26a and s.26b *Mutual Funds Act* include provisions for outsourcing and agency arrangements. These are supported by chapter 5.4 of FSA Standard 4.1, *Establishment and maintenance of internal control and risk management* and chapter 5.5 of FSA Standard 4.4b, *Management of operational risk*. Essentially, these acts require that the institution outsourcing any of its operations, including elements of the CDD process, remains responsible for compliance with laws and regulations. Reports from audits of outsourced operations and all documents and information (including identification documents) must be available to both the institution which has outsourced some of its operations and to the authorities.

413. Insurance companies may rely on intermediaries / agents / brokers who carry out identification of the clients. Under the *Act on Insurance Mediation (570/2005)* intermediaries in Finland are divided into two groups: tied insurance agents and insurance brokers. The act provides for the requirements of a registered insurance agents and its status versus insurance company. Tied insurance agents are acting on behalf of and under the responsibility of their principals, *i.e.* the insurance companies. The insurance companies are liable for their agents' selling processes and behaviour. All documentation belongs to the insurance company because the basic relationship is between the insurance company and the customer. Tied agents are in a very similar position as the employees of an insurance company. Although there is also a registration process for the insurance brokers, they are in different position. The brokers in Finland represent the customers and have to be independent from the insurance companies. While brokers are subject to the obligations of the *AML/CFT Act* and the *AML/CFT Decree*, there is no requirement in place for the insurance companies to satisfy themselves that the brokers are regulated and supervised and have measures in place to comply with CDD obligations. Nor is there a requirement that the insurance companies obtain from the broker the necessary information concerning certain elements of the CDD process. According to the *AML/CFT Act*, the documents and information which intermediaries have used for identification must be stored for at least five years after the policy has expired. Documents and information must also be available for inspection and both insurance companies and authorities must have access to them. While the result of these provisions is that documentation relating to CDD conducted by brokers is available to the insurance companies, there is no requirement for insurance companies to take steps to satisfy themselves that copies of identification data and other relevant documentation relating to CDD requirements will be made available from brokers upon request without delay.

414. For other financial institutions, some reliance on third parties to conduct CDD occurs in Finland as long as the CDD is conducted by another members of the same financial services group. FSA guidance for financial institutions in section 5.7.51 of FSA Standard 2.4, *Customer identification and customer due diligence - Prevention of money laundering, terrorism financing and market abuse* has a general provision on the access to identification data stored outside the financial institution "If the documents are stored outside the supervised entity, supervised entities must ensure that they know where the documents are being stored and have immediate access to the storage place." Notwithstanding, there is no requirement that a financial institution relaying on a third party immediately obtain from the third party necessary information concerning the CDD process and there is no requirement in place for the financial institution to satisfy itself that the third party is regulated and supervised and has measures in place to comply with CDD obligations.

415. Since all Finnish companies within a financial services group and all Finnish insurance brokers are obliged parties under the *AML/CFT Act*, in practice it can be expected that those third parties being relied upon are in fact appropriately conducting CDD. However, financial institutions and insurance companies are able to rely on CDD conducted by third parties and there are no legal provisions establishing parameters for this activity, particularly with respect to: the obligations of the financial institutions and insurance companies in doing so; and, the ultimate responsibility of the financial institution for customer identification even when conducted on its behalf by a third party. In addition, there is no requirement that competent authorities take into account information available on whether countries adequately apply the *FATF Recommendations* when determining in which countries the third party may be based.

416. The new *AML/CFT Act* is expected to include provisions pertaining to third parties and introduced business, including provisions allowing other third parties to perform identification and setting the parameters for how that is to be conducted. It is likely that under that legislation, customer identification may be conducted by another credit institution or other entity which is itself supervised by the FSA or ISA and is an obliged party under the *AML/CFT Act*.

3.3.2 Recommendations and Comments

417. Since reliance on third parties to perform some elements of the CDD process is possible in practice, it is recommended that in its new *AML/CFT Act*, Finland clearly regulate in which situations such reliance on third parties is permitted. Although in Finland financial institutions and insurance brokers are obliged parties according to the *AML/CFT Act*, where reliance on third parties is possible, obligations should be established specifying that financial institutions relying on a third parties must immediately obtain from the third party information concerning the CDD process; that financial institutions relying on third parties must take adequate steps to satisfy themselves that copies of identification data and other relevant documentation relating to CDD requirements will be made available from the third party upon request without delay; that financial institutions relying on third parties must satisfy themselves that the third party is regulated and supervised and have measures in place to comply with CDD obligations; and, that the ultimate responsibility for customer identification and verification remains with the financial institution even when it relies on third parties to conduct some of its CDD.

3.3.3 Compliance with Recommendation 9

	RATING	SUMMARY OF FACTORS UNDERLYING RATING
R.9	NC	<ul style="list-style-type: none"> • In some situations third parties are relied upon to perform elements of CDD, but this is not regulated. • Financial institutions are not required to immediately obtain from the third party the necessary information concerning the CDD process. • Insurance companies are not required to take adequate steps to satisfy themselves that copies of identification data and other relevant documentation relating to CDD will be made available from the third party upon request without delay. • Financial institutions are not required to satisfy themselves that the third party is regulated and supervised and has measures in place to comply with CDD requirements. • There are no provisions to establish that the ultimate responsibility for customer identification remains with the financial institution relying on a third party.

3.4 Financial institution secrecy or confidentiality (R.4)

3.4.1 Description and Analysis

418. Secrecy provisions exist in the *Credit Institutions Act s.94*; s.3 chapter 7 of the *Securities Markets Act* (495/1989); s.48(2) of the *Act on Investment Firms* (579/1996); s.133 chapter 21 of the *Act on Common Funds* (48/1999); the *Mutual Funds Act* and the *Insurance Companies Act*, though not in a form which inhibit the implementation of the FATF Recommendations or compliance with the Finnish AML/CFT laws and regulations. The main objective of these secrecy provisions is to ensure that all personal data remains undisclosed to outside sources unless consent is given by the customer for the use of such information. These provisions (for example s.6 of chapter 18 of the *Insurance Companies Act*) specify that any member of a board, employee or agent of a financial institution which has obtained information on the financial position or private personal circumstances of a customer must “keep it confidential unless the person to whose benefit the secrecy obligation has been provided consents to its disclosure”. The provisions then go on to specify that “A [firm] or an undertaking belonging to the consolidation group of the [firm] shall be liable to disclose the information ... to a prosecuting and pre-trial investigation authority (including the MLCH) for the investigation of a crime as well as to another authority entitled to this information under the law.”

419. However, many institutions have to, without need for the customer's consent, disclose customer information to specific authorities that have a legal right to obtain such information. These authorities

include, amongst others, Police (including the MLCH), prosecution, taxation, customs, frontier guard, bankruptcy, and debt collection enforcement and social benefit authorities. Section 10 of the *AML/CFT Act*, which contains the STR reporting obligation, notes that obliged parties must, once the report has been submitted, “supply on request all information and documents that could be significant to clearing the suspicion”. European Union Regulation 1781/2006 establishes in article 14 that payment service providers (including providers of wire transfers and alternative remittance services) shall respond fully and without delay to enquiries from the authorities responsible for combating money laundering or terrorist financing concerning the information on the payer accompanying transfers of funds and corresponding records. This EU Regulation is directly applicable in Finland.

420. The FSA and ISA have unrestricted access to all of the information that institutions under their supervision possesses. Pursuant to s.15 of the *Act on the Financial Supervision Authority* (587/2003) (the *FSA Act*), the firms under the supervision of the FSA have a duty to disclose any information to the FSA. Similarly, pursuant to s.3, chapter 14, of the *Insurance Companies Act* (1062/1979) (the *ISA Act*), insurance companies must, within a reasonable period of time, provide the competent ministry and the ISA with information needed for the performance of their duties (*i.e.* in the case of the ISA, its supervision duties).

421. Although there are no limitations on the power of authorities in Finland to obtain information in the course of their duties, as Finland has not established CDD measures relating to correspondent banking, it is possible that institutions are not obtaining and keeping all records and necessary information on correspondent banking relationships to fully perform their functions. It is possible that this in turn may limit the information available to authorities.

422. Section 12 of the *AML/CFT Act* goes on to provide that, notwithstanding any confidentiality provisions, the MLCH has the right to obtain any information and documents necessary for clearing money laundering from any authority or body assigned to perform a public function. Further, the *AML/CFT Act* establishes in s.5(2) that if supervisory bodies consider, on the basis of facts discovered in the context of their supervisory or other duties, that there are reasons to suspect that the assets or other property involved in a transaction are of illegal origin or that these are used to commit an offence or a punishable attempt of such an offence, they shall report the case to the MLCH. While all major agencies with AML/CFT roles in Finland appear to have the power to disclose information and the obligation to provide information as appropriate for supervision and investigation of ML and TF, the tax authority does not clearly have the ability to disclose information. It is however subject to the powers of the MLCH to obtain information in s.12 of the *AML/CFT Act*.

423. Section 36 of the *FSA Act* provides that the FSA has the right to disclose information to the ISA, the Government Guarantee Fund or other authority supervising financial markets or responsible for their reliable functioning for the performance of their responsibilities (*e.g.* the Central Bank or the Ministry of Finance) and to an authority in charge of pre-trial investigation (including the MLCH) or to a prosecutor for the investigation of an offence. Further the FSA has the right to disclose to the authorities responsible for overseeing bodies involved in the liquidation and bankruptcy proceedings of a supervised entity or other undertaking or foundation operating in the financial markets information related to such proceedings and to disclose to the authorities responsible for overseeing the auditor of a supervised entity or other undertaking or foundation operating in the financial markets information related to the supervision of the auditor of a supervised entity or other undertaking or foundation operating in the financial markets. The FSA also has, in connection with the consultation proceedings referred to in the *Accounting Act*, the right to provide the Accounting Board with information necessary for the performance of its supervisory responsibilities and, in accordance with the *Securities Act*, the right to disclose information to the Business Acquisition Committee of the Central Chamber of Commerce. The same section of the *FSA Act* provides that the FSA may share information with a foreign authority or undertaking which in its home country by virtue of law performs responsibilities similar to those of the FSA.

424. According to s.6a, chapter 18, of the *Insurance Companies Act*, the ISA is entitled to disclose confidential information to:

- Prosecuting and investigating authorities for prevention and solving of a crime.
- The FSA and other Finnish authorities supervising the financial market.
- Authorities supervising insurance businesses or financial operations or financial markets in another EEA state or to authorities supervising insurance operations in a state other than an EEA state.
- Auditors of an insurance company or a credit institution or a financial institution which is part of the same group as the insurance company.
- Authorities or bodies in EEA states who are, pursuant to legislation, responsible for monitoring compliance with company law and for investigation of offences.
- The Finnish central bank or central banks in other EEA states and other bodies holding a similar role as a monetary policy authority and other authorities responsible for supervision of payment systems.

425. The *Insurance Companies Act* s.6a also provides that the competent ministry (the Ministry of Social Affairs and Health) and the ISA may disclose to each other and use the confidential information only for the purpose of:

- Verifying that the criteria set for the commencement of insurance business.
- Supervision of insurance companies’ operations, notably technical provisions, solvency margin, administration and accounting procedures as well as internal control.
- Imposition of sanctions.

426. Further to the above, s.6b of the *Insurance Companies Act* notes that insurance companies may disclose confidential information to Finnish prosecuting and investigation authorities for the prevention and solving of a crime and to investigation authorities for prevention and solving of a fraud against an insurance or pension institution and for prosecution.

3.4.2 Recommendations and Comments

427. Secrecy provisions exist in various legislation application in the financial sector, though not in a form which inhibits the implementation of the *FATF Recommendations* or compliance with the Finnish *AML/CFT Act* and or the *AML/CFT Decree*.

3.4.3 Compliance with Recommendation 4

	RATING	SUMMARY OF FACTORS UNDERLYING RATING
R.4	C	<ul style="list-style-type: none"> • This Recommendation is fully observed.

3.5 Record keeping and wire transfer rules (R.10 & SR.VII)

3.5.1 Description and Analysis

Recommendation 10

428. The requirement to keep transaction records derives from the *Accounting Act* (1336/1997), which applies to “anyone who carries on a business or practices a profession” as well as limited liability companies, co-operatives, partnerships, associations, foundations, insurance funds, mutual insurance companies, insurance associations, investment companies, employees’ profit-sharing funds, deposit insurance funds, guarantee funds, investor compensation funds and clearing funds. Pursuant

to s.10 in chapter 2 of the *Accounting Act*, all ‘vouchers for the financial year, correspondence related to the transactions and reconciliation documents for a computerised accounting system’ must be maintained for at least six years. Transactions records and correspondence are considered to fall within the definition of ‘accounting records’. That section goes on to note that when operations are terminated, these records must also be kept for six years. Section 10 also provides that ledgers and charts of accounts must be preserved for up to and including the tenth year following the expiry of the calendar year in which the accounting year was closed. The documents must be promptly available for the authorities. According to the *Accounting Act*, accounting material can be kept in paper form, microfilm or in an electronic form, and it must be easily accessible.

429. The objectives and scope of the *Accounting Act* are not related to the control of the clients, but to the maintenance of sound business practices. While the provisions of this act specify detailed documents and records which must be kept, including vouchers (receipts) for all transactions, they do not specifically require that these records be sufficient to permit reconstruction of individual transactions. However, as a voucher contains all information on a transaction and as all vouchers must be kept for at least 6 years, this provision results in full records being kept which would in fact be sufficient to permit reconstruction of transactions.

430. In addition to the *Accounting Act*, Finland’s record keeping rules for customer identification data are found in the *AML/CFT Act*. Section 8 of the *AML/CFT Act* provides that all obliged parties must maintain all customer identification data in a secure manner for at least five years following the completion of a business transaction or termination of a customer relationship. Information on the identification method used, information on the identification document or sources of information used in identification or copies of the documents used for identification must be kept as part of the identification data referred to in s.8 of the *AML/CFT Act*. Section 6 of the *AML/CFT Decree*, supported by paragraph 50 of FSA Standard 2.4, *Customer identification and customer due diligence - Prevention of money laundering, terrorism financing and market abuse* and the *Money Laundering Clearing House Best Practices*, also notes that taking copies of the identification documents is one possible way of storing customer due diligence data. In addition, all reports prepared in order to fulfil the reporting obligation of the *AML/CFT Act* must be retained.

431. Pursuant to s.2, s.4 and s.6 of the *AML/CFT Decree*, the following personal data of a customer who is a natural person must be recorded as part of CDD and must be stored for at least five years in accordance with s.8 of the *AML/CFT Act* : *i*) full name and date of birth; *ii*) Finnish personal identity code if the person has one, or, in the case of an alien, the nationality; and *iii*) the number of an alien’s passport or other travel document, or other identification data. It further provides that the following data must be obtained and stored for any legal person which is a customer: *i*) full name of the legal person; *ii*) the legal person’s registration number, if the legal person has one, the registration date and registration authority; and *iii*) full names, dates of birth and nationalities of the members of the legal person’s board of directors or corresponding decision-making body.

432. Section 16 of the *AML/CFT Act* lays down penalties for violation of the record keeping obligation. A person who, deliberately or through negligence, fails to fulfil the obligation to store identification data referred to in s.8 may be sentenced for *violation of obligation to identify*. The penalty is a fine which may be imposed by the Police, as confirmed by a public prosecutor, or by the District Court. Fines are calculated as a number of ‘unit’ fines. The units are calculated based on a person’s income and have a minimum of EUR 6. The number of unit fines imposed may vary depending on the severity of the violation, to a maximum of 120 or, if several offences are involved, 240. Thus, the fines have a minimum of EUR 6 and an unspecified maximum amount (as it depends on the income of the person who committed the violation). If the fine is not paid, the District Court may order a term of imprisonment of one day imprisonment for each unit of fine.

433. According to the s.6(2) of the *AML/CFT Decree*, the identification data must be kept secure and in a form that allows it to be made available to the authorities ‘without undue delay’ if the need arises. If the documents are stored outside the institution, institutions must ensure that they are aware of

where the documents are held currently and that they have immediate access to the storage place. As noted previously, s.15 of the *FSA Act* provides that the entities under the supervision of the FSA have a duty to disclose any information to the FSA. Section 3, chapter 14 of the *Insurance Companies Act* similarly provides that entities supervised by the ISA must disclose any information to the ISA and/or the Ministry. In addition, s.12 of the *AML/CFT Act* provides that the MLCH has the right to obtain any information and documents necessary for clearing money laundering from any authority or body assigned to perform a public function. None of these provisions note the timeframes within which such information must be provided, leaving the authorities the ability to set the appropriate timeframe. Depending on the urgency of the case, timeframes may range from a few hours to two weeks.

Special Recommendation VII

434. The *EU Regulation on information accompanying transfers of funds* (1781/2006) is directly applicable legislation in Finland. This regulation entered into force on 1 January 2007. The EU regulation applies to transfers of funds, in any currency, which are sent or received by institutions established in the European Community. In line with the exemptions set out in SR.VII, the regulation is not intended to apply to the following types of payment (article 3.2):

- Transfers of funds carried out using a credit or debit card provided that a unique identifier, allowing the transaction to be traced back to the payer, accompanies the transfer. Where credit or debit cards are used as a payment system to effect a transfer of funds, this exemption does not however apply because it is also subject to the proviso that the payee must have an agreement with the institution permitting payment for the provision of goods or services.
- Transfers of funds where both the payer and the payee are financial institutions acting on their own behalf.

435. The EU regulation establishes a EUR 1 000 threshold which applies in relation to: *i*) the derogation for transfers of funds using electronic money (article 3.3); *ii*) transfers of funds within a member state in certain prescribed circumstances if the member state chooses to apply the EU regulation to its domestic transfers (Finland has not decided to do so) (article 3.6); *iii*) transfers not from an account (article 5.4, see below).

436. Article 5(1) of the EU regulation requires that institutions ensure that transfers of funds are accompanied by complete originator information. The EU regulation defines ‘complete information on the payer’ as comprising name, address and account number. This regulation provides that the address may be substituted with the date and place of birth of the originator, his customer identification number or national identity number. Also, where the originator does not have an account number, the institution may instead substitute a unique identifier which allows the transaction to be traced back to the originator. Institutions must, before transferring the funds, verify the originator information on the basis of documents, data or information obtained from a reliable and independent source (article 5[2]). This verification requirement is subject to article 5(3) and (4).

437. Articles 5(3) and 5(4) provides for circumstances in which verification may be deemed to have taken place. These are where:

- The transfer is from an account and the payer’s identity has been verified during account opening and the information gained by this verification has been stored in accordance with the CDD and storage obligations prescribed in the *3rd EU ML Directive* (article 8.2 and 30a).
- The transfer is from an account and the payer falls within the scope of article 9.6 in the *3rd EU ML Directive* which provides that member States must require institutions and persons covered by the directive to apply CDD procedures to all new customers and at appropriate times to existing customers on a risk-sensitive basis.
- The transfer is not from an account and *i*) the transaction amount does not exceed EUR 1 000; or *ii*) the transaction is not carried out in several operations that appear to be linked and together exceed EUR 1 000.

438. Domestic wire transfers (defined in the regulation as all transfers between institutions within the European Community) do not need to be accompanied by complete originator information. Where both the sending and receiving institutions are situated in the European Community, the regulation provides that transfers of funds only need be accompanied by the account number of the payer or a unique identifier allowing the transaction to be traced back to the payer (article 6). However, if so requested by the receiving institution, the sending institution must, within three working days of receiving that request, make available complete originator information.

439. Article 5(5) of the EU regulation requires the sending institution to keep records for five years of the complete originator information which accompanies transfers of funds. In addition, article 14 provides that payment service providers must respond fully and without delay, in accordance with the procedural requirements established in the national law of their member state, to enquiries from the competent authorities responsible for combating money laundering or terrorist financing concerning the originator information accompanying transfers of funds and corresponding records.

440. Article 7(1) of the EU regulation requires that transfers of funds to an institution situated outside the Community must be accompanied by complete originator information. Article 7(2) provides an exception to the requirement in article 7(1) in relation to cross-border batch file transfers but only where these are from a customer. The effect of this exception is that the cross-border transfer requirement in article 7(1) does not apply to the individual transfers bundled together within the batch file provided that *i*) the batch file contains the complete information; and *ii*) the individual transfers carry the account number or a unique identifier for the originator. Where this exception applies, the requirements for domestic wire transfers must still be met.

441. Article 12 of the EU regulation requires intermediary institutions to ensure that all information is kept with the transfer. Here, again, the problem of the “domestic payments” can affect the effectiveness of this provision. According to the EU regulation, all payments between EU member States are considered “domestic payments” and are thus accompanied not by all required originator information, just the account number. The intermediary institutions must keep records for five years of all information received where technical limitations prevent information on the payer from accompanying the transfer of funds (article 13(5)).

442. Article 8 of the EU regulation requires the recipient institution to check that all fields within the messaging or payment and settlement system used to affect the transfer which should contain information on the originator have been completed in accordance with the characters or inputs admissible within the conventions of that messaging system. Under this article, the recipient institution is required to have effective procedures in place to detect missing information on the payer. Where a recipient institution becomes aware that some information on the originator is missing or incomplete, the institution must either reject the transfer or ask for complete information on the originator (article 9). Where a sending institution regularly fails to supply all required information on the originators, the recipient institution is expected to *i*) take steps which may include restricting or terminating the business relationship, and *ii*) report that fact to the authorities.

443. In addition, article 10 (“risk-based assessment”) requires the sending institution to consider incomplete originator information as a factor in assessing whether the transfer of funds, or any related transaction is suspicious, and whether it must be reported, in accordance with the reporting obligations set out in chapter 3 of the *3rd EU ML Directive*, to authorities responsible for combating money laundering or terrorist financing.

444. Each EU member state is required (article 15) to lay down the rules on penalties applicable to infringements of the regulation and to take all measures necessary to ensure that they are implemented. Penalties set by each state must be effective, proportionate and dissuasive and must apply from 15 December 2007. The FSA is responsible for supervision of the compliance with the regulation and the FSA’s authority and powers of sanction apply in this context. Finland is in the process of preparing the new *AML/CFT Act* and regulations which are expected to contain these

provisions relating to wire transfers and are expected to be passed by 15 December 2007. The FSA has however published some guidelines relating to wire transfers and the requirements of the EU regulation and has begun compliance monitoring of financial institutions against the EU requirements. Finnish authorities consider that for the FSA-supervised entities further elaboration of provisions with respect to wire transfers is not necessary, though it is still needed for other entities undertaking payments transfer activities. As noted with respect to Recommendation 17, the penalties which may be imposed under the *AML/CFT Act* and those available to the FSA and ISA are relatively low, particularly the maximum amount of EUR 10 000 set for fines – and are seldom used – and this is expected to also be the case in relation to the obligations for originator information in wire transfers.

3.5.2 Recommendations and Comments

Recommendation 10

445. While the current provisions in the *Accounting Act* appear to cover all the requirements of Recommendation 10, the provisions do not specifically require that the transaction records kept must be sufficient to permit reconstruction of individual transactions. It is recommended that Finland incorporate this specific requirement in its record keeping provisions.

Special Recommendation VII

446. Finland fully relies on the implementation of the EU regulation on the payer accompanying transfers of funds that is in force since 1 January 2007 as its system of requirements for originator information in wire transfers. The regulation meets the technical requirements of Special Recommendation VII: obtaining and verifying originator information; maintaining full originator information for cross-border transfers; accompanying domestic wire transfers with more limited originator information and making full originator information available within three days; adopting specific procedures for identifying and handling wire transfers not accompanied by full originator information; compliance monitoring; and, sanctions. However, the EU regulation classifies wire transfers within the EU as domestic and therefore only seeks limited originator information on wire transfers within the European Community. Under that regulation Finland may exercise an option to apply the EU regulation requirements to transfers within the EU but Finland has not done so. The FATF Interpretative Note to Special Recommendation VII defines domestic transfers as “any wire transfers where the originator and beneficiary institutions are located in the same country.” On the contrary, cross-border wire transfers means “any wire transfer where the originator and beneficiary institutions are located in different countries.”

447. The cross-border nature of these wire transfers between institutions in the European Community is likely to pose an obstacle for timely access to the full originator information. Institutions in different EU countries each have their own national supervisory authority. The EU regulation specifies that full originator information must be provided within three days if so requested by the recipient institution but it is unlikely that in practice that the exchange of full originator information between a law enforcement authority in one country and a financial institution in another country could be timely on a regular basis.

448. While provisions exist for monitoring FSA-supervised institutions’ compliance with these provisions, implementation of this is at an early stage. Finland should consider introducing a clear mechanism to monitor compliance of money remitters with the regulation, and establish the sanctions available for any non-compliance by that sector.

3.5.3 Compliance with Recommendation 10 and Special Recommendation VII

	RATING	SUMMARY OF FACTORS UNDERLYING RATING
R.10	C	<ul style="list-style-type: none"> This Recommendation is fully observed.

	RATING	SUMMARY OF FACTORS UNDERLYING RATING
SR.VII	PC	<ul style="list-style-type: none"> • The provisions relating to originator information for wire transfers within the EU (classified as domestic transfers) is not in compliance with the FATF requirements under SR.VII³⁸. • There is no obligation in Finland for institutions to maintain address details, thus leading to incomplete identification procedures relating to wire transfers. • There are no provisions on penalties applicable to infringements of the wire transfer requirements for the money remittance sector.

Unusual and Suspicious Transactions

3.6 Monitoring of transactions and relationships (R.11 & 21)

3.6.1 Description and Analysis

Recommendation 11

449. The “customer due diligence obligation” outlined in s.9 of the *AML/CFT Act* provides that all obliged parties must “examine with due diligence the grounds for and the purpose of the use of its services, if it notices that such services are unusual in respect of composition or scale (structure or size), or the size of a party under obligation to report or in respect of the facilities of such party, or if they have no apparent financial purpose, or if they are inconsistent with the financial situation or other activities or transactions of a customer.” However, this section does not satisfactorily obligate institutions to “set forth their findings in writing” for purposes of R.11. Section 10 of that act then provides the STR reporting obligation.

450. Section 5.4 of FSA standard 2.4, *Customer identification and customer due diligence - Prevention of money laundering, terrorism financing and market abuse* notes that fulfilment of the due diligence requirements of the *AML/CFT Act* requires that obliged parties “have adequate knowledge of their customers' business so that they can detect any unusual or suspicious transactions or orders relating to the customer or service in question. Unusual activities can take many forms; for example, the origin of the funds can be disguised or concealed with the use of financing products or various cover activities. If supervised entities neglect to fulfil the due diligence requirement or advise or assist customers in the concealment of funds, supervised entities may run the risk of sanctions.” That standard also notes that obliged parties should, within available reasonable means, examine the background of an unusual / suspicious transaction as well as the origin and purpose of use of the funds associated with it. Information may be obtained from official registers or from the supervised entities' own registers or by requesting more detailed information on the transaction from the customer, for example, contracts or other documents supporting the transaction. If a transaction remains suspicious after the additional examination or if a customer is unwilling to provide the information as requested, obliged parties must submit an STR to the MLCH in accordance with s.5 *AML/CFT Act*. Similarly, FSA standard 4.4b *Management of operational risk*, section 6.8.1 notes that supervised institutions should accumulate and store data related to customer identification and due diligence for five years. It specifies that the obligation to detect unusual activity is part of the due diligence obligation.

451. The *Money Laundering Clearing House Best Practices* includes in its section 4, an elaboration of what is required in the *AML/CFT Act* with respect to unusual transactions, which is similar to that in the FSA standard. In addition, the Federation of Finnish Financial Services in its 2 March 2007 publication *Carefulness and reporting suspicious cases of money laundering*, gives four examples of

³⁸ The FATF decided at the June 2007 plenary meeting to further consider this subject.

what might constitute unusual transactions which should be investigated in order to decide whether the transactions should be reported as STRs.

452. While the *AML/CFT Act*, and associated FSA and MLCH guidance, address the need for record keeping in relation to identification information and STRs and address the need to detect unusual activity, it is silent on record keeping associated with findings of examinations of unusual transactions. There is no requirement *that when* financial institutions examine unusual transactions they set forth their findings in writing and there is no requirement for financial institutions to keep such findings available for competent authorities and auditors for at least five years. As there is no requirement to document findings or keep records relating to examinations of unusual transactions, it is difficult to ascertain whether the obligation in s.9 of the *AML/CFT Act* is in fact being observed by financial institutions in Finland.

Recommendation 21

453. The *AML/CFT Act* and *AML/CFT Decree* set binding rules for enhanced due diligence measures for situations where the customer or transaction have a link to a jurisdiction on the FATF list on non-co-operative countries or territories. The enhanced due diligence obligation in s.11a of the *AML/CFT Act* provides that “If a transaction is connected with a State whose system of preventing and clearing money laundering does not meet the international standards, an enhanced identification, customer due diligence and reporting obligation applies to the transaction.” The *AML/CFT Decree*, in s.10, provides that in such cases the obliged parties must ascertain the person’s identity from a document issued by an authority or, for special reasons, from some other document from which identity can be reliably ascertained. The obliged entity must establish the customer’s full name and date of birth; Finnish personal identity if the customer is Finnish; the nationality, passport number or other data if the customer is not Finnish; and the customer’s full address. For customers which are legal entities the obliged party must ascertain the:

- Full name of the legal person.
- Legal person’s registration number, if the person has one, registration date and registration authority.
- Full names, dates of birth and nationalities of the members of the legal person’s board of directors or corresponding decision-making body.
- Owners of the legal person or other persons exercising controlling power in it.
- Legal person’s sphere of operations.
- The persons that are the beneficiaries of the legal person (if necessary).

454. Where the enhanced customer due diligence measures of the *AML/CFT Decree* s.10 are in place, obliged parties are required (*AML/CFT Decree* s.11a) to “seek an account of the transaction about to be conducted and its purpose”. There is no requirement that the financial institutions set forth their findings in writing and keep records of these findings available for competent authorities and auditors. As there is no requirement to document findings or keep records relating to examinations of unusual transactions, it is difficult to ascertain whether the obligation in s.11a of the *AML/CFT Act* is in fact being observed by financial institutions in Finland.

455. Finland does not have a domestic list of countries which do not apply the FATF standards. An FATF decision on countermeasures against a country or jurisdiction on the FATF’s list of non-co-operative countries or territories (NCCT) triggers the enhanced customer identification obligation described above. Where the FATF has recommended that counter measures be applied to NCCT-listed countries and territories, the MLCH, FSA and ISA have informed the supervised entities on these measures and reminded them of the enhanced due diligence obligation outlined in the *AML/CFT Decree*. While the assessment team was provided with clear information on how this process is applied for FSA-supervised entities, it is less clear how this process is applied by the MLCH and ISA. Finnish authorities advise that the ISA has a mechanism to inform its supervised entities of changes to

the NCCT list when these occur. The *Money Laundering Clearing House Best Practices* publication makes note of the NCCT process and of obliged parties' obligation to apply enhanced customer identification, though as this publication was last updated in 2004 its information on the 'current list of NCCTs' is no longer accurate.

456. In Finland, counter-measures are implemented after a decision taken at a government plenary session. On 22 October 2003 the government made such a decision (Government plenary session decision 878/2003), that the AML systems in the republic of Nauru and in Myanmar do not meet the international standards and thus that enhanced due diligence should be applied to all transactions involving these jurisdictions. Other than this mechanism, the only counter-measures available in Finland are the enhanced customer identification requirements of the *AML/CFT Decree*. Obligated parties are expected to submit an STR to the MLCH if the transaction appears suspicious due to any of this customer information not being available.

3.6.2 Recommendations and Comments

Recommendation 11

457. It is recommended that strengthened provisions in relation to unusual transactions be included in the new *AML/CFT Act*. In particular, this legislation should clearly require all financial institutions³⁹, not just those supervised by the FSA, to examine the background and purpose of unusual transactions and should require obliged parties to keep such findings in writing and accessible by competent authorities for at least five years.

Recommendation 21

458. It is recommended that strengthened provisions in relation to jurisdictions which do not or do not sufficiently apply the FATF Recommendations be included in the new *AML/CFT Act* or its regulations. In particular, this legislation should clearly require all financial institutions to document their findings when enquiring into these transactions and to keep such findings accessible for competent authorities or auditors. In addition, it is recommended that Finland ensure that a system is in place to advise all obliged parties of the countries and jurisdictions which do not or insufficiently apply the FATF Recommendations so the obliged parties may effectively comply with s.11a of the *AML/CFT Act* and s.10 of the *AML/CFT Decree*. Finland may also want to consider creating additional types of counter-measures which could be applied by it to countries or territories which do not or insufficiently apply the FATF Recommendations.

3.6.3 Compliance with Recommendations 11 & 21

	RATING	SUMMARY OF FACTORS UNDERLYING RATING
R.11	PC	<ul style="list-style-type: none"> For institutions not supervised by the FSA, there is no requirement to keep records of findings of examinations of unusual transactions. Due to the lack of record-keeping requirement for institutions not supervised by the FSA, it is difficult to assess whether the obligation to examine unusual transactions is in fact being observed.
R.21	PC	<ul style="list-style-type: none"> Due to the absence of a requirement to set forth in writing the findings of examinations of unusual transactions, it is difficult to assess whether the obligation to examine the purpose of transactions with no apparent economic or visible lawful purpose involving countries or territories which do not or insufficiently apply the <i>FATF Recommendations</i> is in fact being observed. The only possible counter-measure is application of enhanced customer identification

³⁹ See Table 9 in section 1 of this report for a list of the institutions in Finland which are considered 'financial institutions' for the purposes of the FATF Recommendations.

	RATING	SUMMARY OF FACTORS UNDERLYING RATING
		<p>processes.</p> <ul style="list-style-type: none"> • There is no evidence that non-FSA supervised entities have mechanisms in place to receive notifications from a supervisory authority regarding countries or territories which do not or insufficiently apply the <i>FATF Recommendations</i>.

3.7 Suspicious transaction reports and other reporting (R.13-14, 19, 25 & SR.IV)

3.7.1 Description and Analysis

Recommendation 13 and Special Recommendation IV

459. Section 10 of the *AML/CFT Act* provides that if obliged parties have reasons to suspect that the assets or other property involved in a transaction are of illegal origin or that these are used for or may be used to attempt financing of terrorism, they must submit a report (an ‘STR’) to the MLCH without delay. The reporting obligation exists regardless of the amount of money or value of assets involved in the transaction. In addition, the act provides that obliged parties must submit an STR where the customer does not provide sufficient identification information or information pertaining to the grounds for the transaction and origins of the assets during enhanced due diligence processes (s.11a).

460. The *AML/CFT Act* provides that obliged parties must supply on request all information and documents that could be significant to clearing the suspicion. The MLCH is entitled to receive from reporting entities all the information it needs for its investigations and to suspend a transaction for the duration of five days.

461. Finland has adopted the all crimes approach for underlying offences and seeks STR reporting relating to any property which may be of illegal origin (see above). Thus, the obligation to report applies regardless of whether the suspicious transaction is thought to involve tax matters, and in fact approximately 25% of STRs referred for pre-trial investigation have concerned tax offences.

462. On 1 June 2003 the scope of application of the *AML/CFT Act* was extended to preventing terrorist financing. The act specifically states that STRs should be submitted if it is suspected that the money or assets are used to commit the offence of terrorist financing or an attempt is being made to use them to finance terrorism. Due to the limited definition of terrorist financing in the *Penal Code* as involving financing of terrorist acts, the STR reporting obligation does not apply where there is a suspicion that the funds or assets are linked to or related to terrorist organisations or linked to those who finance terrorism, in situations where there is no link to a terrorist act.

463. Section 11a of the *AML/CFT Act* requires STR reporting of attempted transactions in those cases where enhanced customer identification cannot be successfully conducted. The broader requirement for obliged parties to submit STRs in relation to attempted transactions is clarified in s.8, chapter 2 of the *AML/CFT Decree*, which requires suspicious transaction reports to detail whether the transaction has been completed, suspended or refused. FSA Standard 2.4, *Customer identification and customer due diligence – Prevention of money laundering, terrorism financing and market abuse* also clarifies that STRs do not constitute the report of an offence, but rather a report of an irregular transaction, or an attempt thereof. Among banks, more than 20% of STR reports received to date related to attempted transactions, defined as transactions that were not completed because they were suspended for further investigation or because they were refused by the institution or the customer.

464. Penalties for violation of the reporting obligation are laid down in s.16a of the *AML/CFT Act*: “A person who, deliberately or through negligence, fails to make a report referred to in sections 10 or 11a, against the prohibition laid down in s.10, discloses such reporting, or fails to fulfil the obligation to exercise due diligence referred to in s.9 and, therefore, does not notice the existence of the

obligation to report referred to in s.10 shall be sentenced for *violation of obligation to report money laundering* to a fine.”

465. Entities and professions covered by the *AML/CFT Act* must evaluate, on a case-by-case basis, when a transaction is considered suspicious, based on their experience and expertise. Obligated parties are expected to make an overall evaluation of the situation and determine whether the particular transaction / activity gives rise to a suspicion that the money or assets are of illegal origin or are related to terrorist financing.

466. The number of reports received by the MLCH increased by nearly 300% in 2006. This increase is due largely to the threshold-based STR reporting system voluntarily practiced by the money remittance, currency exchange and gaming sectors (except the Grand Casino Helsinki). In addition to the basic STR reporting obligation, these sectors also file ‘threshold’ STRs for customer transactions, or related series of transactions, exceeding a certain value. No subjective determination of suspicion occurs for these ‘threshold’ STRs. The threshold value is set by each obliged party, in consultation with the MLCH, at a value which, solely by being exceeded, may constitute activity inconsistent with the normal licit use of that business. The value typically falls within the range of EUR 1 000 to EUR 3 000. As at the time of the on-site visit, the MLCH also had a backlog of several thousand of these threshold-based reports to be uploaded to the STR database, suggesting that it lacked the resources to process and analyse the reports, leaving the STR database overwhelmed by these reports. The threshold-based reports do not contain narratives or other explanations of why the activity is suspicious and it is likely that these threshold STRs in fact represent activity that is largely legitimate. Finnish authorities have indicated that the reports have significant utility, particularly for analysis of the movement of funds and for tracking a suspect’s financial activity.

467. There is significant disparity in the reporting volume both within and between different financial sectors. In the banking sector, for example, almost half of the institutions have never filed any STRs. While it is reasonable that the majority of reports would come from the largest institutions in Finland, the absence of any reports from such a significant percentage of the sector reveals widespread compliance deficiencies. Moreover, if the threshold-based STRs are excluded, less than 1 400 STRs were made in 2006, with banks, money remittance and gaming sectors filing the vast majority despite Finland’s robust insurance (20 STRs), investment (5 STRs) and other sectors (less than 8 STRs per sector) being subject to the reporting obligation. For many sectors, there is no supervisory authority responsible for addressing this widespread non-compliance.

468. Most private-sector representatives that met with the evaluation team appeared to be familiar with the reporting obligations and were able to speak about their compliance initiatives. Considering the statistical evidence mentioned above, it is clear that awareness of and/or compliance with the STR reporting obligation varies greatly based on the size, sophistication and extent of supervision for each business subject to the *AML/CFT Act*.

Recommendation 14

469. Under s.15 of the *AML/CFT Act*, obliged parties are liable for the financial loss sustained by their customers only if they have failed to carry out such customer due diligence measures as can be reasonably required from them, considering the circumstances. As the *AML/CFT Act* provides that obliged parties must take the necessary measures if there is reason to suspect that the funds or other property involved in a transaction are of illegal origin or that these are used for TF, they cannot be made financially liable if it is found out later on that the reported transaction was not such as to be punishable as ML, the financing of terrorism or a predicate offence.

470. In other cases, the provisions of the *Tort Liability Act* (412/1974) apply to the liability for damages of a party under obligation to report. Section 1(1) of chapter 2 of that act provides that any person who deliberately or negligently causes injury or damage to another is liable for damages.

471. Section 10(3) of the *AML/CFT Act* reads: "Submitting a report shall not be disclosed to the person subject to a suspicion or any other person." Failure to comply with the reporting obligation and disclosing such reporting are punishable by law. Section 16a of the *AML/CFT Act* lays down penalties for violation of due diligence or reporting obligation or for tipping-off: "A person who, deliberately or through negligence, fails to make a report referred to in sections 10 or 11a, against the prohibition laid down in s.10, discloses such reporting, or fails to fulfil the obligation to exercise due diligence referred to in s.9 and, therefore, does not notice the existence of the obligation to report referred to in s.10 shall be sentenced for *violation of obligation to report ML* to a fine."

Additional elements

472. The suspicious transaction reports submitted to the MLCH are recorded in a personal data file for use by a Police unit as referred to in s.6 of the *Act on the Processing of Personal Data by the Police* (761/2003). Only the staff of the MLCH have access to this data file. The MLCH is only entitled to record, use and disclose information reported to it for the purpose of preventing and clearing ML and TF (s.12(4) of the *AML/CFT Act*).

Recommendation 19

473. Currently there is no obligation to report all currency transactions above a fixed threshold to the authorities. Finnish authorities have provided an account of events in 1992 whereby, after participating in a meeting organised by Interpol and the Financial Crimes Enforcement Network (FinCEN) of the USA, the Finnish representatives advised policy-makers of the currency transaction systems in place in some other countries. These policy-makers considered the feasibility and utility of implementing a currency transaction reporting system as part of the AML legislation being devised in 1992-1993, but eventually decided to only implement a suspicious transaction reporting system. No documentation is available to demonstrate that such a system was considered.

474. For the gaming, money remittance and currency exchange sectors, the MLCH has asked (and each sector has complied) that they voluntarily report all transactions (not just those involving currency) that exceed a certain threshold as STRs. These thresholds are set by each institution in consultation with the MLCH and generally range from EUR 1 000 to EUR 3 000. While these reports may have some utility as they detail large transactions that may not have commercial justification (although there is no subjective evaluation of this), the current reporting system results in submission of reports that are not pure STRs nor are they cash transaction reports (as envisioned by the FATF). The subjective element has been removed from these STRs, resulting in an influx of reports that the MLCH lacks the resources to process and analyse efficiently. Moreover, because the reports are not required of all sectors, the threshold-based STRs are limited in their utility for the analysis of currency use or movement as compared with that provided by a universal currency reporting system.

Recommendation 25

475. Twice a year the MLCH publishes a report on the state of ML in Finland. These reports contain information on the ML clearing process, reports concerning ML and TF transfers across the Finnish borders, reports forwarded to pre-trial investigations and other topics. The reports contain some statistics on such matters and some examples of recent court decisions in ML cases. The MLCH also provides more extensive information about confiscations and penal judgments on ML in its publication *Money Laundering Offences in Legal Praxis*, which was most recently updated in 2006. This publication contains information on current techniques, methods and trends, case law and criminal legislation concerning ML. All of these reports provide information which may assist obliged parties in understanding ML and TF activity and thus may assist parties in observing their AML/CFT obligations.

476. The MLCH's primary guidance for obliged parties is its *Money Laundering Clearing House Best Practices*, published in 2004. This publication, which was developed as practical guidance to

support the 2003 *AML/CFT Act* and its decree, provides information pertaining to ML and TF and the work of the MLCH. It also provides information pertaining to obliged parties' reporting obligation, identification obligation, CDD, enhanced CDD and sanctions for non-compliance with AML/CFT obligations. In addition, the MLCH has for some years participated in numerous training sessions for obliged parties and has developed co-operative relationships with them.

477. The FSA and ISA have well organised systems for providing guidance on a range of matters to the institutions they supervise. The guidance typically notes all legally binding obligations and, particularly the FSA guidance, also provides useful recommendations in relation to implementation of those obligations or other best practices which may contribute to the robustness of the system. In terms of AML/CFT-related obligations the FSA and ISA have published:

- FSA standard 1.1, *Market Entry*, 18 April 2006.
- FSA standard 1.4, *Assessment of Fitness and Propriety*, 20 March 2007.
- FSA standard 1.5, *Supervision of Financial and Insurance Conglomerates*, 17 June 2003.
- FSA standard 2.1: *Code of Conduct for the Provision of Financial Services*, 16 June 2006.
- FSA standard RA2.1, *Notification of Suspicious Securities Transactions and other Suspect Transactions*, 1 September 2005
- FSA standard 2.4, *Customer Identification and Customer Due Diligence - Prevention of Money Laundering, Terrorism Financing and Market Abuse*, 1 September 2005.
- FSA standard 4.1, *Establishment and Maintenance of Internal Control and Risk Management*, 1 July 2003.
- FSA standard 4.4b, *Management of Operational Risk*, 1 January 2005.
- ISA *Instruction for Preventing Money Laundering and Terrorism Financing: Finnish insurance companies and foreign insurance companies' agencies in Finland*, 1 December 2006.
- ISA *Instruction for Preventing Money Laundering and Terrorism Financing: Insurance Intermediaries*, 1 December 2006.

478. Other supervisory authorities do not produce such guidance or provide such feedback as the FSA and ISA do for their supervised entities. Most DNFBPs would benefit from comparable supervision. Although SROs for the legal, real estate and accounting sectors provide some guidance and supervision of their members, they have limited powers considering their systems of voluntary membership. Those offering legal, real estate or accounting services without SRO membership are therefore subject to no supervision and no feedback or guidance is provided other than publicly available information from MLCH.

479. Multiple DNFBP sectors are subject to no or inadequate supervision. Although Finland law does not recognise trusts, at least one business in Finland offers services that would be characterised as "trust and company service provider" services, including company formation. This sector is not subject to any AML/CFT provisions and, accordingly, has no supervisor. Although dealers are subject to the *AML/CFT Act*, there is no supervisory agency responsible for providing guidance or feedback or to enforce compliance with the AML requirements. Although the State Provincial Office of Southern Finland enforces the registration requirement for the money remittance sector, and other State Provincial Offices are tasked with supervising compliance with all laws for the real estate sector, they have not demonstrated that they provide additional AML/CFT supervision with respect to other requirements for these sectors.

480. It is to be noted that the MLCH and the supervisory authorities have close working relationships. The MLCH gives regular feedback and guidance to the supervisory authorities on financial institutions' STR reporting activity and cases under investigation. Also joint meetings and training seminars for obliged parties are arranged by the MLCH, FSA and ISA.

481. In addition to general feedback provided in its various publications, the MLCH gives feedback and statistics directly to the financial institutions. The MLCH has a close working relationship with many of the reporting institutions as well as with their supervisory authorities. Institutions contact the MLCH by phone for guidance regarding a specific transaction or compliance concern. Thus there appears to be a significant though informal system of feedback to specific institutions for specific purposes. In some instances of filing deficiencies, the MLCH has assisted with or coerced (informally) remedial action. The MLCH does not have adequate resources, however, to provide specific supervisory feedback to each institution subject to the *AML/CFT Act*.

3.7.2 Recommendations and Comments

Recommendation 13

482. As noted previously in relation to SR.II, it is recommended that Finland expand the scope of the terrorist financing offence beyond funds connected with a terrorist act as this limited definition of terrorist financing means the obligation to report STRs does not arise where there is a suspicion that the funds or assets are related to or used for terrorism other than terrorist acts. It also does not arise where there is a suspicion that the funds or assets are linked to or related to terrorist organisations or those who finance terrorism. It is recommended that Finland specify more clearly that the STR reporting obligation in its new *AML/CFT Act* applies to attempted transactions as well as completed transactions. Finland should ensure that a robust supervisory regime addresses the widespread lack of filing by many sectors and institutions.

Recommendation 14

483. The ‘good faith’ standard is expressed in s.15(1) of the *AML/CFT Act* in an indirect manner. It is recommended that in its new *AML/CFT Act* Finland should express the ‘good faith’ standard more clearly to ensure that there is a complete protection in law from criminal and civil liability for those who report suspicions in good faith. In addition, Finland should consider whether the fines associated with non-compliance with the disclosure provision are a sufficient deterrent.

Recommendation 19

484. As it appears Finland last considered the feasibility and utility of having currency transaction reporting when devising the Finnish AML legislation in 1992-1993, it is recommended that the FATF Working Group consider whether such a system is now desirable in Finland. In addition, Finland should clarify or amend the suspicious reporting system in place for the gaming, money transfer, and money exchange sectors as this applies a threshold but is in fact suspicious transaction reporting.

Recommendation 25

485. Finland should consider establishing a more robust supervisory system for DNFBPs with supervisory authorities issuing guidelines to more comprehensively supervise the money remittance, foreign exchange, accounting, lawyer, real estate agent, and trust and company service providers sectors. Finland should address the concerns created by SROs with voluntary membership (parts of sector remain unsupervised or do not receive appropriate guidance).

Special Recommendation IV

486. Finland’s limited definition of terrorist financing should be expanded to include transactions not connected to a terrorist act (See SR II), thereby requiring suspicious transaction reporting for funds linked or related to terrorism, terrorist acts, or terrorist organisations.

3.7.3 Compliance with Recommendations 13, 14, 19 and 25 (criteria 25.2), and Special Recommendation IV

	RATING	SUMMARY OF FACTORS UNDERLYING RATING
R.13	LC	<ul style="list-style-type: none"> • There is no requirement to report transactions suspected of being related to terrorism other than those related to terrorist acts and no requirement to report transactions suspected of being related to terrorist organisations or to those who finance terrorism. • A large percentage of local banking institutions are not filing suspicious reports. Few reports have been received from any securities institutions. • <i>Effectiveness issue:</i> For money remitters and foreign exchange, the threshold-based STR reporting may discourage meaningful due diligence to subjectively evaluate whether activity is suspicious.
R.14	C	<ul style="list-style-type: none"> • This Recommendation is fully observed.
R.19	C	<ul style="list-style-type: none"> • This Recommendation is fully observed.
R.25	PC	<ul style="list-style-type: none"> • No AML/CFT guidance is issued specifically for DNFBPs and only one publication (<i>Money Laundering Clearing House Best Practices</i>) has been issued as guidance to all obliged parties. • SRO best practices are not distributed to all in the accounting/legal sectors, as participation in SROs is voluntary. • TCSPs are not subject to any regulation or guidance. • Dealers have no supervisor to provide them guidance other than the MLCH. In practice, supervisors of the money remittance, the foreign exchange and the real estate sectors do not provide any feedback or guidance, other than that which is provided by MLCH. The MLCH, however, lacks the resources to provide the kind of individual feedback that a robust supervisory system could provide.
SR.IV	LC	<ul style="list-style-type: none"> • Suspicious transaction reporting is not required re TF unless the transaction is potentially connected to an act of terrorism. •

Internal controls and other measures

3.8 Internal controls, compliance, audit and foreign branches (R.15 & 22)

3.8.1 Description and Analysis

Recommendation 15

487. Pursuant to the laws and decrees described further below, it is a prerequisite for gaining a license from the FSA that entities demonstrate adequate risk management and internal controls for CDD and AML/CFT policies and practices, including employee training programmes and appointment of compliance personnel. Prior to a license being granted, an on-site inspection or thorough discussion with the applicant is carried out. The priority focus on these FSA pre-license inspections is to determine that the supervised entity has strong policies and procedures with respect to corporate governance, internal audit, corporate-level risk management and internal controls.

488. According to the FSA standards 4.1, *Establishment and maintenance of internal control and risk management*, and 4.4b, *Management of operational risk*, each institution supervised by the FSA must have clearly defined responsibilities for its board and management, a senior level AML contact/compliance officer, internal guidelines and CDD processes, systematic training programme of

personnel, internal reporting to senior management or board, independent internal audit and control functions. During its inspections the FSA focuses on examining:

- Group level internal AML/CFT policies, internal guidelines and procedures.
- Internal reporting structure and organisation (responsibilities, compliance organisation and commitment of senior management and reporting/compliance personnel).
- Personnel training programmes (systematic, continuous, statistics).
- Process for establishing a customer relationship.
- Identification and CDD of customers and beneficiary customers.
- Monitoring of customer relations / services.
- Documentation and record keeping.
- Observations of unusual or suspicious transactions including internal investigations and reporting.
- Suspicious transactions reports to the MLCH.
- Internal controls.
- Internal audit and reports.
- Reports to the senior management.
- Sample tests where necessary.

489. FSA standard 4.4b, *Management of Operational Risk*, and ISA *Instruction for Preventing Money Laundering and Terrorism Financing* for insurance companies (at 4.2.11.3.5) recommend that supervised institutions nominate AML/CFT compliance/reporting officers at senior level. The AML/CFT reporting officer should have independent decision making powers to file suspicious transactions reports. FSA standard 4.1 *Establishment and maintenance of internal control and risk management* recommends that the AML/CFT compliance / reporting officers have an adequate level of authorisation, for instance, access to all customer and (other) files of the institution.

490. Each FSA supervised institution is expected to have an independent internal audit function in place (FSA standard 4.1). Those institutions, that employ very small number of employees, are allowed to use external auditing services.

491. For FSA and ISA-supervised entities, on-going supervision of compliance with AML/CFT obligations is carried out primarily as part of prudential oversight and as part of risk management, internal control and code of conduct supervision (FSA standard 4.4b, *Management of Operational Risk*, and ISA *Instruction for Preventing Money Laundering and Terrorism Financing* for insurance companies at 4.2.11.3.5).

492. A screening procedure for new employees is normal practice for risk management of financial institutions and is recommended by FSA standard 4.1 *Establishment and maintenance of internal control and risk management*. Screening is normal also when employees are appointed to new positions. Screening of employees is governed in Finland by the *Act on Background Checks* but this act does not require screening for employees of financial institutions. Screening of personnel in the private sector is part of good governance and risk management practices.

493. The FSA standard 1.1 on *Market Entry*, of April 2006, requires that employees must be competent and have a good reputation: "...the management must make sure that the number of staff is appropriate and that staff members are professionally competent, eligible for their tasks and have good reputation". In addition, FSA standard 4.4b on *Management of Operational Risks* states that institutions should have procedures in place that ensure that their employees have the adequate level of competence and skill for their position. With regards to new employees, attention should be paid to their reputation and background.

494. For those sectors not subject to FSA or ISA supervision, there is some evidence in practice of significant implementation of internal controls, designation of compliance officers, internal training and audit functions. Although not required, the industry as a whole is largely aware of and at least partially implementing the MLCH best practices (not binding), which address many of these areas.

Additional elements

495. There are no restrictions for AML/CFT compliance officers to report to the highest level of organisation.

Recommendation 22

496. FSA supervision of financial institutions covers the entire financial group, including foreign branches. FSA supervises also that the branches of foreign credit institutions, investment firms and fund management companies in Finland, comply with the Finnish AML/CFT laws and regulations.

497. According to the EU ML directives, which are applicable in Finland, foreign branches are required to comply with the local AML/CFT obligations (the AML/CFT laws and regulations of the country where the branch is located). The FSA standard 2.4, *Customer Identification and Customer Due Diligence - Prevention of Money Laundering, Terrorism Financing and Market Abuse* states that: "Entities within the same consolidation group shall comply with uniform operating practices. The foreign branch of a supervised entity shall comply with local rules and regulations. If, however, local rules and regulations are not in line with EU community legislation or the *FATF Recommendations*, the supervised entity shall ensure that the foreign branch adheres to the principles of this FSA standard as the minimum. Parent companies of financial and insurance conglomerates primarily engaged in financial services shall ensure that all companies within the conglomerate comply with the obligations laid down in this FSA standard in a uniform manner." Finland does not have similar explicit provisions for all FSA standards (only this standard on CDD), nor are similar provisions in place for entities other than those supervised by the FSA.

498. Currently there are no branches or subsidiaries of Finnish institutions in other than FATF countries. Establishment of a branch or subsidiary in a country outside the EEA requires authorisation from the FSA and AML/CFT matters are considered as part of the licensing process. The FSA advised that they would not grant such an authorisation if it believed the local rules in that country would prohibit the branch/subsidiary of the Finnish institution from complying with appropriate AML/CFT obligations. Establishment of a branch or subsidiary in a country within the EEA is not subject to the same authorisation process. Although this process would likely prevent a foreign branch or subsidiary from being licensed to operate in a foreign jurisdiction that had inadequately implemented the FATF Standards, there is no requirement that an institution notify the FSA in the event that its foreign branch is unable to meet minimum standards due to local provisions.

3.8.2 Recommendations and Comments

Recommendation 15

499. The money remittance and foreign exchange sectors should have explicit rules that require internal controls, compliance officers, and training to ensure compliance with the identification, reporting, and customer due diligence requirements of the AML Act. Sectors not supervised by the FSA need explicit binding requirements to have an independent audit function for AML compliance and to ensure appropriate screening procedures are in place when hiring employees.

Recommendation 22

500. Finland should consider implementing standards for non-FSA supervised institutions similar to s.1(5) of FSA standard 2.4, *Customer Identification and Customer Due Diligence - Prevention of*

Money Laundering, Terrorism Financing and Market Abuse. Finland should require all institutions to inform their supervisory authority when a foreign branch or subsidiary is prohibited by the local rules from observing AML/CFT measures.

3.8.3 Compliance with Recommendations 15 & 22

	RATING	SUMMARY OF FACTORS UNDERLYING RATING
R.15	PC	<ul style="list-style-type: none"> • The <i>Money Laundering Clearing House Best Practices</i>, which would satisfy many of the elements of Recommendation 15, are not binding. • There is no explicit requirement for money remittance and foreign exchange sectors to develop internal controls or independent audit to ensure compliance with the <i>AML/CFT Act</i>. • There is no requirement for non- FSA-supervised entities to have comprehensive training that focuses not only on internal procedures and regulatory requirements, but also ML/TF typologies. • Non-FSA supervised entities have no employee screening requirements. • There is no legal requirement for money remittance and foreign exchange sectors to have compliance officers.
R.22	PC	<ul style="list-style-type: none"> • There are no relevant requirements for non-FSA supervised businesses. • Banks and securities are only authorised, not required, to provide notice to the FSA or the MLCH when their foreign branches or subsidiaries are prevented by local rules from observing AML/CFT measures

3.9 Shell banks (R.18)

3.9.1 Description and Analysis

501. Neither the *AML/CFT Act* nor any other legislation in Finland contains a directly prohibition against establishing or operating a shell bank. Although shell banks are not explicitly prohibited, Finnish law and the supporting guidance in FSA Standard 1.1, *Market Entry* would exclude a bank or other institution with no physical address from gaining an authorisation (license) to operate. These licensing requirements can be found in s.1(a) of the *Credit Institutions Act*, s.4 *Investment Firms Act*, s.3 *Mutual Funds Act* clearly prohibits providing services without authorisation. Banks cannot legally operate without an authorisation and it is a prerequisite for authorisation that the financial services detailed in the authorisation are actually provided. Authorisations may be revoked if the agreed operations are not carried out. To date no authorisations have been revoked for matters pertaining to operation of a shell bank.

502. Pursuant to FSA standard 2.4 *Customer identification and customer due diligence – prevention of money laundering, terrorism financing and market abuse*, the FSA supervised entities are to be aware of the risks associated with counterparties and customer relations and to adapt their operating procedures and risk management systems accordingly to reflect the special characteristics of their customers and counterparts. In addition, the FSA has published a warning-list on its website of companies that offer financial services without an authorisation (license). When such a company is found to be operating in or have some interests in Finland, the FSA may contact the supervisory authority in the country where the un-authorized firm is located and inform the pre-trial authorities or the MLCH of the matter.

503. Finland does not have provisions prohibiting banks or other institutions (securities, insurance, money remittance or forex) from having correspondent relationships with shell banks. Nor does it require institutions to satisfy themselves that their accounts at respondent institutions do not allow indirect access by shell banks to those accounts. The new AML/CFT legislation in preparation in

Finland is expected to address the CDD obligations for cross-border correspondent banking as well as shell banks.

3.9.2 Recommendations and Comments

504. Finland should consider expressly prohibiting the operation of shell banks, rather than relying on the licensing system for financial institutions to uncover shell bank operations. The FSA should clarify explicitly in its CDD and Customer ID standards that institutions cannot maintain correspondent banking relationships with shell banks. More generally, such requirements should be binding for other non-bank sectors, including the insurance, money remitter, and foreign exchange sectors. Finland should require all institutions to perform due diligence to satisfy themselves that their respondent institutions do not allow indirect access to their accounts by shell banks.

3.9.3 Compliance with Recommendation 18

	RATING	SUMMARY OF FACTORS UNDERLYING RATING
R.18	PC	<ul style="list-style-type: none"> • There is no provision prohibiting banks or other institutions from having correspondent relationships with shell banks. • There is no provision requiring institutions to satisfy themselves that their accounts at respondent institutions do not allow indirect access by shell banks to those accounts.

Regulation, supervision, guidance, monitoring and sanctions

3.10 The supervisory and oversight system - competent authorities and SROs. Role, functions, duties and powers (including sanctions) (R.23, 29, 17 & 25)

3.10.1 Description and Analysis

Authorities/SROs roles and duties & Structure and resources - R.23, 30

Overview

505. The **Financial Supervision Authority (FSA)** operates in connection with the Bank of Finland, but is an independent body. Its objective is to ensure the maintenance of financial stability and public confidence in the financial markets (s.2 *FSA Act*). It grants and revokes authorisations (licenses) for credit institutions, investment firms, mutual fund companies, custodians and pawnshops and supervises financial markets and financial market participants, as provided in the *FSA Act* and other relevant acts. The FSA exercises prudential supervisory powers, including in relation to AML/CFT obligations, through both on-site inspections and off-site continuous monitoring of approximately 500 supervised entities. The FSA has a staff of about 140 persons. An organisation chart for the FSA and for its three supervisory departments can be found in *Annex 6* to this report.

506. The **Bank of Finland (BOF)** The primary objective of the BOF is to maintain price stability in the Euro area and Finland. In its capacity as the overseer of payment systems, the BOF participates in maintaining the reliability and efficiency of payment and overall financial systems. It is only indirectly concerned with AML/CFT, but when performing its primary tasks, the Bank takes into account issues related to ML. AML/CFT issues have for example been taken into account in relation to the development and creation of the regulatory framework for electronic payment systems.

507. The **Ministry of Finance** is responsible for the preparation of legislation concerning financial markets, *i.e.* credit institutions, investment firms, mutual funds and pawnshops. The Ministry of Finance is responsible for the authorisation and revocation of authorisation of stock and derivative

exchanges and the central security depository. The Ministry is also the Finnish representative in the European Commission's Committee on Prevention of Money Laundering and Terrorist Finance.

508. The **Ministry of Interior** is responsible for AML/CFT legislation and supervision of the casinos and other institutions engaged in gaming or betting activities. Licences are granted by the Council of State. The Ministry of Interior heads the Finnish Delegation in the FATF meetings.

509. For the insurance sector the regulatory body is the **Ministry of Social Affairs and Health**. The Ministry is responsible for the *Insurance Companies Act*, *Insurance Mediation Act* and the *Act of Foreign Insurance Companies*. The **Insurance Supervisory Authority** (ISA) is the body responsible for supervision of intermediaries and insurance companies. The primary function of the ISA is to promote the financial stability of insurance and pension institutions as well as other operators in the insurance industry while maintaining confidence in the insurance business. The governance and the management of ISA are described in the *ISA Act*. ISA conducts both on-site and off-site inspections of the 805 insurance companies and intermediaries it supervises. In Finland, both life- and non-life insurance companies are supervised for compliance with AML/CFT obligations. An organisation chart for the ISA can be found in *Annex 6* to this report.

510. The primary self-regulatory organisations (SROs) in Finland are:

- The Finnish Bankers' Association and the Federation of Finnish Insurance Companies merged their organisations as of 1 January 2007. They have established a new body called **Federation of Finnish Financial Services (FFFS)**, which represents companies operating in the financial sector in Finland. It is the largest SRO within the financial sector. The FFFS issues guidelines and has provided an AML-education package for its member institutions.
- The **Finnish Association of Securities Dealers** is the self-regulatory organisation of the Finnish investment services industry. The association accepts as members all brokers, dealers and other authorised financial services firms engaged in public securities business.
- The **Finnish Association of Mutual Funds** is the trade organisation for the Finnish investment fund industry. The association has 22 management companies as members representing more than 98% of the Finnish open-ended fund management industry.
- The **OP Bank Group Central Co-operative** is the service centre for the OP Banking Group and its member institutions (banks, insurance, investment and fund management companies). It is a co-operative owned by the member banks and its function is to provide services for the member co-operative banks, including provision of AML/CFT guidance and training. The co-operative provides a central compliance function for reporting of STRs and also inspects its member institutions.
- The **Savings Bank Inspectorate** is responsible, under the direction and guidance of the FSA, for supervision of savings banks. In addition, Samlink PLC, a company fully owned by the member banks, is a service centre providing IT and product development services for savings banks and for local co-operative banks. Samlink PLC also co-ordinates AML/CFT training and suspicious transactions reporting for the savings and local co-operative banks

511. Pursuant to the *AML/CFT Act* and the *FSA Act*, the supervisory authorities are responsible for monitoring the compliance of their supervised entities with the obligations laid down by the *AML/CFT Act* and the *AML/CFT Decree*. The supervisory authorities also have a duty to inform the MLCH of suspicious transactions which the authorities observe in the context with their supervisory or (other) duties.

Financial Supervision Authority

512. The Parliamentary Supervisory Council is responsible for supervising the overall efficiency of the FSA's operations and for the appointment of its Board members who represent the: Bank of Finland; Ministry of Finance; Ministry of Social Affairs and Health; Insurance Supervision Authority; and, the FSA. The operations of the FSA are funded by levying supervision and processing fees from

supervised entities and issuers of securities. In addition, the personnel and financial administration, security and other areas of general administration are provided by the Bank of Finland. Some FSA decisions and other measures are also subject to a charge. This is a processing fee which is in accordance with the schedule of fees. The FSA's 2006 budget was EUR 18.5 million. Most of the operating expenses are staff and staff-related costs. Although the Board of the FSA approves the budget, ultimately, it is decided by the BOF.

513. The FSA employs approximately 140 staff; 14 management, 100 experts, 21 assistants and 6 on leaves of absence. Over 80% of the FSA personnel are university graduates (PhD 6%, Masters degree 78%). Knowledge of the financial markets and practices is maintained through continuous professional training and job rotation. AML/CFT expertise is mostly gained through-the-job training and through internal and external training seminars. In addition, the FSA arranges annual AML/CFT training seminars, usually jointly with the MLCH and other supervisory authorities, for its own personnel and for the supervised entities. An FSA representative has given speeches at numerous training seminars arranged by supervised entities and private firms.

514. The FSA's supervisory and regulatory functions reside in three departments:

- The Prudential Supervision Department is centrally responsible for the prudential supervision of all supervised institutions as well as credit and market risk, corporate governance and operational risk, financial analysis, capital adequacy reform and information systems. It employs approximately 60 staff who are organised into teams of experts and each team is responsible for monitoring of a designated set of institutions. The team consists of risk management and legal experts. This department manages the annual FSA risk evaluation exercise to determine the risk position of supervised entities, including AML/CFT risks. AML/CFT supervision is carried out through inspections – focused on AML/CFT or with AML/CFT as a component, other supervisory visits and off-site monitoring. One person in this Department works 50% for AML/CFT matters. In addition, there are several experts within the Department who are able to conduct AML/CFT inspections and supervision.
- The Market Supervision Department is responsible for monitoring marketplaces, systems, the conduct of business and the clearing and settlement systems. Market Supervision is also responsible for co-ordination of AML/CFT supervision and regulation, enforcement of financial reporting, insider dealing and market manipulation investigations. This department has approximately 60 staff, 2 of whom are working full-time on AML/CFT matters for the entire FSA. The MLCH shares information with the market supervision department on the STRs received from entities supervised by the FSA.
- The Regulatory Governance Department is in charge of preparing the strategic objectives, organisational development, regulatory environment analysis and principles for regulation and guiding. The department also provides legal counsel and is responsible for monitoring the FSA's achievements against its strategic objectives. In addition, it is responsible for the authorisation and sanction processes.

515. FSA supervision is conducted on a risk-sensitive basis, considering the level of exposure to risk associated with different types of institutions and different types of financial activities/products offered. The FSA carries out both on-site inspections and ongoing supervision and monitoring of the supervised entities. Supervisory operations of the FSA include:

- Granting authorisations and confirming the Articles of Association and by-laws of supervised entities and deciding on the revocation of authorisations where necessary.
- Monitoring that supervised entities comply with: relevant laws and regulations; their Articles of Association and by-laws; and, the terms of their authorisation.
- Issuing regulations and guidelines.
- Monitoring and evaluating supervised entities' financial position, management systems, internal control and risk management systems, their operating conditions, and changes in their operating environment.

- Promoting compliance with best practice guidelines within supervised entities.
- Promoting the availability of information concerning the operation of financial markets.
- Participating in combating criminal misconduct and financial fraud (including prevention of ML and TF).

516. The FSA provides training to its supervised entities and its website gives further guidance on the AML-CFT regulatory framework and its contents. The FSA has issued a number of standards (regulations) based on Finnish laws, EU Directives and other international standards, including:

- FSA Standard RA2.1, *Notification of suspicious securities transactions and other suspect transactions*, 1 September 2005.
- FSA Standard 2.4, *Customer identification and customer due diligence - Prevention of money laundering, terrorism financing and market abuse*, 10 June 2005.
- FSA Standard 4.1, *Establishment and maintenance of internal control and risk management*, 27 May 2003.
- FSA Standard 4.4b: *Management of operational risk*, 1 January 2005.

Insurance Supervisory Authority

517. The ISA is, according to the *ISA Act* obliged to supervise that all supervised entities fulfil the requirements of the *Insurance Companies Act*, the *Act of Insurance Mediation* and the *Act of Foreign Insurance Companies*. One of these requirements is to combat ML and TF. The ISA informs the supervised institutions of changes in law or regulations, including any amendments to the *AML/CFT Act*, *AML/CFT Decree* or other laws and regulations. Further, through on-site inspections as well as through internal control supervision the ISA checks that the obligations imposed on entities by these laws and regulations have been incorporated in the entities' internal regulations.

518. The ISA acts in the administrative field of Ministry of Social Affairs and Health, which is the primary regulatory body for the insurance sector, but the ISA is autonomous in its decision-making and supervision activities. The ISA Board comprises a chairman from the Insurance Department of Ministry of Social Affairs and Health and five other members, from the: Ministry of Social Affairs and Health; Ministry of Finance; BOF; FSA; and, ISA. It is responsible for drafting legislation concerning insurance institutions and products and for conducting inspections of supervised entities. However, it should be noted that the Ministry of Justice is responsible for the *Insurance Contracts Act*. The ISA also contributes to regulatory developments related to insurance companies' risk-based solvency regulations both nationally and within EU.

519. The ISA is an expert organisation with approximately 75 staff; 4 senior managers, 10 managers, 49 experts and 10 assistants. Over 60% of the ISA personnel are university graduates (PhD 5%, Masters degree 58%). Two senior officers are specialised in AML/CFT and the ISA provides training for its personnel concerning ML and TF. In addition, ISA personnel have attended AML training seminars organised by the FSA, the MLCH and the Insurance Training Centre.

520. At the end of 2005, the ISA supervised 805 institutions including insurance companies, local mutual insurance associations, employee benefit funds, pension funds, insurance intermediaries, unemployment funds, statutory pension institutions established by the law, the State Pension Fund, the Church Pension Fund, the Unemployment Insurance Fund and other corporations. The aim of the ISA is to ensure that the supervised institutions have sufficient financial strength, have efficient internal control and management systems and comply with insurance legislation.

521. ISA supervises compliance with regulations on corporate governance and promotes development of efficient internal control mechanisms. It monitors institutions' development of risk management systems for investment risks and underwriting risks. As regards market behaviour, ISA supervises that marketing of the insurance products, management of insurance contracts and claims

handling process conform to the legislation in force. The ISA focuses its resources on supervision of those operators in the industry which are considered most risky. The MLCH shares information with the ISA on the STRs received from entities it supervises.

522. The ISA provides training to supervised entities and publishes statistics on the supervised institutions' finances and operations. It also published guidance and instructions for the supervised entities, including:

- ISA *Instruction for Preventing Money Laundering and Terrorism Financing: Finnish insurance companies and foreign insurance companies' agencies in Finland*, 1 December 2006.
- ISA *Instruction for Preventing Money Laundering and Terrorism Financing: Insurance Intermediaries*, 1 December 2006.

State Provincial Offices

523. In Finland, State Provincial Offices are regional authorities directed by seven ministries. They act as general administration, supervisory and security authorities at regional level, performing certain specialist functions of the Ministry of the Interior; Ministry of Social Affairs and Health; Ministry of Education; Ministry of Transport and Communications; Ministry of Trade and Industry; Ministry of Agriculture and Forestry; and, the Ministry of Justice. In recent years, informative guidance has been emphasised along with normative guidance. There are six State Provincial Offices in Finland, with over 1 000 employees. The State Provincial Office of Southern Finland is the largest, with 380 persons. A State Provincial Office is headed by a Governor, who is appointed by the President of the Republic for a maximum of eight years.

524. The State Provincial Offices supervise the activities of two obliged parties under the *AML/CFT Act*. Firstly, they monitor compliance of real estate and apartment rental agencies with the *Real Estate Businesses and Apartment Rental Agencies Act* (1075/2000), and the *Act on Assignments for such Businesses* (1074/2000). Real estate and apartment rental businesses must be entered in the State Provincial Office register before commencing operation. A request for action may be made to the State Provincial Office concerning any irregularities in the activities of real estate and apartment rental businesses. The Office may impose administrative sanctions on them, if necessary. The State Provincial Office of Southern Finland also supervises the legality of the activities of such businesses by carrying out relevant checks. Secondly, the State Provincial Office of Southern Finland supervises businesses or professions practising payments transfer activity other than payment intermediation referred to in the *Credit Institutions Act*. Before commencing such operations, businesses or professions must notify the State Provincial Office.

Integrity of Employees

525. *Lomakkeen yläreuna*, the *FSA Act*, outlines the obligations of independence and the ethical guidelines to which FSA employees are bound. All government employees (including those in the FSA, ISA and State Regional Offices), work under the *State Civil Servants Act* which requires them to behave in such a way as required by their position and duties. In addition, they must refrain from any behaviour that could undermine the general trust in the activities of public authorities. The *Penal Code* and the *State Civil Servants Act* also provide that government employees or persons related to the public administration may not accept a bribe or otherwise use their position inappropriately. The bribery provisions concerning government employees contained in Finnish legislation aim to ensure the correctness of the activities of government employees, to promote the legality, impartiality and independence of public administration and to maintain the confidence of citizens in the legality of the activities of public authorities.

526. In Finland there is a general principle of openness regarding government activities and documents, as provided in the *Openness of Government Activities Act*. The act does however provide

for classes of documents and types of information which must be kept secret (s.24). Due to the nature of the activities of the FSA and ISA, much of the information they hold falls under the secrecy provisions, including: documents containing information on inspections or other supervisory tasks of the authorities (s.24[1][15]); and, documents containing information on a private business, professional secret, private business information or other information which would cause economic loss to the business if revealed (s.24(1)(20)). Section 23 of the *Act of the Openness of Government Activities* prohibits civil servants, elected officials, and others who obtain confidential information from the government from disclosing such information. The *Openness of Government Activities Act* is complemented by a specific provision in the *FSA Act*, s.36, which provides that the FSA may give non-public information in its possession, for example, to a foreign authority or institution which in its home country by virtue of law performs responsibilities similar to those of the FSA.

527. Section 33 of the *FSA Act* deals with potential conflicts of interest for FSA employees: "A member or deputy member of the board or an employee of the FSA, while in the performance of his or her responsibilities, shall not have a vested interest in a supervised entity or other undertaking or foundation operating in the financial markets, nor shall he or she belong to a supervisory board, board of directors, board of management, body of representatives, board of trustees, or auditors of the supervised entity or other undertaking or foundation operating in the financial markets. The provisions of the *Administrative Procedures Act* shall apply to the disqualification of the persons referred to in this section".

Authorities Powers and Sanctions – R.29 & 17

528. Sections 16 and 16a of the *AML/CFT Act* lay down penalties for obliged parties covered by the act. The penalties apply for violation of obligations pertaining to: identification; record keeping; CDD; reporting; and tipping-off. These penalties are relatively low, however, and are only applicable in connection with criminal proceedings. For violation of identification obligations, a party may be fined, unless a more severe penalty for the act is provided elsewhere in legislation. For other violations, the penalty is a fine. Finnish authorities advise that these penalties have only imposed on a small number of occasions and statistics do not exist with respect to these penalties. As noted previously, the fines have a minimum of 6 Euro and an unspecified maximum amount (as it depends on the income of the person who committed the violation). If the fine is not paid, the District Court may order a term of imprisonment of one day imprisonment for each unit of fine.

529. In the absence of a designated AML supervisor, the money remittance and foreign exchange sector is subject only to the criminal sanctions under the *AML/CFT Act* (s.16), while entities supervised by the FSA and ISA are subject to a range of additional administrative penalties.

Financial Supervision Authority

530. Sections 5 and 6 of the *FSA Act* list 25 categories of supervised entities and other market participants which are supervised by the FSA, including: banks and co-operative banks; credit institutions; investment firms and funds; custodians; branches and representative offices of foreign institutions; the stock and options exchanges; securities firms, issuers, brokers and intermediaries; pawnshops; holding corporations, any undertaking holding a controlling interest in a stock exchange; options corporations; clearing corporations; securities depositories; and, parties involved in share transfers. The supervision powers and available sanctions of the FSA are outlined in the *FSA Act*. The FSA's powers and sanctions are available for use in prudential matters and are equally available for supervising AML/CFT compliance of the entities under its supervision.

531. Under s.15 of the *FSA Act*, the FSA is entitled to obtain for inspection, at the place of business of a supervised entity, documents and records concerning the supervised entity or its customer which are necessary for the performance of the FSA's duties, and may obtain copies as necessary. The FSA also has the right to obtain for inspection a supervised entity's information systems and cash and other assets. 'Information systems' include hardware, software and data saved in to the information system.

‘Cash and other assets’ refer to cash, precious metals, securities and other similar tangible assets of a supervised entity. Further, the FSA is entitled to obtain for inspection documents and records from any other business operating in the financial markets if the FSA considers these necessary for the performance of its duties, and may also obtain copies as necessary.

532. Powers exist to obtain information from auditors and representatives of FSA-supervised entities and from any company in the same financial group as a supervised entity. The FSA is entitled to obtain from auditors of supervised entities and other businesses operating in the financial markets all information in the possession of the auditor which concerns these entities, and to obtain copies as necessary. This includes memoranda and minutes prepared by the auditor and other documents connected to audits of these entities. The FSA is entitled to obtain for inspection, at the place of business of a company which acts as the supervised entity’s representative or which under assignment of the supervised entity performs tasks pertaining to its accounting, information technology system or risk management or other internal control, any information necessary for supervision. The FSA also has the right to obtain information from a Finnish company which belongs to the same group or consolidation group as the supervised entity or which is an affiliate of the supervised entity. Similarly, the FSA may obtain from a supervised entity any information necessary for supervision of a foreign company belonging to the same group or consolidation group as the supervised entity or a foreign affiliate of the supervised entity, and to obtain for inspection any documents and records in the possession of the supervised entity containing such information, and necessary copies (*Act on the Supervision of Financial and Insurance Conglomerates*).

533. A supervised entity or another financial market participant is obliged, without undue delay, to provide the FSA with any information and reports requested by the FSA. The FSA may use its sanctions to compel the supervised entity to give access to records, documents or information relevant to perform the supervision. If justified by a specific reason, the supervisor may take possession of any documents that are subject to verification. A court order is not required. The FSA may use its powers and impose sanctions to compel a supervised entity to provide access to records, documents or information which are relevant for the supervision.

534. Additionally, for the purpose of fit and proper assessment of supervised entity’s owners, members of the board of directors, managing director or employees, the FSA is entitled to obtain information from several non-public registers *e.g.* the register of fines and criminal records.

535. Under s.14 of the *FSA Act*, the FSA has right to summon a meeting of the body exercising decision-making and governance powers of a supervised entity, and to be present in these meetings. Under s.19 of the *FSA Act*, the FSA may prohibit the execution of a decision or other planned measure or any other action of a supervised entity if such decision, measure or action contradicts legal provisions concerning financial markets or regulations or contradicts the articles of association, by-laws or authorisation of the supervised entity.

536. The FSA may impose the following administrative sanctions on entities and directors of FSA-supervised entities supervised and on other financial market participants:

- Public reprimand (s.25 of the *FSA Act*).
- Public warning (s.26 of the *FSA Act*).
- Conditional imposition of a fine (s.24 of the *FSA Act*).
- Prohibition from holding managerial positions (s.17 of the *Credit Institutions Act*, s.12b of the *Investment Firms Act*, s.5e and s.9d *Mutual Funds Act*).
- Revocation of authorisation and curtailment of operations (s.12 of the *Credit Institutions Act*, s.12 of the *Investment Firms Act*, s.117 and s.125 of the *Mutual Funds Act*).
- Administrative fine (s.24 b of the *FSA Act*).
- Penalty payment (s.26 a of the *FSA Act*).
- Restriction of the provision of investment services (s.23 of the *FSA Act*).

537. Each of the abovementioned sections defines the legal and natural persons to which penalties can be applied. For example, according to s.25 of the *FSA Act*, a natural person may be issued a public reprimand if he or she is in violation of provisions or regulations that are personally binding on him or her. In addition, it notes that a public reprimand may be given to:

- Supervised entities (s.25[1]); supervised entities are listed in s.5 of the *FSA Act*.
- Other financial market participants (s.25[1]); other financial market participants may be natural or legal persons and are listed in s.6 of the *FSA Act*.
- To any legal or natural person or other financial market participant (s.25[3]) where they do not comply with certain obligations under the *Securities Markets Act* or obligations under *Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC*.

538. The conditions for applying the sanctions are defined in the relevant legislation; *FSA Act*, *Credit Institutions Act*, *Investment Firms Act* and *Mutual Funds Act*. Public reprimands, public warnings and conditional fines may be applied in situations where legal provisions concerning financial markets have been violated. Legislation also specifies the cases where administrative fines, prohibitions from holding managerial positions or penalty payments may be imposed. Decisions taken on sanctions are published on the FSA's website.

539. The FSA may issue a **public reprimand** for violation of legal provisions or regulations concerning financial markets or a **public warning** if such conduct is continuous or recurrent or otherwise so reproachable as to render a public reprimand insufficient. Issuance of a public reprimand presupposes wilfulness or negligence in the activities. Public reprimands and warnings are usually issued about entities but may be issued about a natural person where the person is in violation of provisions or regulations that are personally binding on him or her. Section 25 of the *FSA Act* (with reference to s.6) provides limited conditions under which a reprimand may be given to a natural person: "A public reprimand may also be issued to a natural person as referred to in section 6 under the conditions set out in subsection 1 above, if the person is in violation of provisions or regulations as referred to in subsection 1 that are personally binding on him or her". That section similarly notes that a natural person may be issued a public reprimand if he or she is in violation of provisions or regulations of the *Securities Markets Act*, or provisions issued by virtue thereof, that are personally binding on him or her. It is not clear how restrictive is the condition that natural persons can be reprimanded when found to be in violation of provisions or regulations "that are personally binding." Finland has not provided evidence that such a sanction has ever been imposed on a natural person. A public reprimand may not be issued if the legal or natural person concerned has voluntarily and by its own initiative taken corrective action as soon as the error was ascertained. Public reprimands and warnings may be issued to:

- Supervised entities which violate laws or regulations concerning financial markets or the terms of their authorisations.
- Other financial market participants which violate laws or regulations concerning financial markets.
- Other persons who fail to comply with or violate regulations issued by the European Commission by virtue of the *Prospectus Directive* or the *Securities Markets Act*, on: market abuse; disclosure of information affecting the value of securities; disclosure of information relating to the offering of securities or to public trading; or, takeover bids.

540. The FSA has, between 2003 and 2007, issued 6 public reprimands and 1 administrative fine: 2 public reprimands in 2005; 2 in 2006; 2 in 2007; and, 1 fine in 2007.

541. A **penalty payment** may be imposed in connection with a public warning. Penalty payments are imposed by the Market Court on application by the FSA and are payable to the State. The imposition of a penalty payment may occur where the natural or legal person concerned has wilfully

or negligently failed to comply with or violated legal provisions such as disclosure requirements relating to the acquisition or transfer of own shares (s.2b, chapter 1, the *Securities Markets Act*), insider information or market manipulation (chapter 5 of the *Securities Markets Act*). A penalty payment may be imposed if the act or omission has been continuous, recurrent or planned, or otherwise so reprehensible that a warning alone is not deemed to be sufficient. If however the matter is subject to a pre-trial investigation, consideration of charges or criminal hearing at a court of law, penalty payment will not be proposed. The size of a penalty payment is determined by the nature and scope of the activities, whether they were planned, the gain sought and the damage caused. Penalty payments for legal persons may be from EUR 500 to EUR 200 000 but without exceeding 10% of the annual turnover of the entity. The penalty payment for a natural person ranges from EUR 100 to EUR 10 000. The decisions of the Market Court are also published on the FSA's website.

542. **Conditional imposition of a fine** is used by the FSA to prompt an entity or person to fulfil an obligation or otherwise pay the fine. The FSA's entitlement to impose conditional fines and order payment thereof is based on s.24 of the *FSA Act* and the *Act on Conditional Fines*. Conditional fines may be applied to:

- FSA's supervised entities.
- Other undertakings or foundations operating in the financial markets.
- Natural persons operating in the financial markets, such as brokers and parties subject to the obligation to disclose major holdings.
- Auditors of supervised entities, undertakings or foundations operating in the financial markets.

543. Conditional imposition of a fine may occur for failure to comply with laws or regulations concerning financial markets or where the entity has failed to comply with its own articles of association, by-laws or the terms of its authorisation, provided such negligence is not minor. A conditional fine may be imposed in connection with a public reprimand or warning. In determining the size of the fine, account is taken of the seriousness of the negligence and the solvency of the party on whom the fine is imposed.

544. The FSA may **prohibit a person from holding managerial positions** in a supervised entity. A prohibition from holding managerial positions may be considered a milder sanction than revocation of authorisation and curtailment of operations. The prohibition may be preceded by a public reprimand or a public warning. A prohibition from holding managerial positions, with a maximum of five year duration, may be ordered in the following cases:

- In discharging his/her duties, the person concerned has displayed apparent incompetence or carelessness, and it is evident that such conduct may damage the stability of the company's operations or other interests defined in law.
- The person does not manage the company in a professional manner in line with sound and prudent business principles, s/he is unreliable, bankrupt, his/her competences have been limited or s/he is not sufficiently familiar with the business operations concerned.

545. The FSA may, in certain conditions, impose **revocation of an authorisation** it has granted to a credit institution, investment firm, fund management company, custodian, pawnshop or any other supervised entity. The conditions for revocation of an authorisation vary depending on the type of authorisation involved. A supervised entity's authorisation may be revoked in the following cases:

- The activities provide evidence of a material breach of laws, decrees, or regulations, or of the terms of the authorisation.
- The conditions under which authorisation was granted no longer exist.
- No activities have been carried out for six months.
- No activities have commenced within 12 months of granting the authorisation.
- Misleading information was provided when applying for the authorisation.

546. On certain conditions, the FSA may also impose a ***fixed-term or permanent restriction*** on an entity. The conditions for curtailing authorised business vary depending on the type of the authorisation involved but typically involves evidence of incompetence or carelessness where continuation of the activities will seriously jeopardise financial stability, the smooth functioning of payment systems, investor position or creditor interests. Revocations of authorisation and curtailments of operations are the most severe sanctions available to the FSA. They may be applied only in situations where recourse to other sanctions is deemed inadequate to remedy the situation.

547. ***Administrative fines*** of EUR 500 to EUR 10 000 may be imposed on legal persons and fines of EUR 50 to EUR 1 000 may be imposed on natural persons. Fines may be imposed on:

- Securities intermediaries who fail to comply with the obligation to disclose transactions or other transfers in respect of exchange-traded or market-based securities
- Parties subject to the obligation to declare insider holdings who fail to submit timely declarations or who deliver false or inadequate declarations
- Keepers of insider registers who fail to comply with the obligation to keep such registers or who violate relevant provisions.
- Fund management companies which violate the limitations on investment of mutual fund assets.
- Issuers of securities admitted to public trading who fail to publish a yearly summary of information released during the previous financial year.

548. Administrative fines may be waived where:

- The person concerned has voluntarily taken remedial measures immediately upon discovery of a failure or violation.
- Such failure or violation is slight or minor.
- There is a good cause, such as illness, for the failure to comply with the relevant obligation.

549. Instead of the imposition of administrative sanctions, the FSA may ***request Police investigation*** in respect of a detected violation of law, if it has reason to suspect that such conduct constitutes an offence. The request may apply to crimes or offences provided in financial market legislation. Requests by the FSA normally concern securities market crimes as provided in the *Penal Code*, such as abuse of insider information, market manipulation and breach of disclosure obligation. Criminal sanctions differ from administrative ones in that, under the *Penal Code*, punishment presupposes wilfulness or gross negligence, whereas administrative sanctions presuppose ordinary negligence. The *Penal Code* also presupposes the existence of a particular intention of obtaining benefit (except for breach of disclosure obligation). While general information on requests for Police investigation is communicated via the FSA's on-line publication, the *FSA Newslines*, information on suspected persons or activities is only released in exceptional cases.

550. The FSA also has the power to ***restrict the provision of investment services***. It may, for a period of not more than three months, prohibit an investment firm, fund management company or credit institution from offering investment services as referred to in the *Investment Firms Act* and safekeeping and administration services as referred to in s.16(1)(5) of the said act and from accepting funds as referred to in s.16(2)(1) if the financial position of the investment firm, fund management company or credit institution gives the FSA cause to suspect that the entity is in danger of insolvency and that the investor compensation fund will apparently have to compensate the investors for their claims. The restriction on accepting funds may also be imposed on branches of foreign investment firms, fund management companies and credit institutions operating in Finland, where such entities are members of the Finnish investor compensation fund.

551. Chapter 4 of the *FSA Act* thus provides broad sanction authority (including administrative fines, public reprimands, public warning, penalty payments), though the FSA has only used these powers once in connection with an AML deficiency.

Insurance Supervisory Authority

552. The supervision and inspection of insurance companies falls under the responsibility of the ISA (chapter 14 of the *Insurance Companies Act*). Financial supervision comprises, in particular, verification of the company's solvency, financial capacity and internal control management systems. Market conduct supervision includes supervision of products, marketing and market behaviour.

553. The ISA makes on-site inspections during which it reviews companies' policies, procedures and books and makes a sample test to check that CDD is made properly and according to the regulations. The ISA is entitled to inspect business and other operations carried on by insurance companies and their subsidiary undertakings. It is entitled to make on-the-spot investigations at insurance companies' premises and attend entities' senior decision-making meetings, though without participating in decision-making. If a specific reason exists, the ISA may take possession of any documents that are subject to verification. Copies of such documents are given to the company free of charge on request.

554. The *Insurance Companies Act* (s.3, chapter 14) states "Insurance companies shall, within a reasonable period set by the competent ministry and the Insurance Supervisory Authority, also provide the two bodies with information which is needed for the performance of the duties provided in this act." Section 4 states: "The ISA shall be entitled to inspect the business and other operations carried on by insurance companies and their subsidiary undertakings. Supervisor shall be entitled to make on-the-spot investigations at insurance companies premises and attend meetings that exercise the power of decision but shall not be entitled to participate in decision making."

555. According to the *Insurance Companies Act* (s.5, chapter 14) the ISA may give an insurance company a warning, request to remedy an irregularity within a set period of time or prohibit the company from carrying on action that the competent ministry or the ISA considers irregular. Generally this occurs where there is evidence that the insurance company has not abided by the laws, its licence, articles of association or any provisions or regulations issued by the ministry or the ISA, or by the ministry in charge of Police forces under the *AML/CFT Act*, if the company has acted contrary to good insurance practice or if any malfeasance is detected in the company's operations.

556. The ISA is entitled to prohibit implementation of a resolution passed by the general meeting, supervisory board or board of directors. Alternatively, if such resolution has already been implemented, the ISA may oblige the company to take action to have the irregularity remedied. To enforce the request or prohibition, the ISA may impose a penalty or fine ordered by the Provincial State Office of Southern Finland. If the request or prohibition is not complied with, the ISA may prohibit an insurance company from graining new policies until the irregularity is remedied. If the company fails to comply with the request or prohibition and the failure is gross, the competent ministry, after having asked for an opinion on a case from ISA, may limit an insurance company's licence or withdraw the licence altogether.

557. The ISA *Instruction for Preventing Money Laundering and Terrorism Financing* for insurance companies refers, at 4.2.11.4, refers to sanctions that are available to a "company or its employee" but does not clarify if directors or senior management would qualify as employees of the company. As the ISA has not imposed sanctions on natural persons to date, the scope of this ability to sanction natural persons is unclear.

558. Section 5, chapter 14, of the *ISA Act*, with supporting guidance in paragraph 4.2.11.4 of the *ISA Instruction for Preventing Money Laundering and Terrorism Financing* for insurance companies, provides the ISA with broad sanctioning authority (issuance of warnings, impose deadlines for fixing deficiencies, prohibit actions considered irregular, prohibit implementation of resolutions passed by the board, impose a penalty of a fine, prohibit the granting of new policies, or withdrawal of the license), though the ISA has not used any of these powers in connection with AML/CFT deficiencies. Chapter 14 specifically provides that the ISA's supervision role incorporates oversight of AML/CFT

obligations. It is evident that the ISA considers compliance with the *AML/CFT Act* part of its supervisory role, and considers this during its inspections of institutions. The ISA has more limited sanctioning powers than the FSA, but is authorised to issue warnings, prevent the granting of new policies, prohibit the implementation of a resolution passed by the board, or revoke the license. Additionally, the State Provincial Office of Southern Finland can impose a fine in conjunction with any of the ISA's above measures.

559. The *State Provincial Offices Act* (Länsstyrelselag 10.1.1997/22) provides in s.8 that the State Provincial Offices have the power to order a penalty (administrative fines), a threat of carrying out something by force or a threat of suspending something by force, in order to make a person act in accordance with an order issued by the State Provincial Office or another authority which has asked for assistance according to its powers.

Market entry – R.23

Financial Supervision Authority

560. The responsibility for granting and cancelling authorisations (licenses) for credit institutions, investment firms, mutual fund companies, custodians and pawnshops transferred from the Ministry of Finance to the FSA in 2003 and 2004. The FSA grants authorisations in accordance with the *Credit Institutions Act*, *Act on Investment Firms*, *Act on Mutual Funds* and *Pawn Shops Act*. The documents and other reports to be appended to an application for an authorisation are defined by the decree of the Ministry of Finance on the *Accounts to be appended to the application for authorisation* (2003/658, 2003/659 and 234/2004). Additionally, the FSA has the power to authorise the establishment of a Finnish branch for institutions originating from outside the EU, and conversely, the establishment of Finnish institutions' branches outside the EU. The Ministry of Finance continues to be responsible for granting and revoking authorisations for the stock and derivative exchanges and the central securities depository.

561. Credit institutions, investment firms and mutual fund companies operating in the EEA are governed by the 'single passport' principle which entitles authorised institutions to engage in business in all EEA countries, provided the business is subject to mutual recognition as per appendix 1 of *Directives 2000/12/EC of the European Parliament and of the Council of 20 March 2000 Relating to the Taking up and Pursuit of the Business of Credit Institutions* and appendices A and C of *Council Directive 93/22/EEC of 10 May 1993 on investment services in the securities field*. This includes establishment of branch offices or agencies. Commencement of activities is subject to a notification procedure. The FSA is the home country supervisor for the foreign branches of its supervised entities and the so-called host supervisor for the Finnish branches of foreign institutions in Finland.

562. Before an authorisation may be granted and operations of the institutions are allowed to commence, the FSA must be certain that the new applicant fulfils both the technical prerequisites and also has the ability and desire to comply with the functional principles generally accepted in the industry. Therefore, in the context of granting an authorisation, the FSA examines the applicant's internal control, audit and risk control mechanisms (including AML/CFT programmes and procedures), the level and sufficiency of information systems and data security. Further the examination covers the owners' and managers' fitness and propriety to lead the organisation in accordance with prudent and high standard management principles. A key prerequisite for authorisation is that the entity is managed in a professional manner and according to sound and prudent business principles. The applicant entity must have sound corporate governance, owners and management which pass a fit and proper test and must have adequate funds to operate. In addition, its business operations should be planned, managed, organised and controlled to such a standard that the company is able to ensure that all of its operations meet high professional and ethical criteria.

563. When evaluating a legal entity's intended business, the FSA pays particular attention to whether:

- Operations are conducted in accordance with existing legislation and best market practices.
- Ownership structures do not prevent effective supervision of the organisation.
- The organisation has a full-time managing director, supported by a board of directors. Supervised entities are managed in a professional manner and according to sound and prudent business principles. Senior management has confirmed the strategy and business plan. Senior and operating management have the necessary professional competence as well as being able, proper and reliable. Senior management is able to independently evaluate operations of the organisation and its executive management.
- Business operations are planned, managed, organised and controlled in such a manner that the company is able to guarantee operations meeting high professional and ethical standards.
- Responsibilities and powers are clearly defined and any conflicts of interest identified and resolved.
- Operations have a sound basis and economic conditions for conducting the business.
- Operations are target-oriented and the targets are realistic with a view to the economic conditions.
- Plans have addressed all necessary areas such as: corporate governance; internal control; risk management; economic operating conditions; and, AML/CFT programmes and procedures.
- Systems providing information needed for effective management ensure that the information that is provided is reliable and correct.
- Established procedures exist which ensure a high standard of conduct in customer relations.
- The number and quality of personnel are proportionate to the activities of the organisation. The remuneration system does not result in undesirable behaviour such as excessive risk exposure.

564. The AML /CFT programme requires that: each institution's board and management should have clearly defined responsibilities; a senior level AML-contact/compliance officer should be appointed; internal guidelines and CDD processes be implemented; a systematic and on-going training programme be conducted for managers and staff; internal reporting to senior management or the board be implemented; and, internal audit and control functions be in place.

565. The members and alternate members of the board, the managing director and the deputy managing director as well as the people responsible for all key functions must be reliable, professional and otherwise eligible for the function for which they are appointed. They may not have gone bankrupt and their operational eligibility must not be restricted. The managing director and his deputy must have adequate professional qualifications and work experience, which meet the demands of the position. Further board members and their alternate members as well as the managing director and his deputy must have adequate overall knowledge of the area of business of the supervised entity, in proportion to the nature and scope of business. An appropriate fit & proper survey must be appended to the application on all members and alternate members of the board as well as of the managing director and their possible deputy. As far as credit institutions, investment firms, fund management companies and custodians are concerned, the survey must be completed according to the instructions of the FSA on submitting information concerning senior executives.

566. An appropriate fit and proper notification must be appended to the application on the reliability, eligibility and competence of the above mentioned owners and owners of a holding company. Details about the content of the fit and proper notification concerning the owners of a credit institution are laid down in the FSA *Guideline on the supervision by the Financial Supervision Authority of changes in the ownership of credit institutions (101.6) and Regulation on written reporting on the fitness and propriety of owners, directors and managers in connection with changes in investment firms* and s.16 of the *Mutual Funds Act.* As part of any examination of the propriety of persons founding, managing or being on the board of such institutions, the FSA has the right to obtain from the *Legal Register Centre* extract from the criminal records and extract from the register of fines, as referred to in the *Act*

on *Criminal Registers* (770/1993). The FSA also inspects the credit register for all founders, senior managers and board members of applicant institutions⁴⁰.

567. In addition, the auditors of a FSA supervised institutions must be authorised as auditors as per s.2(2) of the *Act on Auditing*. In other words, they must have been accepted and registered in accordance with Chapter 2 of the *Act on Auditing*. In addition, one of the auditors must be approved by the Central Chamber of Commerce of Finland, as per s.4 and s.5 of the *Act on Auditing*. The company's license application must show the names of the auditors and explicitly state which auditors or auditing entities are approved by the Central Chamber of Commerce of Finland.

Insurance Supervisory Authority

568. Provisions on licences to conduct statutory pension insurance business are set forth in the *Insurance Companies Act* (354/1997) and provisions on licences to conduct statutory accident insurance business are set forth in the *Employment Accidents Insurance Act* (608/1948). In accordance with insurance directives of the European parliament and Council, the "Single Passport"-principle also applies to insurance companies in the EEA area.

569. Before an insurance company can be incorporated, an application for licence must be submitted to the Ministry of Social Affairs and Health. Licences are issued for individual classes of insurance and groups of insurance classes. A licence covers insurance business carried out in the EEA and is valid within and, if requested by the applicant, also outside the EEA. An application for and insurance licence must be accompanied by a business plan and details of the envisaged members of the board of directors, managing director and major shareholders. An insurance company may be incorporated by one or more natural or legal persons (founders). The memorandum of association, by which a company is incorporated, must be dated and signed by the founder and submitted as part of the application for an insurance license. At least one of the founders must have its place of residence or place of registered office in the EEA, unless the Ministry of Social Affairs and Health grants an exception from this requirement. A founder may not be incompetent, bankrupt or a person whose business activities have been prohibited. The Ministry of Social Affairs and Health is required to seek the opinion of the ISA with respect to each license application.

570. The ISA examines the fitness and propriety of managing directors, deputy managing directors, members of boards and major shareholders of companies applying for insurance licenses. Information must be appended to shareholders whose direct or indirect holding in the company is at least 5%. Details about the required information on the reliability, eligibility and financial position of owners to be appended to the application are laid down in the *Decree on Credit Institutions*, *Decree on Investment Firms* and the *Decree on Mutual Funds*. The same requirements to submit information are in place with respect to those persons who:

- Do not own shares themselves but who have a controlling interest in an entity that holds shares.
- Do not themselves have shares in the company but do have a contractual or other legal right to exercise rights pertaining to shares owned by another party, such as where shareholders have granted decision-making power over to an asset manager or agent or when a management company uses voting rights pertaining to shares owned by funds of the management company.
- Are guardians exercising the rights to shares of a person lacking legal capacity.

571. Insurance Intermediaries operate under the *AML/CFT Act*, the *Insurance Mediation Act* and ISA's *Regulations and Instructions for Insurance Intermediaries*. Insurance intermediaries are licensed and registered, as required by the *Insurance Mediation Directive*, in a register maintained by

⁴⁰ On 1 July 2007 the FSA issued Standard 1.4, *Assessment of Fitness and Propriety* and Standard RA1.4, *Reporting on Fitness and Propriety of Directors and Managers*. These replace the old fit and proper guideline for credit institutions, 101.10, and the fit and proper regulation for investment firms, 203.17. The principles in the new Standard 1.4 are not new but the FSA's practices are now documented more clearly than in earlier guidelines and regulations. The reporting forms are also published in the FSA website.

the ISA. Before acceptance to the register the intermediary must be identified and have their backgrounds, including criminal records, checked by the ISA.

State Provincial Office

572. By virtue of the *AML/CFT Act* and *AML/CFT Decree*, money transfer service businesses are registered at the State Provincial Office of Southern Finland. With respect to AML/CFT obligations, the money remittance and foreign exchange sectors are subject only to some monitoring by the MLCH, which has no supervisory role and lacks the resources to individually monitor or inspect individual businesses for compliance, and may only be sanctioned by court action for violations of the *AML/CFT Act*. These businesses are not actively supervised at present, though the new *AML/CFT* legislation is expected to institute a system of supervision for these businesses. In addition to registration, it is expected that in accordance with the new legislation, there will be a competent authority which conducts fit and proper tests of those who own or effectively direct such entities.

Ongoing supervision and monitoring – R.23 & 32

573. Prudential supervision by the FSA involves both on-site inspections and monitoring by other means, such as through regular reporting by the supervised entities. Compliance with AML/CFT obligations is one element of the on-going monitoring. Prudential supervision assesses the supervised entities' profitability and capital adequacy as well as the credit, market and operational risks involved in their operations. The focus is on internal governance and the level and control of risks. A comprehensive risk evaluation is prepared annually, encompassing the most significant supervised entities and a selection of the smaller ones. The annual risk evaluation also contains the annual AML/CFT risk assessment.

574. Market supervision by the FSA encompasses oversight of the conduct of businesses, marketplaces and systems and monitoring of compliance with financial reporting requirements. AML/CFT compliance procedures are assessed as part of the conduct of business. Special attention has been paid by the FSA market supervision department to customer identification and CDD-procedures in connection with electronic services. Market supervision also involves on-site inspections which are often undertaken jointly with the prudential experts. The FSA has focused its supervision also on future changes in payment systems. There are many ongoing initiatives in the Euro area relating to payment systems and payment transfer services.

575. Questionnaire-based surveys are increasingly used by the FSA for supervisory purposes. A comprehensive AML/CFT survey was conducted in 2004-2005 targeting approximately 130 supervised entities. On-site visits then followed to selected institutions. A feedback letter outlining the FSA's conclusions from the survey and its on-site visits was sent to all supervised entities and the conclusions were also presented in training seminars. Other questionnaire-based surveys conducted in 2004-2006 have dealt with investment firms' and fund management companies' internal control systems and operative risks etc. In 2006 a survey on electronic services and customer due diligence processes of banks was conducted. This survey targeted all banking groups offering on-line services. Another AML/CFT survey is planned for when the new AML/CFT law and regulations are in force.

576. The FSA co-operates with the BOF, the ISA and the supervisory authorities of the Nordic countries and the Baltic states. Nordic co-operation in the supervision of financial markets infrastructures has increased in recent years, partly due to the integration of marketplaces. Co-operation between supervisory authorities in the Nordic countries is based on Memoranda of Understanding that advocate the division of work between supervisors, and the exchange of information as well as other forms of co-operation. In order to enhance prudential AML/CFT supervision practices, a joint Nordic AML/CFT inspection has been carried out with the Swedish and Norwegian authorities.

577. Supervision of financial conglomerates is an area of ongoing co-operation between the FSA and ISA, with other authorities as required. Supervisory tools (such as risk assessment systems) are being enhanced further in order for all the inspection and assessment methods to meet the 3rd EU ML Directive and the requirements of the European Union *Markets in Financial Instruments Directive* which is expected to come into force on 1 November 2007.

578. In the insurance sector, the *Insurance Companies Act* includes provisions on the assessment of acquisitions and increases in shareholdings of insurance companies. According to s.3 of chapter 3, any person who either directly or indirectly intends to acquire shares or guarantee shares in an insurance company must notify the ISA if the acquisition will increase the person's holding to at least 10% of the insurance company's share capital or guarantee capital. According to s.4, the ISA can prohibit the acquisition if the holding is considered to threaten the sound development of insurance business and the ISA may prohibit the shareholder from exercising hi/her right to vote in the insurance company. The ISA has advised that any such notification coming from a person with a criminal background would be considered to be a strong indication that the insurance business is not going to be carried out in a sound way. A shareholding above 10% belonging to a person with a criminal history is considered likely to threaten the company's compliance with sound and prudent business practices. At least with respect to clear cases of serious criminality and/or criminality relating to financial matters, the ISA appears to have powers to prohibit large shareholdings being in the hands of persons with criminal backgrounds.

579. The ISA makes annual on-site inspections to examine internal controls, including AML/CFT controls. Institutions must have satisfactory internal instructions and arrangements for AML. On-site inspections concern both insurance companies and intermediaries (brokers). Tied agents in Finland act on behalf and under the responsibility of insurance companies. Tied agents are also registered and their qualifications, including criminal records, are checked before they are entered on the intermediaries' register.

580. Those financial institutions which have joined the general payment transmission systems in Finland, to provide payment services as referred in s.2b of the *Credit Institutions Act*, are fully supervised by the FSA. This represents institutions responsible for more than 95% of all payments, including card payments in Finland. Other businesses or professions providing payment transfer services are under a registration obligation. Section 13a of the *AML/CFT Act* provides that the registration authority is Provincial State Office of Southern Finland. The new *AML/CFT Act* is expected to implement regulation and monitoring of money transfer (other than credit institutions) and money exchange services.

Statistics

581. As described earlier, implementation of adequate AML/CFT compliance programmes and procedures is required in order for a company to gain an authorisation from the FSA. The existence of such programmes and procedures is ascertained during on-site inspections. Supervision visits to investment firms and fund management companies are conducted annually or at least bi-annually, and AML/CFT compliance issues are one element examined in these inspections. In addition to the general programme of on-site inspections, the FSA conducts targeted inspections which focus on specific issues such as risk management of payment systems or electronic services or AML/CFT compliance. Additionally, the FSA conducts annual on-site AML/CFT compliance visits to major financial groups. AML/CFT on-site compliance visits are paid less frequently to smaller banks, other credit institutions and foreign branches in Finland. In 2005-2006 the FSA conducted a programme of compliance inspections of all pawnshops which examined a range of issues including AML/CFT programmes and procedures.

Table 24: Number of FSA inspections and other on-site visits

	2004	2005	2006
Banks and credit institutions (includes foreign branches in Finland)	113	108	120
Investment firms	22	29	21
Fund Management companies	19	8	46
Pawnshops	11	-	9
TOTAL	165	145	196

582. The above mentioned on-site visits relate to risk management, corporate governance and internal control systems. In many cases, AML/CFT issues were not the primary focus of the inspection but were examined during the inspection.

Table 25: AML surveys and onsite visits conducted by the FSA

AML-SURVEYS AND ON-SITE VISITS	2004	2005	2006
Banks, credit institutions and foreign branches in Finland	75	10	30
Investment Firms	32	5	5
Fund Management Companies	19	5	5
Pawnshops*	11	-	9
Central Securities depository	1	-	-

583. The FSA has imposed sanctions as follows:

- Revocation of authorisation of one pawnshop (2006). The institution has challenged the revocation and a decision of the Administrative Court on the challenge is pending.
- Fixed-term restriction to exercise voting rights as an owner of an investment firm (2006). The decision relates to financial fraud and ML court proceedings. The person and company involved did not challenge the FSA decision.

584. The ISA produces a report of the findings of each on-site inspection but does not keep statistics or further analyse trends or issues across the sector. The ISA has not issued any sanctions with respect to AML/CFT obligations to date.

Table 26: Onsite visits re AML/CFT conducted by the ISA

	2004	2005	2006
Insurance companies and intermediaries	22	25	28

585. The FSA, ISA and MLCH provide some training for entities supervised by the FSA and ISA. The MLCH provides such training approximately twice per year. The ISA conducts training for its supervised entities, and this includes AML/CFT matters, but does not hold statistics on how many such sessions have been conducted.

Table 27: Training provided by the FSA (not solely on AML/CFT), 2004-2007

	2004	2005	2006	2007
FSA personnel	82	52	50	44
FSA-supervised entities	95	162	400	92
Other authorities' personnel and supervised entities	40	40	60	50

Guidelines – R.25 (Guidance for financial institutions other than on STRs)

586. The FSA issues standards and guidance to supervised entities and places these and other useful information for financial institutions on its website, which includes a page dedicated to AML/CFT issues. The following FSA standards have particular relevance in the AML/CFT context:

- FSA Standard RA2.1, *Notification of suspicious securities transactions and other suspect transactions*, 1 September 2005
- FSA Standard 2.4, *Customer identification and customer due diligence - Prevention of money laundering, terrorism financing and market abuse*, 10 June 2005.
- FSA Standard 4.1, *Establishment and maintenance of internal control and risk management*, 27 May 2003.

- FSA Standard 4.4b: *Management of operational risk*, 1 January 2005.

587. The FSA arranges regularly training seminars for its own personnel and for the supervised entities. Training seminars have covered various current issues such as the AML/CFT legislation, contents of standards, financial sanctions. The MLCH often contributes to the FSA training seminars for supervised entities, presenting statistic and cases investigated and giving feed-back on STRs. In addition, an FSA representative has provided speakers for numerous training seminars arranged by the supervised entities and private firms.

588. The ISA provides training to supervised entities and publishes statistics on the supervised institutions' finances and operations. It also published guidance and instructions for the supervised entities, including:

- *ISA Instruction for Preventing Money Laundering and Terrorism Financing: Finnish insurance companies and foreign insurance companies' agencies in Finland*, 1 December 2006.
- *ISA Instruction for Preventing Money Laundering and Terrorism Financing: Insurance Intermediaries*, 1 December 2006.

589. The MLCH publishes an *Annual Report*, which includes general information and statistics on suspicious transaction reports received and forwarded for pre-trial investigation. It examines efforts taken to combat both money laundering and terrorist financing. The annual report also includes general information on the MLCH, its processes and international co-operation. The annual report is published in Finnish and sometimes also in Swedish and in English. The MLCH annual report does not include information concerning trends and typologies.

590. The MLCH has also published the *Money Laundering Clearing House Best Practices* in 2004 and the *Money Laundering Offences in Legal Praxis* in 2003, which was updated in 2006). These provide useful information for obliged parties on all AML/CFT obligations arising from the *AML/CFT Act* and are thus disseminated widely and available on the MLCH website. Currently most of the cases in the *Money Laundering Offences in Legal Praxis* relate to convictions for the previous ML offence, as it was before 2003. Thus the cases used in this report to describe the *current* techniques, methods and trends are not in fact current. This report will be updated during 2007.

3.10.2 Recommendations and Comments

Recommendation 17

591. The FSA and the ISA are empowered to apply sanctions, though the money remittance and foreign exchange sector are without a supervisor and thus subject only to the sanctions provided in the *AML/CFT Act*. The MLCH has not exercised its authority to initiate criminal proceedings against any institutions for failure to comply with that act. Finland should consider adopting additional binding requirements for the money remittance and foreign exchange sectors beyond the *AML/CFT Act*, and appointing a supervisory authority to monitor these sectors' compliance with all AML/CFT provisions and sanction non-compliance.

592. The scope of the FSA's and the ISA's powers to sanction natural persons is unclear and as yet untested. In addition, it is unclear whether s.16 of the *AML/CFT Act* – which allows for fines to be imposed in connection with criminal sanctions – could apply to directors or senior management within an obliged party. It is recommended that Finland clearly clarifying its sanction provisions to note their applicability to directors and senior management within obliged parties.

593. While they are in line with the usual scale of punishments in Finland, the penalties which may be imposed under the *AML/CFT Act* and those available to the FSA and ISA are relatively low, particularly the maximum fine of EUR 10 000 for natural persons and EUR 200 000 for legal persons

(but without exceeding 10% of the annual turnover of the entity), when compared to other countries – and they are seldom used. In addition, the fines available under the *AML/CFT Act* are only applicable in connection with criminal proceedings. It is recommended that Finland clearly review and raise the strength of the sanctions available to supervisors for non-compliance with AML/CFT obligations and that supervisory authorities in fact apply sanctions where appropriate.

Recommendation 23

594. The various procedures for licensing financial institutions appear generally sound. The qualifications and fit and proper tests for persons operating in senior roles in this sector are however at times vague. While criminal history checks are conducted for persons in these roles, it is not explicitly stated that such persons must not have a criminal history⁴¹. In addition, while it is clear that the fit and proper test will be applied to certain persons who are not directly owners or senior managers of an insurance institution but who exert influence and have decision-making powers impacting on the institution, this breadth of application of the fit and proper test is not specified for other financial institutions.

595. It is recommended that the ISA increase its inspection and monitoring programmes and commenced targeted AML/CFT supervision, both onsite and off-site. In addition, it is recommended that the FSA consider taking a more active role in AML-focused inspections and enforcement and rely less on AML/CFT matters to be uncovered during the prudential inspection programme. The FSA and ISA conduct some off-site AML/CFT control of financial institutions, relying in large part on information submitted to them by the obliged parties. It is recommended that these authorities clearly require that these reports include all AML/CFT-related internal control information.

596. There is a registration requirement but no supervision for the money exchange and remittance sector. Finland is encouraged to continue with its planned implementation of supervision as part of the next AML/CFT law. Standards and guidance will need to be provided to these businesses and measures will be needed which prevent criminals from having a controlling interest in a business that provides remittance services.

Recommendation 25

597. The FSA, ISA and MLCH have issued guidance and standards to assist obliged parties to implement and comply with their obligations, but limited guidance has been issued specifically on AML/CFT matters. The *Money Laundering Clearing House Best Practices* provides guidance focussed on AML/CFT matters, created when the existing legislation was passed in 2003. The MLCH *Money Laundering Offences in Legal Praxis* is also a valuable initiative, but its effectiveness is hampered by a lack of inter-agency statistics and information sharing on cases. This report will be updated during 2007. This guidance does not comprehensively address all areas of the *FATF Recommendations* and does not address the different risks and issues present for each type of obliged parties. No guidance has been issued which specifically addresses AML/CFT issues of relevance for the money exchange and remittance sector. It is recommended that the MLCH, FSA and ISA work together to produce guidance for all obliged parties specifically on AML/CFT obligations and that this guidance be tailored to the characteristics and needs of each type of obliged party.

598. The authorities also provide training and informal feedback to obliged parties but systematic feedback is not provided in the form of statistics and typologies. It is recommended that the FSA and ISA issue further guidance to the entities they supervise which specifically addresses AML/CFT

⁴¹ The FSA standard 1.4 on assessment of fitness and propriety and the relating Reporting standard 1.4 took effect on 1 July 2007 (after the relevant assessment period for this evaluation). These contain clearly (see chapter 5) qualifications and types of criminal offences and other circumstances that affect the fitness and propriety assessment. Thus the FSA's practices are now defined more clearly than in earlier guidelines and regulations. The FSA makes an overall assessment whether the qualifications, offences or other violations may jeopardize the fitness and propriety of the person and/or the internal governance or the reputation of the institution.

matters and that these authorities work with the MLCH to produce updated best practices guidance which targets the needs of each of the types of obliged parties.

Recommendation 29

599. The *FSA Act* provides the FSA broad supervisory powers. While it does not explicitly note that the FSA has a mandate to supervise AML/CFT, its stated mission (s.3 *FSA Act*), is to “supervise the activities of the supervised entities as provided in this act and of other financial market participants as provided in this act and in other acts”, which would include the *AML/CFT Act*. The FSA has assumed a fairly robust AML/CFT supervisory stance as part of its role to promote financial stability and public confidence in the operation of financial markets. In practice, inspections of financial institutions may have a general or even a concentrated AML/CFT focus. Although the FSA possesses administrative sanctioning authority, this power has been rarely used, and used only once for a violation relating to AML/CFT requirements.

600. Finland should consider clarifying the scope of the FSA’s stated mandate to explicitly not that it includes AML/CFT supervision, similar to the ISA authority provided in s.5, chapter 14, *ISA Act*. Supervisors with AML/CFT authority should be appointed over the money remittance and currency exchange sectors. Until such a supervisory regime is established for the money remittance and currency exchange sector, the MLCH should be authorised to compel records from such businesses related to compliance matters, not just as part of investigations of ML/TF. It is recommended that the FSA and ISA consider a more robust use of their respective enforcement powers, and that money remittance and currency exchange sectors be subject to a greater range of sanctions than provided under the current criminal penalties.

Recommendation 32

601. Finland has generally good statistics on supervisory inspections and sanctions, but has not provided evidence of compliance with respect to statistics regarding requests received or made by the various supervisory authorities to the supervised entities. Finland should keep (or provide if they are kept) statistics regarding requests received or made by the various supervisory authorities. In addition, statistics collection with respect to training and inspections conducted could be improved.

3.10.3 Compliance with Recommendations 23, 29, 17 & 25

	RATING	SUMMARY OF FACTORS UNDERLYING RATING
R.17	PC	<ul style="list-style-type: none"> • Money remitters and foreign exchange offices are subject only to criminal sanctions for violations of AML/CFT obligations. • The scope of regulatory authorities’ ability to sanction natural persons, such as directors or senior management of institutions, is unclear. • The ISA has a relatively limited range of sanctions available to it. • Finnish regulatory authorities rarely apply their sanction powers and only once applied them for matters relating to AML/CFT obligations.
R.23	PC	<ul style="list-style-type: none"> • The number of inspections specifically focussed on AML/CFT matters is very low. • There is not relevant supervisor for the money exchange and remittance sectors. • There are no provisions to prevent criminals from holding a controlling interest in institutions operating in the money exchange or remittance sectors. • Off-site AML/CFT control is limited; it is based on periodic reports by institutions which, with the exception of the FSA’s AML/CFT surveys, do not address requirements relating to AML/CFT.
R.25	PC	<ul style="list-style-type: none"> • Limited guidance has been issued specifically on AML/CFT matters. • Only one piece of guidance has been issued on STR reporting.

	RATING	SUMMARY OF FACTORS UNDERLYING RATING
		<ul style="list-style-type: none"> • Guidance does not comprehensively address all areas of the <i>FATF Recommendations</i>. • No guidance has been issued which specifically addresses AML/CFT issues of relevance for the money exchange and remittance sector or for any DNFBPs. • Some general feedback is provided to financial institutions and DNFBPs but does not include information on current techniques, methods and trends (typologies).
R.29	PC	<ul style="list-style-type: none"> • The money remittance and currency exchange sectors are not adequately supervised for AML/CFT compliance by any supervisor, and are not subject to AML/CFT inspections. • The infrequent use of the FSA's and ISA's enforcement powers does not allow for meaningful assessment of their effectiveness.

3.11 Money or value transfer services (SR.VI)

3.11.1 Description and Analysis

602. Businesses (other than financial institutions) which provide money or value transfer services are bound by an obligation to notify the State Provincial Office of Southern Finland of the payments transfer activity they practice. The *AML/CFT Act*, s.13a states that: "A party practising payments transfer referred to in s.3(1)(13) above and a financial institution practising payments transfer shall make a notification of the activity to the State Provincial Office of Southern Finland, which act as the central administrative authority, prior to starting the business. The notification shall include information about the practitioner and the activity referred to in the notification."

603. In accordance with s.12, chapter 4 of the *AML/CFT Decree*, the notification on payments transfer activity, referred to in s.13a of the *AML/CFT Act*, must include at least the following information:

- For persons carrying on a trade, their complete name and personal identity code, or if they do not have a personal identity code, their date of birth, and their business name, auxiliary business name, if any, registration number and the address of each office conducting payments transfers.
- In the case of a Finnish legal person, the company name and auxiliary business name if there is one, business identity code, full names, dates of birth and nationalities of the members of the legal person's board of directors or corresponding decision-making body and the visiting addresses of all operating premises practising payments transfer activity.
- In the case of a branch registered in Finland by a foreign legal person, the company name, business identity code, name of the representative of the branch and visiting addresses of all operating premises practising payments transfer activity.
- A description of the nature and scope of the activity.

604. The State Provincial Office of Southern Finland must also be notified without delay of any changes in the information and must be notified when the payments transfer activities cease. The State Provincial Office of Southern Finland keeps a list of those businesses conducting payments transfers, as referred to in s.3(1)(13) of the *AML/CFT Act*, which have notified the office of their payments transfer activities.

605. The *AML/CFT Act* and the *AML/CFT Decree* apply to the remittance service operators. The State Provincial Office of Southern Finland is currently the relevant registration authority. The new *AML/CFT Act* under preparation is expected to introduce a fit a proper assessment for owners and

directors of these businesses and to improve the monitoring of compliance of these businesses with AML/CFT obligations.

606. Section 16b of the *AML/CFT Act* provides sanctions for any remittance services which violate their obligation to make a notification of payments transfer activity: “A person who, deliberately or through negligence, fails to make a notification of payments transfer activity referred to in s.13a shall be sentenced for violation of obligation to make a notification of payments transfer activity to a fine, unless a more severe penalty for the act is provided elsewhere in the law.”

3.11.2 Recommendations and Comments

607. Finland should address the concerns raised previously in Recommendations 13, 14, 15, 21, 22, and 23 with respect to the remittance sector as well as other obliged parties. Finland is encouraged to establish an AML/CFT supervisor for the sector, with sufficient powers and sanctions available to it to ensure compliance by these businesses with the full range of AML/CFT obligations. It is recommended that this supervisor work with the MLCH to ensure an effective STR reporting system is put in place for the sector and is implemented throughout the sector.

3.11.3 Compliance with Special Recommendation VI

	RATING	SUMMARY OF FACTORS UNDERLYING RATING
SR.VI	PC	<ul style="list-style-type: none"> • Remittance services are obliged parties under the <i>AML/CFT Act</i> and are thus subject to the same limitations in the scope of those obligations as the other obliged parties. • Remittance services are not required to develop internal controls (R.15). • There is a registration system but no monitoring or supervision of this sector and therefore no inspections are conducted (R.23) of these businesses. • Remittances services are subject only to criminal sanctions (R.17). • Effectiveness of the STR reporting obligation cannot be fully ascertained as there is no breakdown of STRs submitted by each money remittance business in Finland (R.16).

4. PREVENTIVE MEASURES – DESIGNATED NON-FINANCIAL BUSINESSES AND PROFESSIONS

4.1 Customer due diligence and record-keeping (R.12) (applying R.5, 6, and 8 to 11)

4.1.1 Description and Analysis

Recommendation 12

608. In addition to financial institutions, the following entities are subject to the *AML/CFT Act* (s.3[1]):

- Institutions engaged in pools, betting, totalisator betting or casino activity.
- Real estate businesses, including apartment rental agencies.
- Businesses or professions selling or dealing precious stones or metals, works of art or vehicles.
- External auditors and accountants other than: accountants / auditors working for and within a company; and, parties which only occasionally provide accounting / auditing services.

609. The act also applies to businesses or professions providing assistance in legal matters (s.3[2]) when they participate on behalf of their client with respect to: real estate transactions; management of assets, securities or other funds; opening or management of bank, savings or book-entry accounts; asset arrangements required to establish, manage or administer companies; establishment or management of or responsibility for the activity of foundations, companies or similar institutions; any other business transactions. Provision of legal advice is not subject to the obligation to report. Parties which only occasionally provide assistance in legal matters are not subject to the reporting obligation.

610. The *AML/CFT Act* provides obligations on these parties to identify customers, keep records, conduct ongoing due diligence, conduct enhanced due diligence where required, report suspicious transactions to the MLCH and suspend transactions where appropriate. The identification obligation requires these entities to identify all regular customers and to conduct identification whenever:

- There is reason to suspect that the funds are of illegal origin.
- There is reason to suspect that the funds are used for TF.
- The sum of a transaction amounts to EUR 15 000 or more when the transaction is carried out in a single operation.
- The sum of a transaction amounts to EUR 15 000 or more when the transaction is carried out in several operations which are linked to each other.

Casinos

611. For those businesses involved in providing gambling, totalisator betting or casino activity – essentially the Finnish National Lottery Company (Veikkaus Oy), Fintoto Oy, their agents, Finland's Slot Machine Association (RAY), and the PAF in the Åland islands – the *AML/CFT Act* provides certain variations to the general identification obligation. According to s.6(4), these obliged parties must identify their customers as follows:

- **Casino activities** - the identity of a customer must always be established when the customer enters the casino.
- **Betting activities and horse race lottery and pools** - the Finnish National Lottery Company and its agents must establish their customers' identity when the stake placed by the player amounts to EUR 3 000 or more, regardless of whether the transaction is carried out in a single operation or in several operations which are linked.

- **Totalisator betting** - Fintoto Oy and its agents must establish the identity of a customer when the stake placed by the player amounts to EUR 3 000 or more, regardless of whether the transaction is carried out in a single operation or in several operations which are linked.

612. For Finland's only mainland Casino – the Grand Casino Helsinki – identification must occur whenever a customer enters the casino. This casino appears to comply with all identification requirements in the *AML/CFT Act* and, in addition, it takes photographs of customers and emphasises on its website that there are identification requirements for all customers. No further records are kept and linked to the customer files however, except where particularly large amounts of money are gambled or won or where there is exceptional behaviour or some disturbance. Staff of the Grand Casino Helsinki are trained to detect fraudulent identification. The casino rarely pays moneys to customers in cheque, when it can be proven clearly that the money was definitely won from the casino. No other non-cash forms are used. No licences for operating casino games on the internet have been granted in mainland Finland. Thus, RAY does not provide internet gaming. The *Lotteries Act*, in s.51, requires casino operators to keep records for three years and the *AML/CFT Act*, in s.8, requires customer identification data to be kept in a secure manner for at least five years after the business transaction or relation is ended. As a result, some records (such as the customer and supervision register which includes details of the name, date of birth and photograph of the customer) are kept for three years, and other records (the record of the identification data presented) are kept for five. Since the Casino is not inspected specifically for AML/CFT compliance, the actual level of compliance with record keeping requirements is not known. As a practical matter, it can be difficult to implement a system where different types of records are kept for different periods of time so some doubts must exist about the effectiveness in the Casinos of the record keeping obligation established by the *AML/CFT Act*.

613. PAF, Åland's Slot Machine Association, operates Finland's only other land-based casino – Casino PAF - which is situated on the Åland Islands. PAF also operates casinos on ships and on the internet. There is some concern that application of AML/CFT obligations to and by PAF is unclear and inconsistent. There remains some debate in Finland as to whether the *AML/CFT Act* applies to PAF as s.3(1)(10) of the *AML/CFT Act* notes that one of the categories of obliged parties is “gaming operators referred to in section 12(1) of the Lotteries Act (1047/2001)”. All mainland gaming operators, including Grand Casino Helsinki are thus obliged parties. However, the gaming operators in the Åland Islands operate in accordance with different lotteries legislation – the *Åland Islands Lottery Act* (1966/10) - and thus may not be covered as obliged parties under the *AML/CFT Act*. PAF has informed authorities in the Åland Islands that despite this, it chooses to apply those obligations of the *AML/CFT Act* which apply to gaming operators. There is some evidence that this application of AML/CFT obligations by PAF is inconsistent. PAF has to date only submitted one STR to the MLCH; preferring instead to report any suspicious activity to the Åland Islands Police. The outcomes of those reports made directly to the police is unknown. It is not known to what extent PAF implements customer identification and other AML/CFT obligations. The government of the Åland Islands acts as a supervisor for this business and is in regular contact with them. No inspections have been conducted of PAF's gaming establishments as the Åland Islands government is satisfied that the annual audit process is sufficient.

614. While no licences for operating internet casino gaming have been granted in mainland Finland and PAF may only provide services in the Åland Islands, it is clearly offering internet casino services to persons across and outside of Finland. A Supreme Court judgement of 24 February 2005 is interpreted by the Finnish government as finding that PAF was illegally offering internet gambling services in mainland Finland and convicting the managing director and members of the board of PAF of lottery offences under the Finnish *Lotteries Act* (491/1965), (which was repealed 1.1.2002 and replaced with a new *Lotteries Act*). That same judgement notes lack of clarity with respect to supervision of PAF by the Åland Islands government. PAF continues to operate internet gambling services for residents of mainland Finland as it and the Åland Islands government have interpreted this Supreme Court decision as in fact finding the PAF guilty only of directly advertising its internet games in mainland Finland. PAF has discontinued its advertising campaign in mainland Finland.

The Finnish government is currently considering whether to commence legal action against PAF for what it considers activity contrary to the 2005 Supreme Court decision.

615. For other businesses providing gambling and betting activities, the customer identification obligation arises when the stake amounts to EUR 3 000 or more. These businesses are also obliged to identify customers when they have linked transactions which together meet the EUR 3 000 threshold, though for many such businesses it is not possible for the businesses to detect such linked transactions as the customer has not been identified when conducting each of the transactions below the EUR 3 000 threshold. All customers playing Veikkaus' or Fintoto's games on the internet are identified via the Population Register and all their transactions are recorded. Veikkaus Oy reports threshold STRs to the MLCH once a week and some of these threshold STRs have occurred as a result of Veikkaus Oy adding all games played within a week by each customer and reporting those where the customer's weekly total has amounted to EUR 3 000 or more. The CDD requirements with respect to internet gaming activities are vague as conduct of this business is allowed through the same license which grants the permission to operate physical gaming, without further provisions specifying the nature or form of CDD to be conducted for the internet-based activities.

616. Customers of gaming businesses in Finland may be paid in cash. This includes winnings at racetracks and from the lottery. The only exception to this practice relates to Fintoto which recommends to its agents that for amounts over EUR 200, they should pay customers' winnings to their bank accounts instead.

617. Approximately 18% of the STRs received by the MLCH in 2006 were threshold STRs from businesses providing gaming services (other than the Grand Casino Helsinki). Most such businesses have set the threshold for this form of STR at EUR 3 000 as this is the amount set in s.6(4) of the *AML/CFT Act* above which customer identification must be conducted. Gaming businesses consider transactions above this amount to be suspicious in their nature. The quality of the reports provided to the MLCH is low, as these communications do not contain analysis of the information obtained, the activity being conducted, the persons involved in the transaction or what may have been suspicious. Nor has any particular suspicion been formed with respect to the transaction.

Real estate agents

618. Where a real estate agent believes that it is likely the seller/purchaser is acting on behalf of another person they are obliged under s.7 of the *AML/CFT Act* to identify the person on whose behalf the customer is acting. There is no requirement for them to know the ultimate beneficial owners involved in real estate transactions and this may be a risk, particularly for purchases involving foreign natural or legal persons or representatives of such parties, which is not uncommon in Finland. No information was obtained to suggest that the State Provincial Offices, which have regulatory oversight responsibility for real estate businesses, inspect these businesses or provide any targeted AML/CFT advice or supervision for the sector. There appears to be a general perception of these businesses that since most property transactions involve payments through bank accounts, it is the banks which are most appropriately placed to conduct customer due diligence. In addition, it is possible to pay for property in cash and purchases of real estate in Finland which involve foreign entities do occur in cash. There are no special rules about this issue, only recommendations issued by the Real Estate Association to its members about the convenience of not accept cash for real estate transactions. The existence of risks in this sector is clear. In 2006, 25 STRs were submitted to the MLCH which related to real estate transactions though none of these were submitted by the sector itself.

Dealers in precious metals and dealers in precious stones

619. While the *AML/CFT Act* imposes the same obligations on dealers in precious metal and stones as imposed on other obliged parties, there is no indication that this has been implemented in practice.

Lawyers, notaries, other independent legal professionals and accountants

620. With respect to legal professionals it appears that implementation of the AML/CFT obligations varies through the sector, depending primarily on the size of the firm involved. The Finnish Bar Association and the Association of Finnish Lawyers provide support to their members in relation to AML/CFT matters, though there is no supervision of the legal profession to determine whether they are in fact complying with AML/CFT obligations. In addition, not all legal professionals are members of the Bar Association or the Association of Finnish Lawyers and there are many who provide legal advice and other services for their clients who are not supervised or members of any professional association. There is no indication that those professionals in that final category of legal 'agents' is aware of or complying with their AML/CFT obligations.

621. The AML/CFT obligations are exactly the same for accountants as for other obliged parties. Accountants in Finland seem to have good knowledge of their clients and can reject prospective clients which may be involved in illegal activities or which are unable/unwilling to fully identify themselves. However, in practice the real concerns of these professionals are related to fraud conducted by their clients rather than money laundering activities and as such it does not appear that the profession is proactive in examining clients in order to detect money laundering schemes. In addition, where prospective clients are rejected by the accountants, this is not reported to the MLCH.

Trust and company service providers

622. Although under Finnish legislation is not possible to set up a trust, there are company service providers and these businesses are not regulated in Finnish law. Finland has begun drafting of a new *AML/CFT Act* which is expected to extend the AML/CFT obligations to trust and company service providers.

Dealers in works of art and dealers of vehicles

623. In addition to the categories of DNFBPs required in the *FATF Recommendations*, Finland imposes AML/CFT obligations on dealers in works of art and dealers of vehicles. Indications are that these identification requirements are effectively complied with in the motor vehicle sector, largely due to vehicle registration requirements.

4.1.2 Recommendations and Comments

624. The *AML/CFT Act* and the *AML/CFT Decree* establish a uniform set of obligations for all parties they apply to, other than the specified variations of customer identification for the gambling industry. As such, the same deficiencies in application of Recommendations 5 to 8 by financial institutions exist in the obligations applying to designated non-financial businesses and professions (DNFBPs). In particular, there are no provisions in Finland relating to verification, identification of beneficial ownership, identification of legal arrangements and conduct of ongoing due diligence on business relationships. There are limited enhanced due diligence obligations and no requirements to conduct enhanced due diligence with respect to PEPs. There are no CDD requirements with respect to correspondent banking relationships, no requirements for obliged parties to have measures in place for prevention of the misuse of technological developments in ML or TF and limited provisions with respect to the risks associated with non face-to-face business relationships and transactions. The same recommendations made previously for action by Finland with respect to Recommendations 5 to 8 are also applicable for the DNFBP sector.

625. Finland is encouraged to apply the new *AML/CFT Act* to trust and company service providers. While all other categories of DNFBP are covered in Finnish legislation, the number of STRs submitted by these businesses and professions is very low, suggesting that little attention is being paid by these businesses to unusual and suspicious financial activities, incomplete CDD and other AML/CFT obligations. In general, there are the same very small deficiencies in record keeping

requirements for DNFBPs as expressed previously with respect to financial institutions. In addition, there is limited supervision of DNFBPs and no inspections for compliance with AML/CFT obligations, so the level of implementation of the record keeping requirements is in question. Further, no AML/CFT guidance has been issued to these businesses and professions other than the general best practices paper published by the MLCH on its website. As with financial institutions, there is no requirement that records of unusual transactions or findings of examinations of unusual transactions be kept by the DNFBPs. The same recommendations for action by Finland expressed previously with respect to Recommendations 10 and 11 are applicable for the DNFBP sector.

626. It is recommended that a targeted programme be put in place to increase implementation of the FATF standards by DNFBPs and that active AML/CFT supervision of these business and professions be conducted. It is further recommended that a review be conducted of the obligations in the gaming sector, including a review of requirements for non face-to-face activities. Finland should ensure that AML/CFT obligations are applied completely and consistently, including in the Åland Islands.

4.1.3 Compliance with Recommendation 12

	RATING	SUMMARY OF FACTORS UNDERLYING RATING
R.12	NC	<ul style="list-style-type: none"> • Trust and company service providers are not obliged parties. • Finland's shortcomings in implementation of Recommendations 5 - 8 and 10 - 11 also apply to DNFBPs. • There is no indication that dealers in precious metals and precious stones are complying with their AML/CFT obligations. • There is a lack of clarity with respect to the AML/CFT obligations for gaming businesses in the Åland Islands.

4.2 Suspicious transaction reporting (R.16) (applying R.13 to 15 & 21)

4.2.1 Description and Analysis

627. Pursuant to s.10 of the *AML/CFT Act*, all obliged parties must submit STRs, directly, to the MLCH without delay. There is no minimum threshold for making STRs and no provision for submission of STRs via a self-regulatory organisation (SRO). Since 1 June 2003 this provision has applied to most categories of DNFBP: casinos and other gambling businesses; dealers in precious metals or stones; lawyers, other legal professionals and accountants. These amendments to the *AML/CFT Act* have not increased the number of reports as expected, and only 10 – 11 reports from these entities have been received annually.

628. As Finland has adopted an all-crimes approach for defining predicate offences and seeks STR reporting relating to any property which may be of illegal origin, the obligation to report applies regardless of whether the suspicious transaction is thought to involve tax matters. The *AML/CFT Act* specifically states that STRs should be submitted if it is suspected that the money or assets are used to commit the offence of terrorist financing or an attempt is being made to use them to finance terrorism. Due to the limited definition of terrorist financing in the *Penal Code* as involving financing of terrorist acts, the STR reporting obligation does not apply where there is a suspicion that the funds or assets are related to or used for terrorism other than where there is a link to terrorist acts. It also does not apply where there is a suspicion that the funds or assets are linked to or related to terrorist organisations or those who finance terrorism.

629. In addition, s.11a of the *AML/CFT Act* specifies that attempted transactions must be reported when enhanced customer identification cannot be successfully conducted. The broader requirement

for obliged parties to submit STRs in relation to attempted transactions is in s.8, chapter 2 of the *AML/CFT Decree* and elaborated in the FSA Standard 2.4 (see relevant discussion under R.13). It should be noted however, that the percentage of DNFBPs' STRs which relate to attempted transactions is significantly less than the percentage of STRs from the banking sector which relate to attempted transactions, suggesting insufficient supervision of the DNFBPs' STR reporting obligation.

630. Penalties for violation of the reporting obligation are laid down in s.16a of the *AML/CFT Act*: “A person who, deliberately or through negligence, fails to make a report referred to in sections 10 or 11a, against the prohibition laid down in s.10, discloses such reporting, or fails to fulfil the obligation to exercise due diligence referred to in s.9 and, therefore, does not notice the existence of the obligation to report referred to in s.10 shall be sentenced for *violation of obligation to report money laundering* to a fine.”

631. As described elsewhere in this report, the *AML/CFT Act* does not require institutions to have internal controls, designate a compliance officer, maintain an independent audit function, or to screen and train their employees. With the absence of supervisory agencies in most of the DNFBP sectors to prescribe binding best practices, DNFBPs are generally not subject to the same level of due diligence as FSA and ISA-supervised entities. It should be noted that at least some institutions in some DNFBP sectors voluntarily implement some of the MLCH Best Practices, which address several of these elements. Inadequate supervisory structure could also prevent prompt notification to DNFBPs regarding jurisdictions that insufficiently apply the *FATF Recommendations* and the implementation of any countermeasures to address such concerns.

Casinos

632. The Grand Casino Helsinki, the only mainland casino operator, discloses STRs based on suspicious gaming behaviour. Veikkaus Oy and its gaming businesses however report STRs and also report ‘threshold STRs’ (every transaction over an objective threshold of EUR 3 000, which they deem to be suspicious due solely to the amount involved) to the MLCH. This threshold STR system for the gaming businesses, other than the Grand Casino Helsinki, is the reason for the high level of STRs submitted by this sector – 1 822 reports in 2006.

633. Although the Grand Casino Helsinki appears to have a reasonably robust compliance function, longstanding disagreements between the Finnish government and the government of the Åland Islands regarding PAF's activities (particularly internet gaming activity) and lack of clarity with respect to the *AML/CFT* obligations which apply in the Åland Islands make it difficult to evaluate compliance across the entire Finnish casino sector.

Real estate agents

634. Real estate businesses and apartment rental agencies are subject to the reporting obligations in the *AML/CFT Act*, yet historically have filed low numbers of reports. Given the significant foreign investment in Finnish real estate and anecdotal concerns expressed to the assessment team by government and industry representatives regarding cash purchases of real estate by foreign customers, the number of reports may be unjustifiably low. Moreover, the real estate industry and its supervisor (the State Provincial Offices, which do not have a specific *AML/CFT* supervisory role) both suggest that banks are better suited to identify suspicious transactions in real estate deals. This suggestion ignores the likelihood that real estate agent will usually have far greater interaction with the customer than the bank that processes the transaction. From 2004-2006, nine STRs were filed by members of the real estate industry, although 53 STRs were filed by all financial institutions with respect to purchases of real estate. Rather than confirming the notion that other institutions are better suited to identify these transactions, this data suggests that the industry may not be adequately monitoring, detecting, or reporting the suspicious activity it should.

Dealers in precious metals and stones

635. Dealers (which include dealers in precious stones or metals, works of art, or vehicles) are subject to the reporting obligations of the *AML/CFT Act*, yet historically have filed low numbers of reports. There is insufficient data to determine the utility of the seven reports filed by this industry since 2004. While dealers in motor vehicles have submitted seven STRs since 2003, dealers in precious metals and stones have not yet submitted any STRs. It appears that dealers in precious metals and stones have little or no understanding of their AML/CFT obligations.

Lawyers, notaries, other independent legal professionals and accountants

636. Where accountants, auditors, and lawyers have SROs with AML/CFT functions, membership in those organisations is voluntary. Accordingly, there is a completely unregulated portion of each sector. Moreover, the number of reports received from each industry may indicate that even entities subject to SRO or other professional association oversight do not comply, and maybe do not understand, how to detect or report suspicious activity.

Trust and company service providers

637. Trust and company service providers are not subject to any form of AML/CFT obligations and are effectively unregulated in Finland. Finland has begun to amend and reform the *AML/CFT Act* and it is expected that these businesses will be subject to AML/CFT obligations in the new legislation.

Additional elements

638. The *AML/CFT Act* is applied in the same scope as in the financial sector also to:
- Businesses or professions carrying out duties referred to in s.1(1) of the *Auditing Act*.
 - Businesses or professions practising external accounting.

4.2.2 Recommendations and Comments

639. It is recommended that Finland ensure its new AML/CFT legislation is widened in scope to capture trust and company service providers as obliged parties. Finland's limited definition of the financing of terrorism (see Special Recommendation II previously) should be expanded to include the reporting of transactions not directly linked to a terrorist act. Finland should provide a more clear requirement that any attempted transactions that otherwise meet the suspicious transaction reporting criteria should be reported. It is strongly recommended that in the new AML/CFT legislation Finland implement supervision and inspection of DNFBPs' compliance with the obligation to report STRs to address the widespread lack of filing by many sectors and institutions. This supervision could draw on the expertise of existing supervisors in terms of provision of standards for all DNFBPs similar to those for FSA-supervised entities requiring internal controls, fully empowered compliance officers, independent audit, comprehensive employee training, and employee screening procedures to manage AML/CFT risks. It is recommended that Finland ensure that all DNFBPs are notified by an appropriate government authority of high-risk jurisdictions or other areas of concern. Finland should address the jurisdictional disagreements between the Finnish government and the government of the Åland Islands with respect to gaming and should ensure that AML/CFT obligations and robust controls and supervision are applied consistently across the entire gaming sector.

4.2.3 Compliance with Recommendation 16

	RATING	SUMMARY OF FACTORS UNDERLYING RATING
R.16	PC	<ul style="list-style-type: none"> Trust and company service providers are not obliged parties. Finland's shortcomings in implementation of Recommendation 13 also apply to DNFBPs. There is no requirement to report transactions suspected of being related to terrorism other than those related to terrorist acts and no requirement to report transactions suspected of being related to terrorist organisations or to those who finance terrorism. DNFBPs are not required to have internal controls, compliance officers, independent audits for AML/CFT, ongoing training or employee screening. There is lack of clarity with respect to the AML/CFT obligations for gaming businesses in the Åland Islands and only one STR has been submitted from that sector to date. Few STRs have been submitted by the other DNFBPs, which calls into question the effectiveness of Recommendation 13 in this sector.

4.3 Regulation, supervision and monitoring (R.24-25)

4.3.1 Description and Analysis

Recommendation 24

640. In Finland gaming operators, auditors, advocates and real estate agents have designated supervisors to monitor compliance with various regulatory requirements. Although most consider the fulfilment of AML/CFT obligations part of the risk management of the institution, none provides a robust, comprehensive level of AML/CFT supervision similar to the FSA. Other DNFBPs are not supervised for compliance with AML/CFT requirements. However, Finland is currently in the process of amending the AML/CFT legislation and regulations and it is expected that this legislation will address supervision and monitoring of these other businesses and professions.

Casinos

641. There is one casino in mainland Finland – the Grand Casino Helsinki – which is run by Finland's slot machine association *Raha-automaattiyhdistys* (RAY). The Council of State granted RAY the gaming licence for 2007 through 2011 for keeping slot machines available for use, operating casino games and running casino activities. Chapters 2 and 3 of the *Lotteries Act* elaborate the provision on licensing of lotteries, which includes casinos. Section 6 provides that lotteries may only be run with a licence granted by a licensing authority. There are specific conditions required in every gaming licence (s.13). Licences granted for keeping slot machines, operating casino games and running casino activities must explicitly note the maximum number of slot machines and casino games and the number and location of casinos, and the types of casino games in the casinos and the hours of business of casinos. According to the s. 3 of the *Government Decree on Lotteries*, information to be shown on lottery tickets must include the price of each ticket and information on how to claim prizes. Licenses may also include conditions concerning the tickets, the ticket price, the sale of tickets, the draw, claiming of prizes, conditions on the purpose of use of the proceeds and on supervising the running of a lottery. A licence may be revoked if the licence holder is found to have seriously violated a law of legal significance for the running of lotteries or the licence conditions or if the licence holder no longer meets the conditions for obtaining a licence (s.8).

642. Chapter 8 of the *Lotteries Act* provides that lotteries must be supervised to protect lottery participants, prevent abuse and criminal activity and reduce social problems associated with lotteries. The Ministry of Interior is responsible for supervision of lotteries and for keeping statistical records on lotteries on mainland Finland. The Åland Government is responsible for supervision of gaming

activities run by PAF (the province's Slot Machine Association; *Åland Penningatutomatförening*) on Åland Island, onboard ships and on the internet. It remains unclear whether PAF is actually obliged to comply with the Finnish *AML/CFT Act*, though it has decided to do so. The Ministry of Interior appoints official gaming supervisors to ensure compliance of gaming activities with the *Lotteries Act* and the act provides appointed supervisors the power to obtain from any party operating a lottery all information and documents necessary to perform their supervision duty (s.44). In addition, State Provincial Offices and Police departments of State Local Districts supervise the lotteries run in their own particular areas. The Police, official supervisors and a business contracted by the Ministry of Interior to conduct technical inspections of devices and equipment are entitled to check that an approved payment-monitoring device is used in slot machines and non-money prize machines, and in game machines and game equipment and are empowered to prohibit the keeping of any equipment in violation of legal provisions (s.45). Gaming operators reimburse the State for the costs incurred in supervision of gaming activities (s.46).

643. The provisions on the organisational structure and administration of gaming operator practising the activities of keeping slot machines available for use, operating casino games and running casino activities are laid down by decrees. The *Decree on the Slot Machine Association* (RAY) (1169/2001) entered into force on 1 January 2002. Decision-making within RAY is vested in the Board of Administration and the member organisations, which operate in the areas of health and social welfare. According to the s.4 of the *Decree on the Slot Machine Association*, membership of RAY is open to significant societies and foundations that work on a non-profit basis to promote health and social welfare. At the end of year 2005 RAY had 98 member organisations. The fourteen members of Board of Administration are appointed by the General Meeting and the Council of State. Among the seven members appointed by the Council of State shall be one representative from each of three ministries: Social Affairs and Health; Ministry of Interior; and, Ministry of Finance. The *Decree on the Slot Machine Association* also governs RAY's revenue accounting procedures. Preparation of the funding distribution and control over usage of the funds are based on the *Act on Slot Machine Funding Assistance* (1056/2001). The act regulates the basis on which funding assistance is granted, the procedure for granting assistance, the payment process, the use of funds and control over their usage, inspection procedures and the repayment or reclamation of funds. The Ministry of Social Affairs and Health controls and supervises RAY's funding activities, including the procedures for preparing the distribution proposal and assistance plan, and control of its use.

644. Veikkaus Oy is a state-owned limited company which belongs under the management of the Ministry of Education. Veikkaus Oy's superior administrative organ is the General Meeting, which appoints the Board of Directors and the Supervisory Board. The general meeting is attended by the Minister of Culture as the representative of the Finnish state, and officials of the Ministry of Education. According to s.17 of the *Lotteries Act* the proceeds from money lotteries, pools and betting are used to promote sports and physical education, science, the arts and youth work. The Ministry of Education allocates Veikkaus Oy's funds to Finnish culture in accordance with the *Act on the Distribution of the Funds from Lottery, Pools and Betting Games* (1054/2001).

645. The licence for operating totalisator betting has been granted to Fintoto Oy. Fintoto Oy is owned by the Finnish Trotting and Breeding Association, which consists of about 130 member associations. There are seven members in the Board of Directors of Fintoto Oy and two of them are representatives of the Finnish state. The proceeds from totalisator betting are according to the *Lotteries Act* used to promote horse breeding and equestrian sports. A gaming licence shall lay down the distribution of the total accumulated stakes from totalisator betting between the State and the licensed gaming operator. The Ministry of Agriculture and Forestry decides on the distribution of grants to be distributed from the proceeds of totalisator betting.

646. The *AML/CFT Act* and *AML/CFT Decree* provide the only AML/CFT obligations for the gaming sector (and all other DNFBP sectors). As indicated elsewhere in this report, this act does not comprehensively implement many of the *FATF Recommendations*. In the absence of robust AML-specific supervision and administrative sanctioning authority, compliance with the *AML/CFT Act* can

only be enforced through criminal sanctions in the nature of fines or convictions for other offences. As it is unclear whether AML/CFT obligations in fact apply to gaming businesses in the Åland Islands, it is unlikely that sanctions for inadequate AML/CFT practices could be imposed on gaming businesses there.

Real estate agents

647. The State Provincial Offices monitor compliance with the *Act on Real Estate Businesses and Apartment Rental Agencies* (1075/2000), and the act on assignments for such businesses (1074/2000). Real estate and apartment rental businesses must be entered in the relevant register of the State Provincial Office before commencing operation. The State Provincial Office may be consulted for the names of persons responsible in such businesses, and to find out if the Office has imposed any sanctions on them. A request for action may be made to the State Provincial Office concerning any irregularities in the activities of real estate and apartment rental businesses and administrative sanctions may be imposed if necessary. The State Provincial Office of Southern Finland also supervises the legality of the activities of such businesses by carrying out relevant checks. Further, in accordance with s.18, the State Provincial Office may use coercive measures and prohibit the activities of an agency that has not been registered, give a warning or impose a default fine for the non-compliance with the above-mentioned legislation.

648. Section 17 of the *Act on Real Estate Businesses and Apartment Rental Agencies* provides that the State Provincial Office must supervise that the enterprise complies with the law. Real estate businesses must provide books, documentation and information needed for the supervision to the State Provincial Office at their request notwithstanding any confidentiality provisions. The State Provincial Office has the right to obtain information from the penalty register referred to in s.46 of the *Act on the Enforcement of Fines* (672/2002), necessary for the establishing the trustworthiness of the responsible person.

Dealers in precious metals and dealers in precious stones

649. Any precious metals put up for sale in Finland must meet the requirements prescribed in the relevant Finnish statutes: *Articles of Precious Metals Act* (1029/2000); and the *Government Decree on Articles of Precious Metals* (1148/2000). The national statutes apply both to articles manufactured in Finland and to imported products. There are no specific regulations on precious stones in Finland. The dealers in precious metals or stones are not monitored supervised with respect to their obligations under the *AML/CFT Act*.

Lawyers, notaries, other independent legal professionals and accountants

650. The Finnish Bar Association supervises the professional activities of advocates, other lawyers working in attorney-in-law offices and public legal advisers. Other lawyers and independent legal professionals are not supervised. According to s.6 of the *Act on Advocates*, the Board of the Finnish Bar Association supervises that advocates fulfil their obligations, including obligations under the *AML/CFT Act*. This supervision may result in disciplinary action being taken. Such action commonly commences after receipt of a written complaint about a member of the Association. An advocate is obliged to supply the Board with the information required for this supervision. Moreover, advocates are required to permit a person designated by the Board to carry out an audit where the Board deems this necessary for the exercise of the supervision, and in this context advocates must present the documents required for carrying out the audit. A member of the Board and the auditor shall not without authorisation disclose information learned in the context of the supervision.

651. In addition, the Chancellor of Justice has the right to initiate a supervision matter referred to in s.7c of the *Act on Advocates* if he deems that the advocate is in violation of his or her duties. The Chancellor of Justice has likewise the right to demand that the Board of the Bar Association undertake measures against an advocate, if he deems that the latter has no right to serve as an advocate. The

Chancellor of Justice is informed of the decisions taken by the Bar Association, and he can file appeals regarding these decisions with the Appellate Court of Helsinki.

652. There are no regulations concerning the profession of accountants or their supervision. However, if the obligations set in the legislation concerning the accountants are breached, the offender may be prosecuted and sanctioned for an accounting infraction (*Accounting Act*, chapter 8, s.4) or for an accounting offence, an aggravated accounting offence, or a negligent accounting offence (*Penal Code*, chapter 30, sections 9, 9a and 10). The Finnish Accounting Standards Board operating under the auspices of the Ministry of Trade and Industry is responsible for the application of the *Accounting Act*. The Board may also, for a special reason, grant exemptions from certain statutory provisions of the *Accounting Act* for a fixed period of time. The Association of Finnish Accounting Firms acts as an umbrella organisation for Finnish accounting firms. Its main functions are: information; education; looking after members' interests; and, promoting ethical guidelines for its members. However, a significant number of the accountants in Finland are not professionally organised as membership of the association is voluntary.

653. The Auditing Board of the Central Chamber of Commerce examines annually the reports and documents given to it by the authorised auditors and authorised audit firms in order to check that auditors and audit firms still maintain their proficiency and other qualifications required for authorisation. The Auditing Board of the Central Chamber of Commerce and takes appropriate measures to ensure that the auditors and audit firms authorised by it maintain their proficiency and other qualifications required for the authorisation and that they observe the *Auditing Act* and any rules given by virtue thereof. Where the Auditing Board of the Central Chamber of Commerce or the Auditing Committee of a regional Chamber of Commerce consider that the special conditions laid down in the *Auditing Act* are met, it has to give a warning or a remark to the authorised auditor or the authorised audit firm. Where the Auditing Board of the Central Chamber of Commerce or the Auditing Committee of a regional Chamber of Commerce considers that the special conditions of cancellation of authorisation laid down in the *Auditing Act* are met, it has to make an application to the Auditing Board of the State for the cancellation of the authorisation of an authorised auditor or an authorised audit firm. The Auditing Board of the State, the Auditing Board of the Central Chamber of Commerce or the Auditing Committee of a regional Chamber of Commerce have the right to obtain all documents and other records considered necessary for the supervision of the authorised auditor. They may also examine documents and other records on the premises of the supervisory authorities or of the authorised auditor. In addition, the authorised auditor must, without unnecessary delay, submit to the supervisory authorities any requested information or reports necessary for supervision.

Recommendation 25

654. Twice a year the MLCH publishes a report on the state of ML in Finland. These reports contain information on the ML clearing process, reports concerning ML and TF transfers across the Finnish borders, reports forwarded to pre-trial investigations and other topics. The reports contain some statistics on such matters and some examples of recent court decisions in ML cases. The MLCH also provides more extensive information about confiscations and penal judgments on ML in its publication *Money Laundering Offences in Legal Praxis*, which was most recently updated in 2006. This publication contains information on current techniques, methods and trends, case law and criminal legislation concerning ML. All of these reports provide information which may assist obliged parties in understanding ML and TF activity and thus may assist parties in observing their AML/CFT obligations.

655. The MLCH's primary guidance for obliged parties is its *Money Laundering Clearing House Best Practices*, published in 2004. This publication, which was developed as practical guidance to support the 2003 *AML/CFT Act* and its decree, provides information pertaining to ML and TF and the work of the MLCH. It also provides information pertaining to obliged parties' reporting obligation, identification obligation, CDD, enhanced CDD and sanctions for non-compliance with AML/CFT

obligations. In addition, the MLCH has for some years participated in numerous training sessions for obliged parties and has developed co-operative relationships with them.

4.3.2 Recommendations and Comments

Recommendation 24

656. The relevant supervisory authorities should consider issuing more exhaustive binding rules for casinos to supplement the minimum requirements of the *AML/CFT Act*. Finland should clarify to the gaming sector the difference between threshold-based reporting and true suspicious transaction reporting as defined by the FATF, as well as clarify that existing sanctions can be imposed against the directors or senior management of a casino. In addition, Finland should empower the appropriate supervisory authorities with other powers of enforcement in addition to the criminal sanctions for failure to comply with the *AML/CFT Act*. Finland must address the jurisdictional concerns that could obstruct the consistent enforcement of AML/CFT measures for the casino sector in the Åland Islands.

657. It is recommended that Finland evaluate the vulnerabilities in their system of voluntary membership in SROs for the legal and accounting sectors, recognising the importance of ensuring compliance by all businesses within a certain sector. In addition to subjecting the trust and company service provider sector to AML requirements, Finland should establish a relevant and adequately empowered supervisor for both the trust and company service providers and the dealers in precious metals and stones.

Recommendation 25

658. None of the guidance provided to obliged parties is targeted towards the risks experience or nature of the activities of the various industries / businesses / products of the DNFBPs. Finland should consider establishing a more robust system of provision of guidance and feedback to DNFBPs with information tailored for the nature of their activities. It is recommended that in doing so, Finnish authorities address the need to provide guidance to businesses which are not members of SROs as well as those which are members.

4.3.3 Compliance with Recommendations 24 & 25 (criteria 25.1, DNFBP)

	RATING	SUMMARY OF FACTORS UNDERLYING RATING
R.24	NC	<ul style="list-style-type: none"> It is unclear what AML/CFT obligations and thus AML/CFT supervisory regime apply to Casino PAF on the Åland Islands. Casinos are subject only to the general requirements in the <i>AML/CFT Act</i> – with no additional requirements or binding standards in place to govern their conduct regarding AML issues. It is unclear whether limited (criminal) sanctions can be applied to directors and management of all DNFBPs. As SRO membership for accountants and lawyers is voluntary, parts of each sector receive no guidance and are completely unsupervised. Trust and company service providers are not regulated or supervised in any way, and while trusts are not recognised in Finnish law, company service providers are operating. There is no supervisory authority for dealers in precious metals and stones.
R.25	PC	<ul style="list-style-type: none"> Non-FSA/ISA supervisors rely completely on the MLCH to provide guidance and limited guidance documents have been issued by the MLCH to date. No guidance has been issued specifically for DNFBPs. SRO best practices are not distributed to all in the accounting/legal sectors as participation in SROs is voluntary. TCSPs are not regulated in any way and receive no guidance.

4.4 Other non-financial businesses and professions - Modern secure transaction techniques (R.20)

4.4.1 Description and Analysis

659. The Finnish *AML/CFT Act* applies to some additional parties to those classified as DNFBPs in the FATF Recommendations. Namely, to:

- Apartment rental agencies.
- Businesses or professions holding auctions.
- Businesses or professions selling or dealing in works of art.
- Businesses dealing in sales of vehicles.
- Pawnshops.
- Businesses operating gambling activities (in addition to casinos).

660. As noted previously, Finnish banks have highly automated systems and there is relatively limited use of cash with 95% of all payment transactions in Finland occurring electronically. The amount of electronic banking agreements (at the moment over 3 million agreements) and transactions continues to increase. Moreover, domestic payments are almost 100% of credit transfers, i.e. payment transfers between bank accounts.

4.4.2 Recommendations and Comments

661. Although the *AML/CFT Act* does not address all of the components of Recommendations 5, 6, 8-11, 13-15, 17, and 21, the fact that apartment rental agencies, auctioneers, dealers in works of art, businesses selling vehicles, pawnshops and all gaming activities are obliged entities demonstrates Finland's consideration of the inclusion of certain non-designated NFBPs. Finland's promotion of electronic payments, development of a secure payment system, and embedding of accounting codes in all central bank payment system transactions evidences their efforts to develop and use modern and secure techniques.

662. While Finland has applied AML/CFT obligations to additional businesses and professions and its financial sector encourages use of electronic techniques to conduct transactions, the application of the Finnish AML/CFT measures to the financial system and to DNFBPs is not based on risk assessment in the manner contemplated in the *FATF 40 Recommendations*. Implementation of a risk-based approach is one of the expected features of the new AML/CFT legislation. It is recommended that Finnish authorities conduct a comprehensive assessment to identify AML/CFT risks.

4.4.3 Compliance with Recommendation 20

	RATING	SUMMARY OF FACTORS UNDERLYING RATING
R.20	C	<ul style="list-style-type: none">• This Recommendation is fully observed.

5. LEGAL PERSONS AND ARRANGEMENTS & NON-PROFIT ORGANISATIONS

5.1 Legal persons – Access to beneficial ownership and control information (R.33)

5.1.1 Description and Analysis

663. The three forms of legal person with limited liability which exist in Finland are; limited liability companies, co-operatives and mutual insurance companies. Partnerships are also common. Systems are in place to understand the ownership and management of legal persons but the concept of beneficial ownership does not exist in the Finnish company legislation. As such, no measures have been put in place to understand, or keep and disclose information on, beneficial ownership and control of legal persons in Finland.

Limited liability companies

664. The limited liability company is the predominant of form of legal person in Finland. There are two categories of limited liability companies; ‘private’ and ‘public’, the latter being able to raise capital from the public through share issues. The founders of limited liability companies may be natural or legal persons. At least one of the founders has to be domiciled within the EEA, unless the PRH grants an exemption from this requirement. In addition, founders of a company and its board members may not be legally incompetent (e.g. minors and others declared not to be legally responsible) or be persons declared to be bankrupt or prohibited from engaging in business. All private and public limited companies and co-operatives must establish and maintain an updated register of shareholders, including name and address. Share acquisitions and other changes to shareholdings must be entered in the company’s share register and the shareholder register without delay. The register of shareholders or members is publicly available. Legal persons are not permitted to issue bearer shares.

665. The acquirer of a share has no right to exercise shareholder’s rights in the company until the purchase is entered into the share register, referred to in the *Companies Act*, or the acquirer has declared the acquisition to the company and produced reliable evidence of the same. Similarly, if shares of a company are registered in the book-entry system, an acquirer of shares is not able to exercise shareholder’s rights in the company until the purchase is entered in the shareholder register of the book-entry system. However, this provision does not apply to shareholder’s rights to withdraw funds and to participate in an issue of shares. Only limited rights are associated with shares registered in the names of nominees; the right to withdraw funds, to sell or the shares and to participate in an issue of shares. If several persons own a share jointly, they can exercise shareholder’s rights in the company only by means of a common representative. Shares owned by the issuing company in itself (“treasury shares”) do not carry any shareholder’s rights.

666. Private companies with a share capital of at least EUR 80 000 and all public companies must have a managing director appointed by the board of directors. In these companies, the same person may not be both managing director and chairman of the board unless the company has a supervisory board. The managing director, at least one the board members, at least one of the deputy members and at least one of the special signatories must be resident within the EEA, unless PRH grants an exemption from this rule. The board and the managing director are not required by law to maintain ownership information beyond that kept in the share register.

Co-operatives

667. A co-operative is a legal entity regulated by the *Co-operatives Act* which is formed by a minimum of three natural or legal persons. Every member of a co-operative pays a certain contributed capital. For a co-operative to acquire legal capacity, it must be registered with the PRH. After a co-operative has been registered, only its assets are liable for its debts. Members of the co-operative do not assume any personal liability for the co-operative's debts.

Mutual insurance companies

668. Insurance business can be carried on in two forms of legal persons, either in the form of limited liability company or in the form of mutual insurance company. The main distinction between these is that the owners of the mutual insurance companies are the policy holders while the owners of the limited liability companies are the shareholders. Mutual insurance companies' administrative structure resembles the administrative structure of a co-operative. The *Insurance Companies Act* and the AML/CFT Act apply also to the activities of the mutual insurance companies. The regulations, sanctions and supervision of money laundering are equally in force concerning both limited liability insurance companies and mutual insurance companies. Supervision of mutual insurance companies is conducted on the same basis as the supervision of the limited liability insurance companies.

Partnerships

669. Partnerships exist as trading partnerships and limited partnerships and both of these forms are regulated by the *Partnerships Act*. Trading partnerships and limited partnerships must be operated by two partners or more and these partners may be legal or natural persons. In a trading partnership, the partners are personally responsible for the company's contracts and debts. In a limited partnership, at least one of the partners assumes unlimited responsibility for the company's debts. It is not required that any of the partners be domiciled in Finland or that the partnership carries on business in Finland.

The trade register

670. All Finnish companies, co-operatives, partnerships and other private business entities have to register with the National Board of Patents and Registration (the PRH) and be entered in the trade register, the associations register, the foundations register or the register of persons subject to business prohibition and floating charges⁴². The objective of the PRH registers is to provide the public with an updated overview of information on all business entities registered in Finland, including limited liability companies, co-operatives, mutual insurance companies, partnerships, *societas europaea* (SE) and European Economic Interest Groupings (EEIGs). The *Trade Register Act (1979/129)* establishes the rules for registration. The register includes information on: the articles of association or partnership agreement; date of formation; registered address; municipality; board members and deputy board members (and, if any, members of the supervisory board); the managing director; partners of a partnership; and, person(s) who sign for the company / co-operative / partnership / other registered business entity. Information recorded in the register is publicly available and some of the information is published in the PRH's Gazette.

671. The *Trade Register Decree (1979/208)* specifies which documents must be submitted with notifications to the register. The PRH processes the application and examines that the company is in compliance with the *Companies Act* or other relevant laws (depending on the form of legal person involved). For limited liability companies, the company's articles of association, which note the company's business activities, must be filed with the PHR as part of the registration application and this then becomes a public document. For co-operatives, the same information must be submitted to the PRH as for limited liability companies, with one exception; information pertaining to the contributed capital of a co-operative is only made public when the co-operative's annual accounts are

⁴² Further details can be found at www.prh.fi.

registered. For trading partnerships and limited partnerships, the registration must contain information about the partnership's activity as well as the identity of the partners. The partnership agreement, signed by all partners, must be presented to the PRH as part of the registration process. If a partnership is terminated or liquidated, the partners are obliged to notify the PRH. Incorrect or misleading information in a registration or failure to register may be subject to a fine.

672. Upon registration, if the application is approved, the PRH issues a certificate of registration which includes a business ID. This single identifier is used for all public business and industry registers, including tax authorities. This helps public authorities and the public to collaborate when collecting information on enterprises and aids identification of all enterprises.

673. Any changes of the information registered in the Trade Register – such as changes to a limited liability company's name, business activities, address, board members or share capital – have to be notified to and registered immediately with the PRH.

674. Pursuant to the *Accounting Act*, all limited companies, partnership, co-operatives and mutual insurance companies, are also obliged to submit their annual accounts and auditor's report to PRH. If the annual accounts have not been submitted within 12 months after the end of the financial year, the PRH may enforce dissolution of the company. The laws relating to the business entity's accounts, *i.e.* the *Accounting Act* and *Accounting Ordinance* (as general/horizontal legislation applied to all private entities in Finland), *Companies Act* and *Co-operatives Act* (covering special transparency rules based on the special features of the entity forms), *Securities Markets Act* (covering special transparency rules based on the fact that the company/co-operative has offered its shares to the public or its shares are listed), *Credit Institutions Act*, *Insurance Companies Act*, etc. (covering special transparency rules/supervision requirements based on the special features of the activity of the enterprise) determine the requirements for the content of the annual accounts. The board of directors and, if any, the managing director, or partners of a partnership, are responsible for ensuring that the accounts are complete. The PRH does not examine the accounts itself, rather it checks that all necessary documentation has been attached and that the annual accounts have been adopted by the company's / co-operative's annual general meeting. The PRH makes the accounts and related documents available to the public. If a company or a co-operative lacks a qualified board, a managing director, a representative referred to in the *Act on the Right to Act as an Entrepreneur*, or a qualified auditor, the PRH may enforce dissolution of the company or the co-operative. The PRH may also impose fines on the legal entity or the person in charge of the entity for lack of submission of annual accounts. In more extreme cases the PRH may remove the legal entity from the register or order liquidation of the legal person if annual accounts are not submitted.

675. Where foreign entities operate business in Finland through a local office that is independently run and administered and the office is considered a branch, as defined in the *Trade Register Act*, it must be officially entered into the PRH trade register. Through the PRH, the public may also gain access to official information about businesses in certain other countries. The information is available via an internet-based system, the European Business Register (EBR).

676. As Finland does not have notaries to check the compliance of the structure of a new company with companies' legislation, this function is assumed by the PRH. In order to create a legal person it is only necessary to go to the register or, if the complexity of the structure of the new company requires it, a legal advisor may be employed. In practice, there are company service providers which offer sell ready-made companies. There are limited controls over this activity – essentially just an obligation to register annual accounts with the PRH – and these are insufficient to prevent the misuse of the legal persons for ML or TF. Although there is no examination of the information provided by the entities to the PRH, after a period of time of inactivity a company may be removed from the trade register. In addition, the PRH does periodically check the names of the founders of the companies against the population register so the trade register can be updated (for instance, when a founder dies).

Accounting and auditing of Finnish legal persons

677. Section 1 of the *Accounting Act (1336/1997)* provides that “Anyone who carries on a business or practices a profession must keep accounting records on these activities.” This obligation does not apply to public bodies, the Nordic Investment Bank, the Nordic Project Fund or anyone or any entity engaged in farming, with the exception of entities referred to below. That act specifies that the following types of entities always have an obligation to keep accounting records:

- Limited liability companies.
- Co-operatives.
- General and limited partnerships.
- Associations and other similar collective bodies; registered religious communities and registered local associations; foundations and pension foundations.
- Insurance funds; mutual insurance companies; and insurance associations.
- Investment companies, with respect to their mutual funds; employees’ profit-sharing funds; deposit insurance funds; guarantee funds; investor compensation funds; funds referred to in the *Act on Book-Entry Securities System* s.18; and clearing funds (referred to in s.19 of that act).

678. According to the *Accounting Act (1336/1997)*, all business transactions must be entered into a system of accounts for the legal person and kept in such a way that it is possible at all time to verify the completeness of the accounting entries and form an overall picture of the events, balance and result of the business activity. For every business transaction there must be a voucher containing information about when it was compiled, when the business transaction occurred, what it concerns and its amount and which counterparty it concerns. Where appropriate, the voucher must also contain information about documents or other information (such as invoices, contracts, etc.) which relate to the transaction and where these can be found. For each financial year, accounts must be prepared which provide a true and fair view of the entity’s operations and financial position. Accounting records, except vouchers, must be retained for at least 10 years after the end of the financial year, even in case of liquidation or other subsequent event. For vouchers, the period of retention is at least 6 years. The records must be kept in Finland. Only for the purposes of keeping accounting records or preparing the annual accounts, may the accounts be temporarily retained abroad.

679. Every legal person with an obligation to maintain accounting records is subject to statutory audits. There is an obligation on legal persons to elect an authorised auditor, where at least two of the following three conditions are met: *i)* the annual balance sheet total is in excess of EUR 340 000; *ii)* annual turnover is in excess of EUR 680 000; 3) the average number of employees exceeds 50⁴³. According to the *Auditing Act*, audits must, in addition to the audit of accounting records and annual accounts, include a review of the administration of the company. Statutory audits include audits of the management of the legal person, examining factors such as whether: the required notifications have been made to the PRH (*e.g.* with respect to changes of directors and changes to the articles of association) and the taxation authority; and, whether the share register and shareholder register comply with relevant legislation. If the company has not complied with the law in any respect, the auditor must note this in the audit report, which is submitted to the PRH together with the accounting records. These audit reports are publicly available. Failure to comply with the *Accounting Act* and the *Auditing Act* is a criminal offence and may lead to imprisonment or a fine.

5.1.2 Recommendations and Comments

680. While Finland has measures in place with respect to transparency of immediate ownership and control of legal persons, including registers of shares and shareholders, the concept of beneficial

⁴³ These conditions were varied in the new *Accounting Act* which entered into force on 1 July 2007. An authorised auditor must now be elected where: *i)* The annual balance sheet is in excess of EUR 100 000; *ii)* the annual turnover or corresponding profit is in excess of EUR 200 000; or *iii)* the average number of employees is more than three.

ownership does not exist in Finnish legislation. No measures have been put in place to understand, or keep and disclose information on, beneficial ownership and control of legal persons in Finland. As this information is not required to be kept, it is not available to competent authorities, nor is it available to financial institutions which might seek to understand the underlying ownership and control of legal persons which are their customers. It is recommended that this be incorporated in the *Companies Act, Trade Register Act* and related legislation so as to strengthen the Trade Register system and availability of information on beneficial ownership and control.

681. While Finland has a good trade registry system for legal persons, only relatively general information is required for the trade registry and this is insufficient to determine beneficial ownership and control. Measures are in place to ensure companies submit their annual accounts, and lack of compliance with this may be sanctioned, however there are no measures to ensure updating of information on ownership and control of legal persons. Further, while all limited liability companies must keep share and shareholder registers, their compliance with this obligation is not supervised by any government authority. There is limited cross-checking and examination of information submitted for these registers and limited procedures for updating of information once entered in a register. Information about beneficial ownership and control is not included in any registers. It is recommended that Finland consider implementing a programme of monitoring or supervision by the PRH of the full range of obligations of legal persons to hold and submit updated information for the trade registers.

5.1.3 Compliance with Recommendations 33

	RATING	SUMMARY OF FACTORS UNDERLYING RATING
R.33	PC	<ul style="list-style-type: none"> • There are no requirements for legal persons to keep or make available information on beneficial ownership or control. • There are limited requirements for legal persons to submit updated information on ownership and control to the trade register. • Requirements that limited liability companies maintain share registers and shareholder registers are not supervised.

5.2 Legal arrangements – Access to beneficial ownership and control information (R.34)

5.2.1 Description and Analysis

682. The Finnish legal system does not allow for the creation of trusts, and the legal concept of trust does not exist under Finnish law. Finland has not ratified the 1985 *Hague Convention on the Law Applicable to Trusts and on their Recognition*. There are no obstacles for Finnish citizens to be trustees of foreign trusts and Finnish legal practitioners may establish foreign trusts for their Finnish clients. If information is considered necessary for tax purposes, the Finnish taxpayer who is a trustee of a foreign trust is obliged to disclose information on involvement in the trust to the tax authorities.

683. Foreign trusts may operate in Finland. All entities conducting business in Finland, which would include trustee activities, are obliged to maintain accounting records. If a foreign trust comes to a Finnish financial institution as a customer, it is considered in the same way as any other legal person which is a customer of the financial institution. The limitations in identification of beneficial ownership in the Finnish system would thus mean that such a legal arrangement is not fully identified in accordance with the FATF Recommendations.

5.2.2 Recommendations and Comments

684. While the Finnish legal system does not allow for the creation of trusts, and the legal concept of trust does not exist in Finnish law, it may nevertheless be useful for Finland to consider examining issues with respect to trusts and provide information to raise awareness of Finnish financial institutions of these types of legal arrangements.

5.2.3 Compliance with Recommendations 34

	RATING	SUMMARY OF FACTORS UNDERLYING RATING
R.34	N/A	<ul style="list-style-type: none">Trusts do not exist under Finnish law.

5.3 Non-profit organisations (SR.VIII)

5.3.1 Description and Analysis

Non-profit associations

685. The Finnish *Constitution* provides a general right to form, belong to and take an active part in associations. The *Associations Act* provides that, in order to qualify as a non-profit association, an association must have a business purpose other than making profit for its members or management. Due to this very broad definition of a non-profit association, this form of entity is used by a diverse range of organisations including trade unions, employers' associations, charities, sports associations, voluntary organisations and political parties. Membership in a non-profit association does not entitle the person to any form of ownership of the association's assets. The constitution of a non-profit association must allow the number of members to vary without amendment of the rules. In other words, the membership cannot be fixed.

686. It is not mandatory to register a non-profit association, though many are registered in the PRH associations register as this entitles associations which work to the "public benefit" to qualify for beneficial tax treatment and it enables the members and board members to limit their personal liability for the debts of the association. After an association has been registered in the associations register, only its assets are liable for its debts. As Finland does not have provisions in place for identification of ultimate beneficial owners of organisations, the registration process does not involve provision of information on those who ultimately own or control the NPO.

687. Provisions requiring associations to maintain accounting records are contained in the *Accounting Act*. Under s.1(3), associations, other similar organisation and foundations are required to keep accounting records, irrespective of the nature of their activities. This means that associations and foundations also come under the *Accounting Act* and the *Accounting Ordinance*. While there is thus an obligation for them to keep accounting records, the obligations are not directed at prevention of terrorist financing (see previous discussion of these obligations). In addition, those associations which are not registered with the PRH do not need to submit their accounts to the PRH or comply with the *Accounting Act* and are thus effectively unsupervised.

Foundations

688. The *Foundations Act* contains rules on establishment of foundations and on administration, auditing, supervision and registration of foundations. A foundation is a legal entity which must be registered with the PRH. The PRH foundations register contains the same information for foundations as it has for limited liability companies (among other things, the names and addresses of the board members). A foundation deed must be established in writing and signed by the founders. After a foundation has been registered, only its assets will be liable for its debts. The founder of the

foundation or another person donating assets to the foundation may reserve the right to the return of the assets for a given period. As with associations, once a foundation is registered it may qualify for beneficial tax treatment and it must comply with the *Accounting Act*. All foundations must have an authorised auditor. The PRH as the registration authority can demand that the board of a foundation fulfils its undertakings and can issue fines to those foundations which do not comply with the requirements of the *Foundations Act*. It may also bring an action for damages against the board on behalf of the foundation.

Religious Communities

689. In accordance with the *Freedom of Religion Act*, the PRH keeps a register of religious communities which religious communities must file their notifications of establishment, amendment and dissolution. The provisions of the *Freedom of Religion Act* and the *Associations Act* are similar, harmonising the regulations governing religious bodies with those applicable to associations. An expert board, functioning in connection with the Ministry of Education, has the task of providing to the PRH its opinion on whether the purpose and activities of a particular religious community are in compliance with the *Freedom of Religion Act*. A religious community that has been registered in accordance with the law may acquire rights, assume obligations and be party to legal actions before courts or other authorities. Independent parts of a community may also be individually registered.

Fundraising by NPOs

690. In Finland, provisions on fundraising by non-profit organisations are contained in the *Money Collection Act* (255/2006), which entered into force on 1 July 2006, and the *Lotteries Act* (1047/2001). One of the objectives of the *Money Collection Act* is to make the granting of money collection permits and the supervision of accounts and the money collections more efficient so that abuse and criminal activity can be prevented. The Government Proposal supporting this act notes that one of the intentions of enacting the law is to prevent ML and TF abuse in this sector. Money collection may only occur after a money collection permit has been granted by the authorities.

691. The Police Departments in state local districts and the State Provincial Office of Southern Finland are permit authorities, the latter granting money collection permits for collections which will occur across areas larger than a single state local district. The permit authorities are responsible for supervision of money collections conducted under permits granted by them, while the Ministry of the Interior has responsibility for the general supervision and guidance of and the statistics on the arrangement of money collections. In 2003, 873 money collection permits were granted and the proceeds totalled EUR 107 726 603.

692. Under s.17 of the *Money Collection Act*, the receiver of the money collection permit must open a separate bank account for each money collection. The permit authority must audit and approve the accounts. Section 20 of the *Money Collection Act* requires that the funds raised through money collection must be used for the purpose laid down in the permit. Under s.21 of the *Money Collection Act*, the permit holder must, within six months of the termination of the permit period, submit the money collection accounts to the permit authority. Under s.22 and s.23 of the *Money Collection Act*, the permit authority may terminate any money collection and the use of funds raised if it is suspected that the money collection or the use of the funds raised is or was proceeding incorrectly or if matters have come to the attention of the authority that are likely to lead to the cancellation of the money collection permit. The permit authority may also prohibit a bank from allowing the permit holder to access funds in his or her account where it believes the permit holder has been operating inappropriately or it may cancel a permit or give the permit holder a written warning. Section 24 of the act provides that, if the money collection permit has been cancelled or accounts have not been submitted in due time, the permit authority may appoint a trustee to take possession of the funds raised through the money collection and to account for them at the expense of the permit holder. These and other provisions provide clear procedures for the control of money collection by non-profit

organisations in Finland but they do not include obligations on the permit holders or permit authorities focussed on the potential misuse of NPOs to finance terrorism.

693. Under s.29 of the *Money Collection Act*, the permit authority must make information on granting and cancellation of money collection permits, written warnings and accounts available to the public. A money collection supervision database is currently being established. It will contain information on permit applications, permits, permit cancellations, written warnings, accounts, permit applicants and receivers, and persons who arrange money collections. This national database is expected to make supervision of money collection activities more efficient. At the same time, permit and supervisory authorities are being allocated additional personnel resources.

Information available to and powers of authorities

694. The PRH holds information on the registered associations, foundations and religious communities. Where money collection is conducted by an NPO, the various permit authorities also hold information on the activities and finances of the NPO. As many associations and foundations are registered with the tax administration so as to obtain beneficial tax treatment, the Finnish tax administration has records on the activities and finances of registered NPOs and is able to ask questions and seek information from these organisations. In addition, tax audits are conducted regularly of these associations and foundations. The PRH information and, in future, information held by permit authorities, is available to the public. This information is not comprehensive however as an unknown number of associations are unregistered and have not applied for money collection permits. None of the authorities currently exchange their information on NPO activities and there is no co-ordinated program in place for supervision of this sector.

695. While the PRH, tax administration and permit authorities thus have some role in obtaining information and monitoring the financial activity of associations and foundations, this is not in existence for any explicit AML/CFT purpose. In fact, both the public and private sector perceive there to be limited threat of terrorist financing in Finland. While additional resources are currently being put into supervision of the sector, the NPO sector has not been reviewed and any features of the sector which might make it vulnerable to terrorist financing have not been identified. There are no programs in place to raise awareness within the NPO sector of the risks of terrorist financing abuse or to strengthen its resistance to terrorist financing.

696. With the exception of the audits conducted by tax authorities, there appears to be no active compliance monitoring by the authorities to ensure that the obligations of NPOs to submit information, keep records, operate within permit etc are in fact complied with. And, there appear to be very few sanctions available to the authorities other than the powers of permit authorities to cancel permits, freeze activity on bank accounts or give the NPO a written warning and the power of the PRH to require that a board of a foundation fulfils its obligations.

697. According to the s.5(2) of the *AML/CFT Act*, if any supervisory body considers, on the basis of facts discovered in the context of their supervisory or other duties, that there are reasons to suspect that the assets or other property involved in a transaction are of illegal origin or are used to commit an offence referred to in section 1(2)(terrorist financing) or a punishable attempt of such an offence, they must make a report on this to the MLCH. Section 36(1) of the *Police Act* provides that the Police have the right, notwithstanding the obligation to observe secrecy, to obtain information from private organisations or persons. In addition, s.12 of the *AML/CFT Act* gives the MLCH the power to obtain information from any natural or legal person as necessary for progressing ML or TF matters. As the designated authority responsible for AML/CFT intelligence and cases in Finland, the MLCH is responsible for international exchanges of information and co-ordination relating to this work. This includes information exchanges relating to potential abuse of NPOs for terrorist financing. While the procedures for such exchanges are the same as for other international work conducted by the MLCH (see further below) there is no evidence to suggest that international co-operation has in fact taken place which relates to the activities in this sector.

5.3.2 Recommendations and Comments

698. Finland’s trade registry system and accounting requirements apply to foundations and to those associations which choose to register, and a clear process is in place for authorities to manage the money collection activities of non-profit organisations. While Finland is beginning to place greater attention and resources into work with this sector, it has not however conducted a review of the sector and none of the measures that are in place to aid transparency of the non-profit sector exist in order to reduce its vulnerability to terrorist financing or money laundering. Limited supervision and sanctions are in place to deal with inappropriate conduct in the sector.

699. It is recommended that Finland conduct a review of its non-profit sector, including reviews of TF risks, and a review of the legislation in place to ensure the transparency of and appropriate conduct within the sector. It should use this information to fully implement a registration requirement for all bodies operating in the sector and to begin a program of outreach and awareness-raising with the NPOs with a view to strengthening their resistance to terrorist financing abuse.

700. Finland should implement measures to effectively supervise the non-profit sector, including implementation of an effective range of sanctions for inappropriate conduct. In support of this supervision system, exchanges of information and co-ordination between authorities should be improved in order to increase the volume of useful information about NPOs.

5.3.3 Compliance with Special Recommendation VIII

	RATING	SUMMARY OF FACTORS UNDERLYING RATING
SR.VIII	PC	<ul style="list-style-type: none"> • There has been no review of the NPO sector and no identification of its vulnerabilities for terrorist financing. • Information is only obtained on those NPOs which are registered and an unknown number of NPOs are not registered with authorities. • No inspections are conducted of the NPO sector. • The many authorities which have some information on NPOs do not share this information. • Authorities do not conduct outreach or provide guidance on terrorist financing to the NPO sector. • The system for obtaining information on NPOs is weakened by the overall lack of measures in Finland to record and obtain information on beneficial ownership.

6. NATIONAL AND INTERNATIONAL CO-OPERATION

6.1 National co-operation and co-ordination (R.31)

6.1.1 Description and Analysis

701. Co-operation between authorities in Finland takes place at multiple levels, through ongoing working groups, ad hoc projects and regular less formal contact.

702. National co-operation is a feature in a number of government programmes related to AML/CFT. The Government Programme of 24 June 2003 to prevent financial crime, reduce the black economy and improve recovery of the proceeds of crime has a dual aim of producing necessary legislative amendments and intensifying co-operation between the involved authorities. Similarly, the Internal Security Programme of 23 September 2004 aims to result in increased detection of financial crimes through a number of means including strengthened co-operation and exchange of information between the authorities. To achieve the objectives laid down in the above mentioned programmes, in 2006 the Government issued a further action for 2006 to 2009.

703. To achieve the aims of the government programme to prevent financial crime, reduce the black economy and improve recovery of the proceeds of crime, a multi-agency working group was appointed on 25 April 2006 to prepare legislative amendments for improving co-operation between the authorities in combating financial crime and the black economy. The working group evaluates, and makes proposals on, how legislation could contribute to increasing and establishing such co-operation, to defining permanent co-operation structures, and to regulating the processing of information needed in the prevention, detection and investigation of financial crime and the black economy. This working group will complete its task later in 2007.

704. There is a national FATF Working Group headed by the Ministry of Interior which comprises representatives from: Ministry of Interior; Ministry of Finance; Ministry of Trade and Commerce; Ministry of Justice; Ministry of Foreign Affairs; Ministry of Social Affairs and Health; MLCH; FSA; ISA; Finnish Customs; the Finnish Taxation Authority; and, the Bank of Finland (central bank). The FATF Working Group was established when Finland joined FATF in 1991 (then headed by the Ministry of Finance). The FATF Working Group meets when needed and before every FATF meeting. At these meetings the FATF Working Group considers current AML/CFT topics in Finland and considers issues which are under discussion at the FATF meetings. Other authorities are invited to meetings when their participation is relevant. In addition, there is the national FATF Committee, which is headed by the National Police Commissioner of the Ministry of the Interior. The members of the FATF Committee are high level officials from those authorities that are members of the working group: Ministry of Foreign Affairs; Ministry of Trade and Industry; Ministry of Justice; FSA; ISA; and others.

705. In addition, the Ministry of Foreign Affairs co-ordinates national co-operation on TF issues with authorities. This takes place in annual joint meetings with the National Bureau of Investigation/Money Laundering Clearing House, Security Police, Financial Supervision Authority, Ministry of the Interior, Ministry of Finance, Ministry of Defence, Ministry of Justice, Office of the Prosecutor-General and Prime Minister's Office. These coordination meetings are arranged whenever necessary, approximately once or twice a year.

706. The MLCH is the lead Finnish agency on operational AML/CFT matters, with close links to enforcement, supervision and policy agencies working on AML/CFT. Section 4(1) of the *AML/CFT Act* provides for the establishment of the MLCH and specifically notes that amongst its duties "The Clearing House shall also promote co-operation between different authorities in the prevention of money laundering, as well as co-operation and exchange of information with foreign authorities and international organisations responsible for clearing money laundering." The MLCH participates in the

national FATF working group, provides training to national authorities and obliged parties. As noted previously in section 2.5, in 2006 the MLCH provided training for 310 persons from Police and other law enforcement authorities. In 2005, the MLCH trained 500 persons from authorities. The MLCH has also published the *Money Laundering Clearing House Best Practices* in 2004 and the *Money Laundering Offences in Legal Praxis* in 2003, which was updated in 2006. These provide useful information for authorities as well as for obliged parties and are thus disseminated widely and available on the MLCH website.

707. As noted previously with respect to law enforcement projects (section 2.6), the Police, customs, and taxation authorities are involved in the VIRKE project which aims to reduce the black economy and financial crime through joint agency collection, analysis and dissemination of financial crime data. Also noted previously is the 'PCB' co-operation of the Finnish Police, Finnish Customs and Border Guard authorities. The PCB initiative involves joint criminal intelligence teams at local, regional and national levels which gather intelligence, conduct target selection and agree on the agencies' contributions to investigations of those targets. In addition to the PCB authorities, the prosecution service is also involved in this work.

708. In order to support other pre-trial investigation authorities with the necessary expertise, members of the MLCH participate in pre-trial investigations being progressed by other authorities and give support where necessary. In addition with respect to co-operation in investigations, Finland has for some years now used joint teams of Police, the execution and tax authorities for the tracing and recovery of proceeds of crime. Permanent groups specialised in investigating the proceeds of crime have been established in the Finnish Police across Finland, at local and national levels. The first of these proceeds of crime groups was established in 1998, since which time they have become a permanent part of the NBI and local Police departments. However it is unclear how effective operational co-ordination is at targeting and investigating ML and TF as these types of cases are only pursued on a limited basis.

709. Co-operation agreements are in place between the MLCH, other Police authorities, Finnish Customs and the judicial authorities with legal and practical provisions for the exchange of information. The 'PCB co-operation' between the Police, Customs and Border Guard described previously is based on agreements in accordance with a Government Decree, but it is expected that a separate bill on PCB co-operation will be presented to the Parliament later in 2007. There are also co-operation agreements within the Police; between the NBI (also the MLCH), the Security Police, and the National Traffic Police. In addition, there are co-operation agreements with the State Provincial Offices. In addition, ongoing co-operation occurs between authorities without formal agreements. However, the MLCH still has difficulties obtaining feedback on the ultimate outcomes from STRs it forwards to enforcement and judicial authorities. Further, the databases of the competent national authorities are not compatible in this regard. Consequently, it seems that there exist limited tools to assess and review the effectiveness of the preventive AML/CFT system. These concerns have been recognised and are the subject of discussion by the national FATF Working Group.

710. In terms of the prosecution of ML and TF, while the Office of the Prosecutor General is active in achieving new and more efficient ways of co-operating during pre-trial investigations, co-operation is primarily a focus for the prosecutors at the local level. There are co-operation agreements in place between the Police authorities, Finnish Customs and the judicial authorities with legal and practical provisions for the operational exchange of information. Further, considerable attention has been given in the last two years to intensifying co-operation between the prosecuting authorities and the Police authorities. In the Helsinki area the prosecutorial and enforcement authorities have a written protocol regarding co-operation.

711. The FSA is engaged in extensive co-operation with domestic and foreign authorities. Domestically, the FSA's primary partner authorities are the MLCH, the BOF, the Ministry of Finance, the ISA, the Ministry of Social Affairs and Health and the Ministry of Foreign Affairs (especially with respect to the financing of terrorism and financial sanctions). Similarly, the ISA engages in

regular co-operation with domestic and foreign authorities, in particular with the FSA and MLCH. The FSA and ISA have Boards which are almost identical, promoting co-ordinated action and there is regular contact at all levels of their organisations. In addition, communication and co-ordination between the ISA, FSA and MLCH comprises regular informal and formal contact as well as regular co-ordination meetings. From time to time the FSA and ISA participate in each other's inspections and supervisory visits, have formed joint supervision groups for financial conglomerates (in accordance with the *Act on the Supervision of Financial Conglomerates* (2002)) and have drafted joint supervision plans. The FSA and ISA participate in multilateral supervision activities at the Nordic level. A memorandum of understanding on the co-operation between FSA and ISA was first established in October 2000. The MoU is fairly broad in its terms, emphasising the importance of close co-operation and exchange of information. According to the MoU, information exchange must occur whenever observations have been made that are relevant to the other agency. The Finnish Government has announced its plan to merge these authorities by early 2009 and has nominated an expert group to prepare the merger.

712. Supervisors, other than the FSA and ISA, have limited roles in AML/CFT matters and would be largely unable to contribute to any co-operation activities. The MLCH, the only AML/CFT authority for such entities, is inadequately resourced to fulfil the largely unaddressed supervisory role for these sectors.

6.1.2 Recommendations and Comments

713. Formal and informal co-operation between the various stakeholders in Finland is strong. The various authorities involved in AML/CFT are co-ordinating their efforts on operational and policy matters, though co-operative projects could more specifically target ML and TF issues. In addition, there is a lack of feedback and information sharing between agencies which limits the ability of the MLCH and others to completely examine the effectiveness of the system. This is at least in part due to weak information management systems, particularly with respect to collection and analysis of statistics, and limited interagency connectivity between the various systems. It is also a result of the emphasis on regular informal contact rather than structured co-ordination. It is recommended that the national FATF Working Group treat this need for information collection and information sharing and as a priority issue so that an overall picture of the effectiveness of Finland's AML/CFT system can be developed. In addition, as AML/CFT supervisors for the remittance and currency exchange sectors are established, it is recommended that Finland ensure that they are sufficiently able to co-operate and exchange information with other supervisory and enforcement authorities.

6.1.3 Compliance with Recommendation 31

	RATING	SUMMARY OF FACTORS UNDERLYING RATING
R.31	LC	<ul style="list-style-type: none"> It is unclear how effective co-ordination is at targeting money laundering or terrorist financing specifically, as these types of cases are only pursued on a limited basis. There is limited information sharing and in particular feedback between agencies with respect to investigations and results of inter-agency disseminations.

6.2 The Conventions and UN Special Resolutions (R.35 & SR.I)

6.2.1 Description and Analysis

Recommendation 35

714. Finland has signed and ratified the 1988 *UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances* (the *Vienna Convention*), 2000 *UN Convention against Transnational Organised Crime* (the *Palermo Convention*) and the 1999 *UN International*

Convention for the Suppression of the Financing of Terrorism (the Terrorist Financing Convention). The *Vienna Convention* was signed on 8 February 1989 and accepted on 15 February 1994. The *Palermo Convention* was signed on 12 December 2000 and ratified on 10 February 2004. The *Terrorist Financing Convention* was signed on 10 January 2000 and accepted on 28 June 2002⁴⁴.

715. While Finland has signed, ratified and implemented the *Vienna Convention* and the *Palermo Convention*, all physical elements of the ML offence, as required by these conventions, are not covered in the Finnish ML offence. The ML offence does not cover the mere possession of proceeds of crime nor acquisition or use of such property in situations when the perpetrator does not intend to conceal or obliterate the illegal origin. This is not in accordance with the article 3(1)(c) of the *Vienna Convention* and article 6(1)(b)(i) of the *Palermo Convention*. Self-laundering is not a criminal offence in Finland and this is not due to any fundamental principles of law. In addition, the ancillary offence of conspiracy to ML is not punishable, the conspiracy offence does not apply to all forms of the aggravated ML offence, and members of a joint household with the offender cannot be prosecuted if they used or consumed the proceeds of crime for ordinary needs in the joint household.

716. Sanctions for money laundering, aggravated money laundering, negligent money laundering, money laundering violation and ancillary offences when applicable are, with exemptions for conspiracy to commit aggravated money laundering, are generally proportionate. The maximum punishment for conspiracy to commit aggravated money laundering is however too low when the seriousness of the offence is taken into account. The sanction available for “participation in the activity of a criminal organisation” (s.1a, chapter 17 of the *Penal Code*) is a fine or imprisonment for a maximum of two years. This is also very low, particularly as Finland considers a criminal organisation to be one which aims to commit one or more offences for which the maximum statutory sentence is imprisonment for at least minimum of four years.

717. The TF offence in Finland (s.5, chapter 34a, of the *Penal Code*) criminalises the offences that are listed in the annex to the *Terrorist Financing Convention*.

Special Recommendation I

718. As noted above, Finland has signed, ratified and implemented the *Terrorist Financing Convention* and has implemented its requirements in s.5, chapter 34a, of the *Penal Code*.

719. Article 5 of the *Terrorist Financing Convention* is implemented by s.8, chapter 34a; s.9, chapter 1; and, chapter 9 (Corporate criminal liability) of the *Penal Code*. Article 7 of the convention is implemented by s.7, chapter 1 of the *Penal Code*. Articles 9 and 10 are implemented through the general duty of the Police and prosecutors to investigate and prosecute if an offence (among others international offences) has occurred. Article 11 has been implemented as extradition according to the *Extradition Act* doesn't require a treaty and could be granted as long as the act referred to in a request is an offence if committed in Finland under corresponding circumstances. Article 12 is implemented by the *Act on International Legal Assistance in Criminal Matters* and parts of the *Coercive Measures Act*. As Finland does not refuse requests for extradition or for mutual legal assistance on the ground that a certain offence is recognised as a fiscal offence, Article 13 is implemented. Article 18(1)(b) is not however covered as Finland does not have measures in place for identification of beneficial ownership or control.

720. According to articles 6 and 14 of the *Terrorist Financing Convention* each state must ensure that criminal acts under the scope of the convention are under no circumstances justifiable by considerations of political, philosophical, ideological, racial, ethnic, religious or other similar nature. Chapter 34a of the *Penal Code*, which deals with terrorist offences, does not incorporate such a provision. Section 6(1) of the *Extradition Act* provides that extradition cannot be granted for a

⁴⁴ As Finland was not involved in the original drafting of the *Vienna and Terrorist Financing Conventions*, its ‘ratification’ of them is termed an acceptance by the UN. Ratification and acceptance of conventions have the same affect.

political offence and s.6(2) provides: “intentional homicide or an attempt thereof, unless committed in overt combat, shall not be regarded as a political offence”. In s.13(1) of the *Act on International Legal Assistance in Criminal Matters* it is said that assistance may be refused, where the request relates to an offence that is “of political character or ...”. Thus it may be inferred that Finland has intentions to fulfil all the requirements of the convention. In addition, s.15, chapter 1 of the *Penal Code* provides that if any international instrument which is binding on Finland restricts the scope of application of Finnish criminal law, that restriction is valid as agreed in the international instrument. Thus the grounds for refusing extradition and legal assistance for political offences which are contained in the *EC Convention on the Suppression of Terrorism* of 1977, the 2003 amendment protocol to that convention, the 2001 protocol to the *European Convention on Mutual Legal Assistance in Criminal Matters* and other international instruments are binding on Finland.

721. Finland has implemented S/RES/1267(1999) and its successor resolutions and S/RES/1373(2001), primarily through the EU regulations designed to implement these resolutions. The EU regulations do not however cover EU internals and the definition of funds in the regulations does not fully cover all of the situations contemplated by the Security Council Resolutions. That is, the EU regulation does not cover funds owned ‘directly or indirectly’ by designated persons or those controlled directly or indirectly by designated persons. Finland does not have a national mechanism to consider requests for freezing from other countries. Finland doesn’t have an established national procedure in place for considering delisting requests.

6.2.2 Recommendations and Comments

722. As noted previously, it is recommended that Finland amend its ML offence as it does not currently implement all physical elements of the ML offence required by the *Vienna and Palermo Conventions*. In addition it is recommended that the ancillary offence of conspiracy to conduct ML be created and the conspiracy to conduct aggravated ML widened to cover conspiracy to conduct all aspects of the aggravated ML offence. In order to fully implement the Vienna and Palermo conventions, it is further recommended that Finland criminalise self-laundering and ML by members of a joint household with the offender who use or consume the proceeds of crime for ordinary needs in the joint household. Further conduct of a review of the adequacy of penalties is recommended, particularly penalties for conspiracy to commit aggravated money laundering and for participation in a criminal organisation.

723. The Finnish TF offence fully implements the *Terrorist Financing Convention*. However, Finland should enact stronger measures for customer identification so as to more fully implement article 18 of the *Terrorist Financing Convention* and should include an explicit provision in its *Penal Code* clarifying that criminal acts under the scope of the *Terrorist Financing Convention* are under no circumstances justifiable by considerations of political, philosophical, ideological, racial, ethnic, religious or other similar nature.

724. With respect to full implementation of S/RES/1267(1999) and its successor resolutions and S/RES/1373(2001), it is recommended that Finland implement a national mechanism to give effect to requests for freezing assets and designations from other jurisdictions, a de-listing process, and procedures for accessing funds/assets that are frozen and that are determined to be necessary on humanitarian grounds.

6.2.3 Compliance with Recommendation 35 and Special Recommendation I

	RATING	SUMMARY OF FACTORS UNDERLYING RATING
R.35	PC	<ul style="list-style-type: none"> Some shortcoming exist in relation to implementation of article 3(1) of the <i>Vienna Convention</i> and article 6(1) of the <i>Palermo Convention</i>, namely the Finnish money laundering offence does not criminalise all possession or acquisition of the proceeds of crime.

	RATING	SUMMARY OF FACTORS UNDERLYING RATING
		<ul style="list-style-type: none"> • Self-laundering is not an offence in Finland and this is not due to any fundamental principle of law. • The ancillary offence of conspiracy to money laundering is not punishable, the conspiracy offence does not apply to all forms of the aggravated money laundering offence, and members of a joint household with the offender cannot be prosecuted if they only used or consumed the proceeds of crime for ordinary needs in the joint household. • The sanctions for conspiracy to commit aggravated money laundering and for participation in a criminal organisation are not effective, proportionate and dissuasive. • Article 18(1)(b) of the <i>Terrorist Financing Convention</i> is not fully implemented, in particular the requirement for measures to ascertain the identity of beneficial owners.
SR.I	PC	<ul style="list-style-type: none"> • Article 18(1)(b) of the <i>Terrorist Financing Convention</i> is not fully implemented, in particular the requirement for measures to ascertain the identity of beneficial owners. • Finland does not have a national mechanism to give effect to requests for freezing assets and designations from other jurisdictions and it does not have a de-listing process. • The definition of funds does not explicitly cover funds owned directly or indirectly by designated persons or those controlled directly or indirectly by designated persons. • There are no procedures for accessing funds/assets that are frozen and that are determined to be necessary on humanitarian grounds in a manner consistent with S/RES/1452(2002).

6.3 Mutual Legal Assistance (R.36-38, SR.V)

6.3.1 Description and Analysis

Recommendation 36 and SR.V

725. The most important convention on legal assistance in criminal matters valid in Finland is the *1959 European Convention on Mutual Legal Assistance in Criminal Matters*, which is supplemented by the *2000 Convention on Mutual Assistance in Criminal Matters between the member States of the European Union*⁴⁵ and the *Additional Protocol* thereto of 2001⁴⁶. The *Convention on Mutual Assistance in Criminal Matters between the member States of the European Union* came into force in Finland on 23 August 2005 through the *Act on the implementation of the provisions of a legislative nature of the convention on mutual assistance in criminal matters between member States of the European Union and on the application of the convention* (148/2004) and the Government decree supporting that act (624/2005). The provisions of the Convention are especially aimed at making the investigation of organised crime more efficient. The Protocol to the convention was brought into force through the acts 45/2005 and 789/2005 on 5 October 2005. The protocol includes provisions on the granting of legal assistance involving bank account information.

726. The primary Finnish law on international legal assistance is the *International Legal Assistance in Criminal Matters Act* (4/1994). By virtue of this act, Finnish authorities may provide legal assistance to the authorities of another state directly by virtue of the act regardless of whether there is a valid treaty between Finland and the state issuing the request. The requesting state is not required to provide reciprocal legal assistance to Finland. The assistance which can be provided, in accordance with s.1(2) of the *International Legal Assistance in Criminal Matters Act*, includes:

⁴⁵ OJEC C 197, 12.7.2000, p.1.

⁴⁶ OJEC C 326, 21.11.2001, p.1.

- Service of decisions, summonses, notices and other judicial documents relating to a criminal matter, including summonses to appear before an authority of the requesting State.
- Hearing of witnesses, experts and parties, obtaining of expert opinions, inspections, procuring and transmitting documents and objects to be produced as evidence, as well as the taking of any other evidence relating to a criminal matter.
- Use of coercive measures in order to obtain evidence or to secure the enforcement of a confiscation order.
- Initiation of criminal proceedings.
- Communication of extracts from and information relating to judicial records required in a criminal matter.
- Any other necessary assistance in a criminal matter, provision of information on law as well as any other forms of mutual co-operation.

727. The *Coercive Measures Act* includes provisions on restraint orders, freezing of property and seizures pursuant to requests for judicial assistance made by foreign states. It provides in s.15(a) of chapter 4, that an object or a document may be seized if it can serve as evidence in a case under consideration by an authority in a foreign state or if it has been taken from someone through an offence.

728. According to s.9(1) of the *International Legal Assistance in Criminal Matters Act*, a request for legal assistance must be executed promptly and the time limits set or implied in the request shall as far as possible be observed. Section 4 provides that requests from foreign States for mutual legal assistance may be made to the Ministry of Justice or directly to the authority competent to execute the request. Where it is received by the Ministry of Justice: “the Ministry shall transmit it promptly to the authority competent to execute the request, unless the execution of the request falls within the competence of Ministry of Justice.” Requests from Norway, Iceland or a European Union country may go directly to the competent authority in accordance with a Government Decree concerning an agreement among the Nordic countries on mutual legal assistance (469/1975). There is no indication that requests from other countries would not be carried out in a timely and effective manner.

729. No undue conditions have been set for the provision of legal assistance in the *International Legal Assistance in Criminal Matters Act*. The main rule is that Finnish law shall be observed in the execution of a request for legal assistance. There is no general requirement that the requesting state must grant corresponding legal assistance to Finland though in individual cases the Ministry of Justice may, in accordance with s.16, refuse to execute a request on the basis of lack of reciprocity. That section provides simply that: “The Ministry of Justice may decide that assistance be refused, where the requesting State would not afford corresponding assistance pursuant to a request for assistance made by a Finnish authority.”

730. Mandatory grounds for refusal are given in s.12, which provides that: “Assistance shall be refused, where the execution of the request would prejudice the sovereignty, the security or other essential interests of Finland. Assistance shall be refused, where the execution of the request would be contrary to the principles of human rights and fundamental freedoms or otherwise contrary to Finnish public policy (*ordre public*).” The fact that the trial has not yet begun or the sentence not yet been pronounced in the requesting state does not constitute a ground for refusal of mutual legal assistance. Other potential, discretionary, grounds for refusal contained in s.13 are where:

- The request relates solely to an offence that is of a political character or to an offence under military law.
- The request relates to an offence committed by a person who according to Finnish law could no longer be prosecuted by reason of lapse of time, pardon or by any other reason.
- The request relates to an offence which in Finland or in a third State is subject to pre-trial investigation or under consideration of a prosecution authority or where court proceedings have been initiated.

- The request relates to an offence for which the pre-trial investigations, prosecution or punishment, or any other punitive sanctions have been waived in Finland or in a third State.
- The request relates to an offence in respect of which the offender has been sentenced or acquitted in Finland or in a third State.
- The execution of the request would, having regard to the nature of the offence, impose an unreasonable burden on the resources available.

731. The execution of a mutual legal assistance request received in Finland may be postponed if the execution of the request would cause inconvenience or delay in a criminal investigation, pre-trial investigation or court proceedings in Finland.

732. Finland does not refuse assistance solely on the ground that the act can be regarded as a fiscal offence. The *International Legal Assistance in Criminal Matters Act* does not recognise this as a ground for refusal. Nor is bank secrecy an available ground for refusal under that act. Refusal with reference to bank secrecy is, moreover, expressly prohibited in a number of international conventions to which Finland is a party: *The Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime*, the *Vienna Convention* and the *Protocol to the 2001 Convention on Mutual Legal Assistance in Criminal Matters between the member States of the European Union*.

733. Legal assistance available to another state under the *International Legal Assistance in Criminal Matters Act* also includes the use of coercive measures for the purpose of obtaining evidence or securing enforcement of a confiscation order (s.23 and s.15[1]). Search and seizure may be carried out if it would be allowed under Finnish law had the act underlying the request been committed in similar circumstances in Finland. Similarly, telecommunications interception and monitoring, technical surveillance, undercover operations, pseudo purchases⁴⁷ and identification of persons may be conducted in response to a mutual legal assistance request if these measures would be allowed under Finnish law had the act underlying the request been committed in similar circumstances in Finland. Coercive measures may be used to secure the enforcement in Finland of a confiscation order made or to be made in a foreign state if the order is, or would be, enforceable in Finland.

734. There are limitations in the scope of the Finnish ML offence: conspiracy to conduct the basic ML offence is not criminalised; and, conspiracy is criminalised with respect to most but not all aspects of the aggravated ML offence. The Finnish TF offence is also relatively narrow in scope as it requires a connection between the financing and a terrorist act. These limitations in the ML and TF offences in turn limit the extent to which coercive measures may be applied in Finland in response to a request for legal assistance because of the requirement of dual criminality contained in s.15(1) of the *International Legal Assistance in Criminal Matters Act*. There is one exception to the requirement for dual criminality; where a request to apply a freezing order is received from a European Union country. In such instances the *Act on the Enforcement in the European Union of Decisions on Orders Freezing Property or Evidence* provides that a freezing order made by a judicial authority in another EU member state will be executed in Finland, without the need for dual criminality.

735. The underlying basis for the mutual legal assistance system in Finland is that a request from a foreign country should be handled in the same way and with use of the same means as if it were an investigation being carried out by a Finnish authority. The result of this is that the Police may use their powers to obtain information based on the *Police Act* and the *Coercive Measures Act* when executing a request from abroad. The power of the Police under s.36(1) of the *Police Act* to obtain information is thus available to obtain documents from financial institutions and other parties for the foreign authorities, though as these are formal Police powers normally exercised as part of

⁴⁷ s.28(1)(5) of the *Police Act*, pseudo purchase means a purchase offer, or a purchase of an object, substance or property that is considered a sample lot, made by a Police officer in order to prevent, detect or investigate an offence or to recover proceeds from crime, unless it is necessary to buy a lot larger than the sample lot or a certain set of objects, substances or property in order to prevent, detect or investigate the offence or to recover the proceeds from crime.

investigations they may be accompanied by accountability and other procedures which slow their execution. In practice this does not appear to pose a problem in Finland, though an explicit obligation for all natural and legal persons to provide information to whichever authority is competent to execute the mutual legal assistance request would be more clear and easier to implement.

736. In order to avoid conflicts of jurisdiction, criminal proceedings may be initiated in Finland pursuant to a request made by an authority of a foreign State (s.8, chapter 1, the *Penal Code*).

737. Finnish authorities have the power and resources to respond to requests for legal assistance from abroad in a timely, constructive and effective manner. However the dual criminality requirement and the limitations in the ML and TF offences reduce the effectiveness of this assistance. In addition, as Finland is unable to say how many of its mutual legal assistance requests have related to ML or TF and is unable to provide statistics on how long it has taken to respond to requests and the outcome of the requests, it is very difficult to evaluate the effectiveness of these measures in practice.

Additional elements

738. According to s.4(1) of the *International Legal Assistance in Criminal Matters Act*, a request for legal assistance can also be made directly to the authority competent to execute the request.

Recommendation 37 and SR.V

739. Under Finland's *International Legal Assistance in Criminal Matters Act* Finnish authorities are expected to provide legal assistance to the fullest extent possible. Execution of requests for mutual legal assistance does not require dual criminality unless the request is for the use of coercive measures. Coercive measures cannot be used if not permitted under Finnish law had the offence underlying the request been committed in Finland in similar circumstances (s.15).

740. Dual criminality is required for exercise of coercive measures and it is sufficient that the offence underlying the request is punishable under Finnish law when committed in Finland in similar circumstances. Authorities appear to interpret 'similar circumstances' broadly. The details of the legal description of the offence and differences between the offences in the two countries are not considered by Finnish authorities when deciding whether to action a request.

741. Where the request for exercise of coercive measures is received from a non-EU state, this requirement for dual criminality presents potential problems related to the fact that certain acts not are offences in Finland. See the description above of limitations in the ML and TF offences in that respect. It would similarly present problems for most types of requests received from EU member States, other than requests for freezing of property or evidence, for which dual criminality is not required (s.3 of the *Act on the Enforcement in the European Union of Decisions on Orders Freezing Property or Evidence*).

Recommendation 38 and SR.V

742. The possibilities to carry out requests from foreign countries for identification, freezing, seizure or confiscation are in principle the same as if the offence or a suspicion of an offence has occurred in Finland. The *Coercive Measures Act* includes provisions on restraint orders, freezing of property and seizures pursuant to requests for judicial assistance made by foreign states. According to s.6(a), chapter 3, of the *Coercive Measures Act*, a restraint order or a freezing order relating to property may be issued at the request of an authority of a foreign state in order to secure the enforcement of the order. Further, it provides in s.15(a) of chapter 4, that an object or a document may be seized if it can serve as evidence in a case under consideration by an authority in a foreign state or if it has been taken from someone through an offence. An object may also be seized if it has been confiscated or is likely to be confiscated by a decision of a court in a foreign state.

743. The *Act on International Co-operation in the Enforcement of Certain Penal Sanctions* (21/1987) regulates the enforcement of a sanction imposed in a foreign state involving deprivation of liberty, and also enforcement of a confiscation order imposed in a foreign state. According to the act, a confiscation order imposed by a foreign state may be enforced in Finland and Finnish confiscation order may be requested to be enforced in a foreign state. Section 23(2) of the *Act on International Legal Assistance in Criminal Matters* (in connection with s.6a, chapter 3 of the *Coercive Measures Act*) provides that coercive measures may be used upon the request of an authority of a foreign State for the purpose of securing the enforcement in Finland of a confiscation order made or to be made in the requesting foreign State where the order is, or would be, enforceable in Finland.

744. The European Council Framework Decision on the execution in the EU of orders freezing property or evidence⁴⁸ is in force in Finland by virtue of the *Act on the Enforcement in the European Union of Decisions on Orders Freezing Property or Evidence* (540/2005). That act provides that a freezing order made by a judicial authority in another EU Member State will be executed in Finland and Finnish authorities may seek that a freezing order made by a Finnish judicial authority be executed in another Member State. The act also provides for freezing of property which may be used as evidence or may be ordered to be confiscated.

745. There is a dual criminality provision within the *Act on International Legal Assistance in Criminal Matters*. Section 23(2) of that act provides that coercive measures may be used upon the request of an authority of a foreign State for the purpose of securing the enforcement in Finland of a confiscation order made or to be made in the requesting foreign State where the order is, or would be, enforceable in Finland. It is not possible to confiscate property of corresponding value in Finland if the property has been the target of a ML offence in a situation where only the perpetrator of the money laundering offence is prosecuted (see discussion in section 2 above re Recommendation 3). Thus, the requirement for dual criminality in this provision means that a mutual legal assistance request for confiscation relating to a similar situation in a foreign state could probably not be granted, at least where the request is made by a non-EU member state.

746. Problems that might arise are related to the fact that certain acts not are offences in Finland. If the request is made by a country within EU, in some situations it would be possible to carry out the requested measures even though this not would have been possible based on an event in Finland. Section 3 of the *Act on the Enforcement in the European Union of Decisions on Orders Freezing Property or Evidence* (540/2005) states that certain offences should be recognised as grounds for granting a request even if the act is not an offence in Finland.

747. Controlled deliveries and establishment of joint investigative teams may be used for the purpose of co-ordinating seizure and confiscation with other jurisdictions, in accordance with the 1997 *Convention on Mutual Assistance and Co-operation Between Customs Administrations* (the *Naples II Convention*), the *Convention on Mutual Legal Assistance between the member States of the European Union* (MLA) and the Council Framework Decision on joint investigation teams⁴⁹ (implemented through the *Act on Joint Investigation Teams* [1313/2002]).

748. Finland has not previously and is not currently considering establishing an asset forfeiture fund.

749. Chapter 2, section 14 (2) of the *Act on International Co-operation in the Enforcement of Certain Penal Sanctions* (21/1987) contain provision on the transfer of confiscated property to another state. On demand from an authority in the foreign state, the Ministry of Justice decide that the property or a part of it shall be transferred to the foreign state.

⁴⁸ OJEC L 196, 2.8.2003, p.45.

⁴⁹ OJEC L 162, 20.6.2002, p.1.

Statistics

750. Finland is not able to compile information which differentiates the legal assistance requests relating to ML and TF from other statistics on mutual legal assistance requests. However, the tables below provide an indication of the types of offences that are connected with requests made and received by Finland. Finland does not have statistics indicating whether the requests were granted or refused, nor does it have statistics on the time taken to respond to requests.

Table 28: Legal assistance requests made by Finland, 2004-2006

CRIME	2004	2005	2006	TOTAL
Narcotic offences	1 0 038	798	995	2 822
Economic crimes	1 244	1 442	907	3 593
Business prohibition	114	266	328	708
Means of payment fraud	16	170	224	410
Investment fraud	57	39	108	204
Trafficking of human beings	30	13	7	50
Prostitution	27	11	4	42
Illegal immigration	264	349	363	976

Table 29: Legal assistance requests received by Finland, 2004-2006

CRIME	2004	2005	2006	TOTAL
Narcotic offences	2 601	2 151	2 033	6 785
Economic crimes	1 812	1 729	1 272	4 813
Business prohibition	128	244	281	653
Means of payment fraud	41	205	235	481
Investment fraud	79	59	81	219
Trafficking of human beings	79	73	67	219
Prostitution	85	54	33	172
Illegal immigration	495	729	569	1 793

6.3.2 Recommendations and Comments

751. Overall, Finland has an effective system for responding to mutual legal assistance requests from Nordic and European countries. In addition, the *International Legal Assistance in Criminal Matters Act* allows Finnish authorities to assist other foreign states with every measure that is available to Finnish authorities in domestic investigations or proceedings. Dual criminality is not required for non-coercive measures, or for search or seizure requests from EU and Nordic countries. In order to ensure that coercive measure could consistently be applied for all requesting countries, it is recommended that Finland criminalise (1) conspiracy to conduct ML, (2) conspiracy to conduct all aspects of aggravated ML, (3) self-laundering, and (4) collecting or providing funds/assets where these are for a terrorist organisation or individual terrorist without a connection to a terrorist act.

752. Finland should consider establishing an asset confiscation fund into which all or a portion of confiscated property would be deposited for use by law enforcement, health, education or other appropriate programs.

753. It is recommended that Finland keep a complete set of statistics pertaining to mutual legal assistance, thus enabling it to better track the requests it receives and makes and enabling it to ensure that these are being handled in a timely way. In particular, it would be useful to have statistics on the nature of requests, whether they were granted or refused, what crimes they related to, and the length of time taken to respond to the request.

6.3.3 Compliance with Recommendations 36 to 38 and Special Recommendation V

	RATING	SUMMARY OF FACTORS UNDERLYING RATING
R.36	LC	<ul style="list-style-type: none"> As dual criminality is required for exercise of coercive measures in response to a mutual legal assistance request, the limitations in the ML and TF offences limit the

	RATING	SUMMARY OF FACTORS UNDERLYING RATING
		<p>extent and effectiveness of mutual legal assistance provided by Finland.</p> <ul style="list-style-type: none"> Effectiveness could not be assessed due to the limited amount of statistics and information on practical cases that is available.
R.37	C	<ul style="list-style-type: none"> This Recommendation is fully observed.
R.38	LC	<ul style="list-style-type: none"> It is not possible to confiscate property of corresponding value to the proceeds derived from ML. Finland has not considered establishing an asset forfeiture fund.
SR.V	LC	<ul style="list-style-type: none"> As dual criminality is required for exercise of coercive measures in response to a mutual legal assistance request, limitations in the TF offence limits the extent and effectiveness of mutual legal assistance provided by Finland where the funds / assets are being collected / provided for a terrorist organisation or individual terrorist and are not connected with a terrorist act. Effectiveness could not be fully assessed due to limited statistics and information on practical cases being available.

6.4 Extradition (R.37, 39, SR.V)

6.4.1 Description and Analysis

Recommendation 39 and SR.V

754. Extradition is regulated by the following Acts:

- Extradition Act (456/1970) (the Extradition Act),*
- Act on Extradition on the basis of an Offence between Finland and Other Member of the European Union (1286/2003), (the EU Extradition Act).*
- Act on Extradition between Finland and the Other Nordic Countries (270/1960), (the Nordic Extradition Act).*

755. Finland is also a party to the *European Convention on Extradition (Treaty Series 32/1971) and its second additional protocol (Treaty Series 15/1985)*, and entered into a bilateral extradition agreement with the United States (Treaty Series 15/1980) and with some other states.

756. Under the *Extradition Act*, s.4 dual criminality and at least a minimum penalty of one year are required for an offence to be extraditable. The maximum penalty for ML is two years imprisonment and the maximum penalty for terrorist financing is eight years. They are thus extraditable offences. This also applies to extradition between the European Union member States where, moreover, extradition for aggravated ML (maximum penalty six years imprisonment) is possible without the need for dual criminality. Money laundering is, in accordance with the list of extraditable offences in article 2(2) of the *Council Framework Decision on the European arrest warrant and the surrender procedures between member States*, included in s.3(2) of the *EU Extradition Act*. There is no general requirement for dual criminality in connection with extradition between the Nordic countries.

757. Conspiracy to conduct the basic ML offence is not punishable in Finland, nor are all aspects of the aggravated ML offence covered by the conspiracy to conduct aggravated ML offence. The TF offence does not criminalise provision of funds/assets to a terrorist organisation or an individual terrorist without connection to a terrorist act. This could limit the extradition available from Finland to countries that are outside the EU or Nordic states due to the requirement of dual criminality.

758. Finland extradites its citizens to the European Union member States for the purpose of prosecution and execution of sentences for ML. Extradition for the purpose of prosecution is subject to the condition that the extradited person will be returned to Finland to serve a sentence to be imposed on him or her in Finland if s/he has requested that in connection with the consideration of the extradition case. If the request for extradition concerns extradition of a Finnish citizen for the purpose of execution of a sentence, extradition will be refused if the requested person states that s/he wishes to serve the sentence in Finland.

759. Finland may extradite its citizens to other Nordic countries both for the purpose of prosecution for ML and for the purpose of execution of a sentence if the person in question has had a permanent domicile for at least two years in the country when the offence was committed or if the maximum penalty for the offence is at least four years imprisonment or if the offence if committed in Finland in similar circumstances would be regarded as such an offence. Finland can thus extradite its citizens to another Nordic country for both ML and aggravated ML on the basis of either a previous domicile or, in the case of aggravated ML, maximum penalty and dual criminality.

760. Requests for extradition of a Finnish citizen to a country other than an EU member state or a Nordic country, will not be granted (s.2 *Extradition Act*). Under Finnish law, offences committed by a Finnish citizen abroad are punishable in Finland. If there is reason to believe that an offence has been committed, the criminal investigation authorities are obliged to investigate the offence committed abroad in the same way as a “domestic” offence and to submit the results of the investigation to the prosecutor for the consideration of further measures subject to the same restrictions as in a “domestic” case. If the only factor connecting the offence to Finland is the citizenship of the perpetrator, an order must be issued by the Prosecutor General to bring charges. In situations where charges are brought in Finland for an offence committed abroad by a Finnish citizen, the normal legal assistance channels are available for securing evidence and witnesses.

761. The *EU Extradition Act* states that a legally final decision on the extradition question must be made within 60 days of the apprehension. In practice, extradition cases are decided in a considerably shorter time in Finland. Extraditions to non-EU member States are decided in an administrative procedure and there is no provision requiring that these be decided upon without undue delay. Due to the relatively small number of extradition cases, authorities aver that such requests are however processed very rapidly. Authorities were not however able to provide information on the times actually taken for extraditions from Finland.

Additional elements

762. Requests for extradition must in all cases be submitted directly to the Finnish Ministry of Justice. As a requesting State, Finland submits its requests directly to the competent central authority in those States which are parties to the *Second Additional Protocol of the European Convention on Extradition*.

763. A warrant of arrest or commitment or an enforceable judgment does not suffice as grounds for extradition. They must be attached in addition to other reports and statements required as part of the extradition process.

764. According to current law, if the person whose extradition is sought considers that there are no legal grounds for extradition, the Ministry of Justice will request the opinion of the Supreme Court on the matter before any decision. If however the person whose extradition is sought accepts the extradition, the Ministry of Justice does not as a rule request the opinion of the Supreme Court, which expedites the consideration of the extradition case.

Recommendation 37 and SR V

765. The extradition procedure is the same regardless of the offence underlying the request. The core principle of the *International Legal Assistance in Criminal Matters Act* is that the Finnish

authorities shall provide legal assistance to the fullest extent possible and that the execution of a request does not require dual criminality. Requests involving the use of coercive measures form an exception to this principle. Coercive measures may be used if their use had been permitted had the offence been committed in Finland in similar circumstances (s.15). The requirement of dual criminality presupposes an assessment of the act in abstracto. For the requirement to be met it is sufficient that the procedure through which the offence is committed is punishable by law in Finland.

766. The use of coercive measures, requires that their use would be permitted under Finnish law if the offence would be committed in Finland. If dual criminality is required for the provision of legal assistance it suffices that the offence underlying the request is punishable under Finnish law when committed here in similar circumstances. The legal description of the offence is not decisive. Technical difference between the laws in the requesting and request States are not material in the decision of Finnish authorities to accept or reject an extradition request.

Statistics

Table 30: Extradition requests made by Finland, 2004-2006

CRIME	2004	2005	2006	TOTAL
Narcotic offences	30	10	16	56
Economic crimes	7	2	5	14
Business prohibition	-	-	-	0
Means of payment fraud	-	-	-	0
Investment fraud	-	-	-	0
Trafficking of human beings	2	-	-	2
Prostitution	-	-	-	0
Illegal immigration	-	-	-	0

Table 31: Extradition requests received by Finland, 2004-2006

CRIME	2004	2005	2006	TOTAL
Narcotic offences	21	8	20	49
Economic crimes	7	6	5	18
Business prohibition	-	-	-	0
Means of payment fraud	-	-	2	2
Investment fraud	-	-	-	0
Trafficking of human beings	-	-	-	0
Prostitution	-	-	-	0
Illegal immigration	-	-	-	0

Table 32: Extraditions to Finland, 2001-2006

YEAR	EXTRADITIONS TO FINLAND
2006	53
2005	59
2004	55
2003	44
2002	41
2001	43
TOTAL	295

767. Statistics are not held on how many extraditions are made from Finland, though authorities advise that there are less than ten extraditions from Finland to other countries each year. As little detail is available on extradition cases, for example how long it takes to respond to requests and reasons for refusal, it is very difficult to determine the effectiveness of Finland's extradition measures. Finland was not, for example, able to provide information to explain why there are less than ten extraditions from Finland each year and more than 50 extraditions to Finland each year.

6.4.2 Recommendations and Comments

768. Finland should collect and maintain more comprehensive statistics on extraditions from Finland, the duration for the requests to be actioned and the specific offences they relate to. It is

recommended that Finland amend its Penal Code to broaden the definition of TF to cover financing an individual terrorist or providing funds to a terrorist organisation where there is no link to a specific terrorist act. It is also recommended that the offence of conspiracy be broadened to apply to basic ML and all forms of aggravated ML.

6.4.3 Compliance with Recommendations 37 & 39, and Special Recommendation V

	RATING	SUMMARY OF FACTORS UNDERLYING RATING
R.39	LC	<ul style="list-style-type: none"> Conspiracy to conduct money laundering is not criminalised, the offence of conspiracy to conduct aggravated ML laundering is limited in scope, self-laundering is not an offence and funding a terrorist or a terrorist organisation without a specific link to a terrorist act is not punishable in Finland. These factors could be obstacles to extradition limit the extraditions because of the requirement of dual criminality. Effectiveness could not be fully assessed due to limited statistics and information on practical cases being available.
R.37	C	<ul style="list-style-type: none"> This Recommendation is fully observed.
SR.V	LC	<ul style="list-style-type: none"> The application of dual criminality may create an obstacle to extradition in cases involving TF where there is no link between the funding and a specific terrorist act. Effectiveness could not be assessed due to limited statistics and information on practical cases being available.

6.5 Other forms of international co-operation (R.40 & SR.V)

6.5.1 Description and Analysis

Police

769. Finnish Police participate in international co-operation at a number of levels, from working groups and policy initiatives designed to implement international conventions and agreements to ongoing operational information exchange. In terms of high level initiatives focussed on international co-operation initiatives, Finland has in recent years actively participated in the Task Force on Organised Crime in the Baltic Sea Region, also known as the Baltic Sea Task Force (BSTF) and the Asia-Europe Meeting (ASEM)⁵⁰. Finland chaired the BSTF in 2005. This is an important operational co-operation forum for combating serious threats from international organised crime in the Baltic region, particularly between the EU member States and Russia. In the same year, Finland presented an initiative, prepared by the Finnish Police, to the ASEM proposing establishment of regular meetings between the heads of counter-terrorism units in ASEM countries in order to promote practical co-operation and information exchange. ASEM is currently examining options for implementing this proposal.

770. One of the main goals of international co-operation conducted by the Finnish Police is to gather up-to-date intelligence on international crime for the purposes of strategic and operational measures taken to combat crime. The aim is to get a more detailed picture of serious cross-border crime and to promote an offender-based approach to tackling crime at international level. The Criminal Intelligence Division (CID) of the NBI operates as a national criminal intelligence centre and takes part in international co-operation related to their sphere of duties, such as involvement in Europol and Interpol working groups. The national centres for Schengen co-operation and the Bureau de Liaison network for communicating data relating to the Counter-Terrorist Group of the European Union are also operated by the CID. As the CID manages this centre for international assistance and

⁵⁰ ASEM (the Asia-Europe Meeting), is a forum of 39 jurisdictions that promotes various levels of co-operation among Asian and European countries.

information exchange, it provides the Police and other enforcement authorities with specialist services relating to international requests for assistance and facilitates requests on behalf of other agencies where required. The CID ensures smooth operation of international communications to support this co-operation, 24 hours a day, via secure channels.

771. The Finnish Police also has liaison officers posted abroad who have a significant role in the international fight against crime. The network of liaison officers supports the communication of criminal intelligence and international requests for assistance, enabling the authorities of requested countries to execute measures more rapidly. The Finnish Police has six liaison officers in Russia, one in Estonia, three at Europol and one at Interpol. The Finnish Customs has one liaison officer in Estonia and one in Lithuania. The Border Guard has liaison officers in China and Russia. The Finnish Police, Customs and Border Guard co-operate in order to co-ordinate the activities of these liaison officers. It is within the mandate of all liaison officers to liaise on behalf of the other pre-trial investigation authorities. In addition, there are over 40 liaison officers posted in 20 different countries within the Nordic Police and Customs Co-operation (*Polis och Tull i Norden mot narkotika - PTN*) serving all the Nordic countries and their pre-trial investigation authorities.

772. Finland has concluded bilateral agreements on combating crime with Russia, Estonia, Latvia, Lithuania, Poland, Turkey and Hungary. These agreements are designed to improve the capacity of the authorities of the countries concerned for combating crime and to promote exchange of information between the countries. Under the agreements, the authorities carry out co-operation in pre-trial investigations and in preventing, detecting and combating crime. The NBI is the central authority in Finland responsible for monitoring the application of the agreements and for attending to the execution of requests for assistance.

773. Finland also has bilateral anti-fraud agreements in which Finnish Customs is the competent authority with, among others, Russia and the Baltic countries. These bilateral anti-fraud agreements provide for co-operation between multiple authorities (primarily Police, Border Guard and Finnish Customs) in order to prevent, detect, combat and investigate crime. Since the agreements do not contain specific provisions on customs co-operation, in Finland it is the NBI which is the central authority for co-ordinating efforts under these agreements.

Customs

774. Finnish Customs is able to exchange information and co-operate with foreign customs authorities and other authorities on the basis of national provisions and international agreements. The *Customs Act* (1994/1466) provides for the disclosure of information stored in the customs data registers to foreign countries as follows:

- To the World Customs Organization (WCO) with respect to customs offences for which the penalty can be imprisonment.
- To a customs authority of another country in order to prevent, investigate and prosecute crime or to bring charges against a person.
- To be entered into the EU Customs Information System on mutual assistance between administrative authorities of member States and with the Commission in order to ensure impeccable application of the legislation on customs and agricultural matters defined in the Council Regulation (EC) 515/1997.
- To authorities which are not customs authorities where the information is necessary to prevent or investigate an offence which, if committed in Finland, would be punishable by imprisonment.

775. The *EU Council Regulation 1889/2005 on controls of cash entering or leaving the Community* of the European Parliament and of the Council came into force in Finland in June 2007. Article 7 of the regulation provides for exchange of information with third countries. In accordance with it, information obtained may be communicated by member States or by the Commission to a third

country, subject to the consent of the authorities which obtained the information and to compliance with relevant national and EU provisions on the transfer of personal data to third countries.

776. Controlled deliveries and establishment of joint investigative teams may be used for the purpose of co-ordinating seizure and confiscation with other jurisdictions. For the Finnish Customs service, provisions on controlled deliveries are laid down in the 1997 *Convention on Mutual Assistance and Co-operation Between Customs Administrations* (the *Naples II Convention*) which was drawn up in accordance with the 1993 *Treaty on European Union*. Separate provisions on controlled delivery are also included in the *Convention on Mutual Legal Assistance between the member States of the European Union* (MLA) and in several bilateral agreements. Controlled delivery is thus a measure of international legal assistance based on a decision between two or more law enforcement authorities on allowing an illegal consignment exit or enter a country under constant surveillance. Articles 19 and 22 of the *Naples II Convention* provide for the scope of application of the controlled delivery and the general principles concerning the procedure. The Council Framework Decision on joint investigation teams⁵¹ has been enforced through the *Act on Joint Investigation Teams* (1313/2002). By virtue of the act, a competent criminal investigation authority may agree on setting up a joint investigation team together with a competent authority of a foreign state for the purpose of carrying out criminal investigations.

777. Finland has established bilateral agreements on administrative and penal customs co-operation with Russia, the United States, Great Britain, France, Germany, other Nordic countries and Baltic countries. In addition, Finland has ratified the 1997 *European Convention on Mutual Assistance and Co-operation Between Customs Administrations* (the *Naples II Convention*) which provides a basic agreement between the customs administrations of the EU member States under which member States will provide each other mutual assistance and co-operation through their customs administrations in order to prevent and investigate offences violating customs legislation. The bilateral agreements are used in parallel with the *Naples II Convention*, especially in situations where the bilateral agreements are more extensive than the convention.

778. Among others, the following EU-level instruments also support customs co-operation, including operation of a customs information system (CIS) which has two parts:

- Regulation (EC) 515/97 on mutual assistance and co-operation between the administrative authorities of member States and with the Commission to implement the law on customs and agricultural matters. An IT-based CIS has been established on the basis of the regulation in order to meet the needs of the administrative authorities responsible for the implementation of the law on customs and agricultural matters as well as the needs of the Commission.
- *1995 Convention on the use of information technology for customs purposes*, drawn up on the basis of article K.3 of the *Treaty on European Union* (the *CIS Convention*). This Convention provides for the establishment of a customs information system (CIS) to support efforts to combat customs-related crime. The CIS, located in Brussels, can be accessed by member States for processing and searching of personal data.

779. In addition, the *International Convention on mutual administrative assistance for the prevention, investigation and repression of customs offences*, or (the *Nairobi Convention*) is also relevant for co-operation between customs authorities. Finland has approved some of the appendices of the *Nairobi Convention* which provide for co-operation between the States which have approved them and with whom there is no bilateral or multilateral agreement on customs co-operation in force.

FIU

780. The investigation of suspicious transaction reports referred to in the *AML/CFT Act* often requires operational co-operation with foreign authorities responsible for preventing ML and TF.

⁵¹ OJEC L 162, 20.6.2002, p.1.

Section 4 of the *AML/CFT Act* provides: “The Clearing House shall also promote co-operation between different authorities in the prevention of money laundering, as well as co-operation and exchange of information with foreign authorities and international organisations responsible for clearing money laundering.” While the MLCH does not require a memorandum of understanding (MOU) in order to exchange information with a counterpart FIU, the legislation of certain States does require establishment of bilateral Memoranda of Understanding for the reinforcement of operational co-operation. The MLCH has thus signed MOUs with the FIUs of Albania, Belgium, Bulgaria, Canada, France, Latvia, Lithuania, Luxembourg, Poland, Russia, South Korea, Spain and Switzerland. There is close co-operation between the MLCH and the FIUs of Estonia, Sweden, Russia and the Nordic countries. These FIUs meet regularly in order to discuss ongoing cases and to exchange general information regarding ML and TF. Further, the FIU exchanges information via Finnish liaison officers based abroad and foreign liaison officers located at the NBI.

781. Information exchange with foreign counterparts is primarily conducted using the Egmont Secure Web and the FIU.NET. In 2005, the MLCH was granted funding to be a part of the FIU.NET project, which is designed to facilitate efficient exchange of information between FIUs. Finland joined the FIU.NET system at the beginning of 2006, and can now exchange encrypted information with 16 EU FIUs which are connected to this system. In 2005, the MLCH was also granted funding to participate in the *RIHY* (recovery of proceeds of crime) project, the objective of which is to enhance the recovery of proceeds of crime through strengthened international co-operation. This project also includes active exchange of information with other countries. Implementation of the FIU.NET and RIHY projects will continue in 2007.

782. In addition to operational co-operation, the MLCH works in close co-operation with numerous international organisations and bodies responsible for combating ML and TF. The key international bodies in which the MLCH participates are:

- Financial Action Task Force.
- Egmont Group of financial intelligence units.
- Council of Europe’s Select Committee of Experts on the Evaluation of Anti-Money Laundering Measures (MONEYVAL).
- Europol⁵². The MLCH has recently participated in co-operation concerning prevention of TF within Europol.
- Interpol⁵³.
- Baltic Sea Region Task Force on Organised Crime. In the task force the MLCH has been in charge of the prevention of ML in order to reinforce co-operation of the authorities controlling ML, arrange training and join operational activities. In November 2004 the MLCH organised a two-day seminar with the issues of analysis and investigation of reports on suspicious transactions and the development of co-operation between the FIUs. Finland assumed the chair of the Baltic Sea Region Task Force on Organised Crime in 2005-2006.
- United Nations. The UNGPML launched a strategic analysis development project in 2003 which is now being conducted by the Egmont Group’s Operational Working Group. The MLCH participated in the two meetings of the strategic analysis project in 2004.

783. Information can be exchanged with foreign FIUs, both spontaneously and upon request, regardless of whether the FIU is organised within the Police or prosecution authority or within the administration. The exchange of information is possible in relation to ML, TF and the underlying predicate offences.

⁵² Europol is the law-enforcement organisation of the European Union which deals primarily with criminal intelligence. Its goal is to improve effectiveness and co-operation of the competent authorities of member States in prevention of serious international organised crime.

⁵³ The aim of Interpol is to act as a leading Police organisation with the duty of assisting the authorities and organisations in preventing and investigating offences. Interpol is also a significant channel for the exchange of information.

784. The MLCH can make inquiries for foreign FIUs in its own database, in other law enforcement authorities' databases, as well as public databases. As described in detail in section 2.6, the MLCH has direct access to numerous databases and indirect access to other sources of information which it can search in order to fully answer a request for information received from a counterpart FIU. The MLCH does not necessarily verify all the databases or request further information from other authorities, unless the request indicates some connections to Finland. If a sufficiently strong connection can be determined, the request may be treated as a disclosure and the powers available to the MLCH under the *Police Act* can be used to conduct enquiries and obtain related information. The MLCH is authorised to search and provide information both of its own database and other public databases to which the FIU has access. Further, it can request information from the Finnish reporting institutions and persons if some connections to Finland are indicated in the request. In such cases the request received from a counterpart FIU is considered as a disclosure and thus treated as confidential.

785. When information is exchanged with foreign counterparts, the receiver of information in another country has to respect the sending FIU's handling restrictions and the Egmont *Principles for the Exchange of Information*. The information received by competent authorities is used only in an authorised manner. The requesting FIU may not transfer information shared by a disclosing FIU to a third party, nor make use of the information in an administrative, investigative, prosecutorial, or judicial purpose without the prior consent of the FIU that disclosed the information. The MLCH does not refuse requests for co-operation solely on the ground that the request is considered to involve fiscal matters. It may refuse requests in the first instance if no background information is provided. If afterwards the counterpart FIU does provide the relevant background information to the MLCH, the request is processed. Exchanges of information are not made subject to disproportionate or unduly restrictive conditions.

786. In 2006 the MLCH sent 232 international inquiries to other FIUs and received 47 inquiries from these counterparts. The MLCH seems to be satisfied with its international co-operation. There are no indications that the assistance of the MLCH in this regard would not be provided in a rapid, constructive and effective manner. Statistics for 2006 show that the minimum time taken to respond to an international request for information was less than one day, the maximum was 162 days and the average time taken to respond was 18 days. There is currently little information available about the outcomes of these requests. In addition, where the MLCH spontaneously provides information to its counterpart (without first receiving a request) this is counted as a request and the MLCH is not able to distinguish the number of spontaneous dissemination from other international requests. Due to inadequacies in its IT systems, the FIU is not in a position to make a link between its incoming STRs and all requests received from counterpart FIUs overseas.

Table 33: International inquiries sent and received by the MLCH, 2003-2006

YEAR	SENT	RECEIVED
2003-2005	280	108
2006	232	47
TOTAL	512	155

Supervisors

787. The FSA is engaged in co-operation with domestic and foreign authorities. The FSA's international activities comprise participation in various international fora for co-operation and direct co-operation with the supervision authorities of other countries. The FSA is involved particularly in co-operation at the European level:

- Committee of European Banking Supervisors (CEBS) and the banking supervisors' co-operation organ under it (Groupe de Contact). The FSA also participates in the Task Force of AML/CFT supervision set by the CEBS.
- The Banking Supervision Committee (BSC) under the European System of Central Banks.
- The Committee of European Securities Regulators (CESR).

- The European Commission's ML and TF committee.
- FATF meetings.

788. As part of its work supervising financial conglomerates in the banking and insurance industries, the FSA engages in close co-operation with the ISA and Nordic supervision authorities. This co-operation is underpinned by Memoranda of Understanding (MoUs) and specific supervision groups established for the practical supervision work. These MOUs outline provisions on practical co-operation, including procedures for information exchange between authorities, and also determine the principles governing authorities' co-operation. In addition, they define the notification and authorisation procedures to be observed in the setting up of branches and the notification procedure to be applied in the cross-border provision of financial services.

789. The FSA has MOUs on co-operation in supervision of credit institutions with the supervision authorities of 10 countries: bilateral MOUs with Estonia, France, Germany, Latvia, Lithuania and the Netherlands; and a multilateral pan-Nordic MOU involving Denmark, Iceland, Norway and Sweden. In addition, separate MOUs have been signed between the Nordic countries with respect to the supervision of the Nordea group, Sampo group and OMX. In 2005 the FSA participated in a joint Swedish/Norwegian/Finnish inspection of a banking group operating in the Nordic and Baltic Sea region. Some other joint inspections have also been conducted in other countries. A joint inspection of a foreign branch (in Singapore) of a domestic institution is planned for late in 2007.

790. As regards co-operation in securities markets supervision, the FSA is party to the multilateral MOU of the Committee of European Securities Regulators (CESR). The other parties are Austria, Belgium, Denmark, France, Germany, Greece, Iceland, Ireland, Italy, Luxembourg, the Netherlands, Norway, Portugal, Spain, Sweden and the United Kingdom. The FSA has also signed an MOU on supervision of securities markets with the Estonian combined supervision authority. The FSA may not disclose confidential information received from supervisory authorities of another state or obtained during inspections undertaken in another state without the express consent of the supervisory authorities having provided the information or any other competent supervisory authorities of the foreign state in which the inspection was performed. Such information may be used solely for the performance of the FSA's responsibilities or for the purpose for which the consent was given.

791. The FSA has not received or made any international requests which relate to ML or TF. With respect to insider trading and market manipulation:

- In 2004 the FSA sent 15 requests (relating to 7 cases) and received 1 request.
- In 2005, The FSA sent 8 requests (relating to 5 cases) and received 3 requests.
- In 2006, the FSA sent 19 requests (relating to 3 cases) and received 3 requests.

792. The ISA co-operates on the EU level within the CEIOPS (Committee of European Insurance and Occupational Pensions Supervisors). It is involved in close co-operation with counterpart supervisors from other EU member States concerning supervision of financial groups. In addition, procedures are in place for sharing information between home and host supervisory authorities about institutions operating in more than one EU member state. To date the ISA has only received one request for information from an overseas counterpart which relates to AML/CFT. When sharing information with counterparts in other countries, the ISA applies the same secrecy and confidentiality requirements as applied when exchanging information with domestic authorities.

Other authorities

793. The officials of the Ministry of the Interior's Gaming Administration Unit are members of the Gaming Regulators European Forum (GREF). GREF was founded in 1989 as an association of European gaming regulators. Finland participates in its annual meetings and also in the GREF working groups. The Gaming Administration Unit also participates in the International Association

of Gaming Regulators (IAGR) which involves ongoing communication about matters of common interest and participation in an annual meeting.

Investigations

794. Enforcement authorities are authorised to conduct investigations on behalf of a foreign counterpart in consistence with the national legislation and the international agreements and obligations.

795. The *Joint Investigation Teams Act* (1313/2002) provides for the use of joint investigation teams for the purpose of conducting pre-trial investigations into criminal offences and also includes provisions on the powers of foreign officials. Finnish authorities have participated in five such Joint Investigation Teams since 2002 with members of other EU investigative agencies. None of these have had a concerted focus on ML or TF to date.

796. Finnish authorities facilitate investigations by overseas authorities which relate to Finland. Under articles 40 and 41 of the *Schengen Convention*, officers of one of the Contracting Parties who are pursuing in their country an individual caught committing or participating in an offence have the right to continue pursuit, apprehend the person and carry out a security search in the territory of another Contracting Party. Officers who, as part of a criminal investigation, are keeping under surveillance in their country a person who is presumed to have participated in an extraditable criminal offence also have the right to continue their surveillance in the territory of another Contracting Party. The relevant national provisions concerning the powers of foreign Police officers in the territory of Finland are laid down in s.22a and s.30a of the *Police Act*. Similarly, Finnish Customs actively assists counterpart authorities with respect to controlled deliveries involving Finland.

Conditions and secrecy provisions

797. Finland does not refuse requests for information on the sole ground that the request is also considered to involve fiscal matters. The exchange of information is possible in relation to ML, TF and all underlying predicate offences.

798. Information received by competent authorities is used only in an authorised manner. Authorities will not transfer information provided from overseas to a third party without the prior consent of the authority which disclosed the information. At a minimum, information received from overseas authorities must be protected by the same confidentiality provisions as apply to similar information from domestic sources. In addition, authorities are expected to consider safeguards in provisions on privacy, confidentiality and data protection. Information obtained under the *AML/CFT Act* is confidential. Under s.12, the MLCH may record, use and disclose the information it has received only for the purpose of preventing and clearing ML or TF. This obligation applies also to the international exchange of information. In addition, there are provisions on international exchange of information in the *Act on Processing of Personal Data by the Police* (761/2003), chapter 6. Further according to the *Act on Openness of Government Activities* (s.30), an authority may grant access to secret official documents to an authority of a foreign state or to an international institution, if an international agreement binding on Finland contains a provision on such co-operation between Finnish and foreign authorities, or there is a provision to this effect in an act binding on Finland, and if the Finnish authority in charge of the co-operation could under this act have access to the document.

6.5.2 Recommendations and Comments

799. Finnish authorities are satisfied with international co-operation concerning the FIU and law enforcement authorities. There are no indications that co-operation would be ineffective or would not be used as provided in the *FATF Recommendations*. However, statistics are not available which would allow for sufficient evaluation of Finland's investment in international co-operation. The MLCH and the FSA maintain some statistics concerning international co-operation, however these are

not sufficient to fully assess the effectiveness of the system. It is recommended that Finnish authorities collect, maintain and share statistics concerning international co-operation involving the FIU, enforcement and supervisory authorities.

6.5.3 Compliance with Recommendation 40 and Special Recommendation V

	RATING	SUMMARY OF FACTORS UNDERLYING RATING
R.40	LC	<ul style="list-style-type: none">• Statistics are not available which would allow for sufficient evaluation of Finland's investment in international co-operation.

7. OTHER ISSUES

7.1 Resources and statistics (R.30 & R.32)

800. **Remark:** the description and analysis relating to Recommendations 30 and 32 is contained in relevant sections of the report, *i.e.* all of section 2, parts of sections 3 and 4, and in section 6. There is a single rating for each of these Recommendations, even though the Recommendations are addressed in several sections.

7.1.1 Resources – Compliance with Recommendation 30

	RATING	SUMMARY OF FACTORS UNDERLYING RATING
R.30	PC	<ul style="list-style-type: none"> • There is no AML/CFT supervisor for the money remittance and currency exchange sectors. • It is not clear to what extent all supervisory employees are subject to background checks for appropriate integrity and confidentiality controls. • There is a need for more staff in the FIU, and in particular, persons who should focus on enhancing the co-operation with institutions and persons currently not disclosing and on the development of more detailed feedback and ML/TF Typologies development. • The current database of the FIU does not provide all functionality needed, particularly for analysis purposes and typologies development. • No statistics are maintained on spontaneous referrals made by the FIU to foreign authorities. • There is a need to raise the awareness of the pre-trial investigation and prosecuting authorities to ML and TF issues through more resources dedicated to producing guidance on typologies.

7.1.2 Statistics - Compliance with Recommendation 32

	RATING	SUMMARY OF FACTORS UNDERLYING RATING
R.32	PC	<ul style="list-style-type: none"> • No stats on formal requests to/from the supervisory authorities. • The FIU only produces limited statistics and has limited information on the outcomes of STRs referred for pre-trial investigation; • The statistics to be developed should be used for the analysis of the performance of the MLCH and should therefore be shared with partners on a national level. • Statistics on ML / TF investigations and on property frozen, seized or confiscated are not comprehensive. • No statistics are kept with regard to the informal (not on the basis of MLA) exchange of information between the Finnish LEA and foreign LEAs. • The effectiveness of the preventative AML/CFT system is not reviewed. • No statistics are maintained on spontaneous referrals made by the FIU to foreign authorities.

7.2 Other relevant AML/CFT measures or issues

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7.3 General framework for AML/CFT system (see also section 1.1)

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TABLES

Table 1: Ratings of Compliance with FATF Recommendations

The rating of compliance vis-à-vis the FATF Recommendations has been made according to the four levels of compliance mentioned in the 2004 Methodology⁵⁴ (Compliant (C), Largely Compliant (LC), Partially Compliant (PC), Non-Compliant (NC)), or, in exceptional cases, Not Applicable (N/A).

Compliant	The Recommendation is fully observed with respect to all essential criteria.
Largely Compliant	There are only minor shortcomings, with a large majority of the essential criteria being fully met.
Partially Compliant	The country has taken some substantive action and complies with some of the essential criteria.
Non Compliant	There are major shortcomings, with a large majority of the essential criteria not being met.
Not Applicable	A requirement or part of a requirement does not apply, due to the structural, legal or institutional features of a country e.g. a particular type of financial institution does not exist in that country.

Recommendations	Rating	Summary of Factors Underlying Rating ⁵⁵
Legal systems		
1 – ML offence	PC	<ul style="list-style-type: none"> • Not all physical elements (mere acquisition, possession and use of property) of the criminal offence of money laundering are covered. • It is not possible to prosecute for self-laundering and this is not due to any fundamental principle of Finnish law. • It is not possible to prosecute for money laundering any person living in a joint household with the offender who only uses or consumes property obtained by the offender for ordinary needs in the joint household. • There is no offence of conspiracy available for the basic offence of money laundering and this is not due to any fundamental principle of Finnish law. • The ML offence has not been effectively implemented as there have been very few convictions for money laundering, and the numbers appear to be decreasing since the latest amendments to the law were made.
2 – ML offence – mental element and corporate liability	LC	<ul style="list-style-type: none"> • The maximum punishment for conspiracy seems too low when the seriousness of the offence is taken into account. • The maximum corporate fine is very low when both the seriousness of offences that may occur and the economic strengths of the entities in question are taken into account. • Corporate fines are very seldom used.
3 – Confiscation and provisional measures	LC	<ul style="list-style-type: none"> • It is not possible to confiscate property of value corresponding to the laundered proceeds. • It is not possible to confiscate laundered proceeds that are mingled with licit assets to such an extent that the licit / illicit origin cannot be distinguished. • It is not clear that the rights of bona fide third parties would be

⁵⁴ *Methodology for Assessing Compliance with the FATF 40 Recommendations and the FATF 9 Special Recommendations*, 27 February 2004 (Updated as of February 2007).

⁵⁵ These factors are only required to be set out when the rating is less than Compliant.

Recommendations	Rating	Summary of Factors Underlying Rating ⁵⁵
		<p>protected in all circumstances.</p> <ul style="list-style-type: none"> • Provisional measures are not often used due to the high burden of having to demonstrate a material link between the property and an offence and the likelihood that there would be flight or removal of the property. • Due to a lack of detail in statistics held on confiscation it is difficult to assess effectiveness in this area.
Preventive measures		
4 – Secrecy laws	C	<ul style="list-style-type: none"> • This Recommendation is fully observed.
5 – Customer due diligence	PC	<ul style="list-style-type: none"> • There are no requirements to identify the beneficial owners of legal persons. • There are no general requirements to understand the ownership and control structure of the customer, other than as part of enhanced due diligence. • The identification process to be conducted in relation to legal arrangements is unclear. • There is no requirement to conduct ongoing due diligence on the business relationship. • There are no clear requirements for money remitters and foreign exchange companies to know the nature, scope and purpose of their customer relations and transactions. • Some CDD exemptions are in place in the banking and insurance sectors. • The enhanced due diligence obligation is very narrow in scope; covering only NCCT-listed countries.
6 – Politically exposed persons	NC	<ul style="list-style-type: none"> • There are no CDD requirements with respect to politically exposed persons.
7 – Correspondent banking	NC	<ul style="list-style-type: none"> • There are no CDD requirements with respect to correspondent banking relationships.
8 – New technologies & non face-to-face business	PC	<ul style="list-style-type: none"> • There are no requirements for obliged parties to have measures in place for prevention of the misuse of technological developments in ML or TF. • Limited provisions are in place with respect to the risks associated with non- face to face business relationships and transactions.
9 – Third parties and introducers	NC	<ul style="list-style-type: none"> • In some situations third parties are relied upon to perform elements of CDD, but this is not regulated. • Financial institutions are not required to immediately obtain from the third party the necessary information concerning the CDD process. • Insurance companies are not required to take adequate steps to satisfy themselves that copies of identification data and other relevant documentation relating to CDD will be made available from the third party upon request without delay. • Financial institutions are not required to satisfy themselves that the third party is regulated and supervised and has measures in place to comply with CDD requirements. • There are no provisions to establish that the ultimate responsibility for customer identification remains with the financial institution relying on a third party.
10 – Record keeping	C	<ul style="list-style-type: none"> • This Recommendation is fully observed.
11 – Unusual transactions	PC	<ul style="list-style-type: none"> • For institutions not supervised by the FSA, there is no requirement to

Recommendations	Rating	Summary of Factors Underlying Rating ⁵⁵
		<p>keep records of findings of examinations of unusual transactions.</p> <ul style="list-style-type: none"> • Due to the lack of record-keeping requirement for institutions not supervised by the FSA, it is difficult to assess whether the obligation to examine unusual transactions is in fact being observed.
12 – DNFBPs – R.5, 6, 8-11	NC	<ul style="list-style-type: none"> • Trust and company service providers are not obliged parties. • Finland’s shortcomings in implementation of Recommendations 5 - 8 and 10 - 11 also apply to DNFBPs. • There is no indication that dealers in precious metals and precious stones are complying with their AML/CFT obligations. • There is a lack of clarity with respect to the AML/CFT obligations for gaming businesses in the Åland Islands.
13 – Suspicious transaction reporting	LC	<ul style="list-style-type: none"> • There is no requirement to report transactions suspected of being related to terrorism other than those related to terrorist acts and no requirement to report transactions suspected of being related to terrorist organisations or to those who finance terrorism. • A large percentage of local banking institutions are not filing suspicious reports. Few reports have been received from any securities institutions. • <i>Effectiveness issue:</i> For money remitters and foreign exchange, the threshold-based reporting discourages meaningful due diligence to subjectively evaluate whether activity is suspicious.
14 – Protection & no tipping-off	C	<ul style="list-style-type: none"> • This Recommendation is fully observed.
15 – Internal controls, compliance & audit	PC	<ul style="list-style-type: none"> • The <i>Money Laundering Clearing House Best Practices</i>, which would satisfy many of the elements of Recommendation 15, are not binding. • There is no explicit requirement for money remittance and foreign exchange sectors to develop internal controls or independent audit to ensure compliance with the <i>AML/CFT Act</i>. • There is no requirement for non- FSA-supervised entities to have comprehensive training that focuses not only on internal procedures and regulatory requirements, but also ML/TF typologies. • Non-FSA supervised entities have no employee screening requirements. • There is no legal requirement for money remittance and foreign exchange sectors to have compliance officers.
16 – DNFBPs – R.13-15 & 21	PC	<ul style="list-style-type: none"> • Trust and company service providers are not obliged parties. • Finland’s shortcomings in implementation of Recommendation 13 also apply to DNFBPs. • There is no requirement to report transactions suspected of being related to terrorism other than those related to terrorist acts and no requirement to report transactions suspected of being related to terrorist organisations or to those who finance terrorism. • DNFBPs are not required to have internal controls, compliance officers, independent audits for AML/CFT, ongoing training or employee screening. • There is a lack of clarity with respect to the AML/CFT obligations for gaming businesses in the Åland Islands and only one STR has been submitted from that sector to date. • Few STRs have been submitted by the other DNFBPs, which calls into question the effectiveness of Recommendation 13 in this sector.
17 – Sanctions	PC	<ul style="list-style-type: none"> • Money remitters and foreign exchange offices are subject only to

Recommendations	Rating	Summary of Factors Underlying Rating ⁵⁵
		<p>criminal sanctions for violations of AML/CFT obligations.</p> <ul style="list-style-type: none"> • The scope of regulatory authorities' ability to sanction natural persons, such as directors or senior management of institutions, is unclear. • The ISA has a relatively limited range of sanctions available to it. • Finnish regulatory authorities rarely apply their sanction powers and have only once applied them for matters relating to AML/CFT obligations.
18 – Shell banks	PC	<ul style="list-style-type: none"> • There is no provision prohibiting banks or other institutions from having correspondent relationships with shell banks. • There is no provision requiring institutions to satisfy themselves that their accounts at respondent institutions do not allow indirect access by shell banks to those accounts.
19 – Other forms of reporting	C	<ul style="list-style-type: none"> • This Recommendation is fully observed.
20 – Other NFBP & secure transaction techniques	C	<ul style="list-style-type: none"> • This Recommendation is fully observed.
21 – Special attention for higher risk countries	PC	<ul style="list-style-type: none"> • Due to the absence of a requirement to set forth in writing the findings of examinations of unusual transactions, it is difficult to assess whether the obligation to examine the purpose of transactions with no apparent economic or visible lawful purpose involving countries or territories which do not or insufficiently apply the <i>FATF Recommendations</i> is in fact being observed. • The only possible counter-measure is application of enhanced customer identification processes. • There is no evidence that non-FSA supervised entities have mechanisms in place to receive notifications from a supervisory authority regarding countries or territories which do not or insufficiently apply the <i>FATF Recommendations</i>.
22 – Foreign branches & subsidiaries	PC	<ul style="list-style-type: none"> • There are no relevant requirements for non-FSA supervised businesses. • Banks and securities are only authorised, not required, to provide notice to the FSA or the MLCH when their foreign branches or subsidiaries are prevented by local rules from observing AML/CFT measures.
23 – Regulation, supervision and monitoring	PC	<ul style="list-style-type: none"> • The number of inspections specifically focussed on AML/CFT matters is very low. • There is not relevant supervisor for the money exchange and remittance sectors. • There are no provisions to prevent criminals from holding a controlling interest in institutions operating in the money exchange or remittance sectors. • Off-site AML/CFT control is limited; it is based on periodic reports by institutions which, with the exception of the FSA's AML/CFT surveys, do not address requirements relating to AML/CFT.
24 – DNFBP - regulation, supervision and monitoring	NC	<ul style="list-style-type: none"> • It is unclear what AML/CFT obligations and thus AML/CFT supervisory regime apply to Casino PAF on the Åland Islands. • Casinos are subject only to the general requirements in the <i>AML/CFT Act</i> – with no additional requirements or binding standards in place to govern their conduct regarding AML issues. • It is unclear whether limited (criminal) sanctions can be applied to

Recommendations	Rating	Summary of Factors Underlying Rating ⁵⁵
		<p>directors and management of all DNFBPs.</p> <ul style="list-style-type: none"> • As SRO membership for accountants and lawyers is voluntary, parts of each sector receive no guidance and are completely unsupervised. • Trust and company service providers are not regulated or supervised in any way, and while trusts are not recognised in Finnish law, company service providers are operating. • There is no supervisory authority for dealers in precious metals and stones
25 – Guidelines & Feedback	PC	<ul style="list-style-type: none"> • Limited guidance on AML/CFT matters has been issued to obliged parties and only one piece of guidance has been issued on STR reporting. • Guidance does not comprehensively address all areas of the <i>FATF Recommendations</i>. • No guidance has been issued which specifically addresses AML/CFT issues of relevance for the money exchange and remittance sector or for any DNFBPs. • SRO best practices are not distributed to all in the accounting/legal sectors as participation in SROs is voluntary. • TCSPs are not subject to any regulation or guidance. • Dealers have no supervisor to provide them guidance other than the MLCH. In practice, supervisors of the money remittance, the foreign exchange and the real estate sectors do not provide any feedback or guidance, other than that which is provided by MLCH. The MLCH, however, lacks the resources to provide the kind of individual feedback that a robust supervisory system could provide. • Some general feedback is provided to financial institutions and DNFBPs but does not include information on current techniques, methods and trends (typologies). • Non-FSA/ISA supervisors rely completely on the MLCH to provide guidance and limited guidance documents have been issued by the MLCH to date.
Institutional and other measures		
26 – The FIU	LC	<ul style="list-style-type: none"> • There was at the time of this assessment a five-month backlog in inputting STRs to the FIU's database. • Little written guidance has been provided to obliged parties regarding the manner of reporting and these parties have made limited use of the ability to submit STRs electronically. • The feedback provided to obliged parties by the FIU and the analysis conducted by the FIU are limited by insufficient human and technical resources.
27 – Law enforcement authorities	LC	<ul style="list-style-type: none"> • Insufficient attention is being paid to pursuing ML and TF offences; authorities are instead focussing their efforts on predicate offences and recovery of proceeds of crime. • Due to a lack of statistics it is difficult to evaluate the effectiveness of the system.
28 – Powers of competent authorities	C	<ul style="list-style-type: none"> • This Recommendation is fully observed.
29 – Supervisors	PC	<ul style="list-style-type: none"> • Money remittance and currency exchange sectors are not adequately supervised for AML/CFT compliance by any supervisor, and are not subject to AML/CFT inspections. • The infrequent use of the FSA's and ISA's enforcement powers does

Recommendations	Rating	Summary of Factors Underlying Rating ⁵⁵
		not allow for meaningful assessment of their effectiveness.
30 – Resources, integrity and training	PC	<ul style="list-style-type: none"> • There is no AML/CFT supervisor for the money remittance and currency exchange sectors. • It is not clear to what extent all supervisory employees are subject to background checks for appropriate integrity and confidentiality controls. • There is a need for more staff in the FIU, and in particular, persons who should focus on enhancing co-operation with institutions and persons currently not disclosing, to develop more detailed feedback, and to conduct ML/TF typologies development. • The current database of the FIU does not provide all functionality needed, particularly for analysis purposes and typologies development. • No statistics are maintained on spontaneous referrals made by the FIU to foreign authorities. • There is a need to raise the awareness of the pre-trial investigation and prosecuting authorities to ML and TF issues through more resources dedicated to producing guidance and typologies.
31 – National co-operation	LC	<ul style="list-style-type: none"> • It is unclear how effective co-ordination is at targeting money laundering or terrorist financing specifically, as these types of cases are only pursued on a limited basis. • There is limited information sharing and in particular feedback between agencies with respect to investigations and results of inter-agency disseminations.
32 – Statistics	PC	<ul style="list-style-type: none"> • No stats on formal requests to/from the supervisory authorities. • The FIU only produces limited statistics and should also keep statistics about the follow up of the STRs referred for pre-trial investigation; • The statistics to be developed should be used for the analysis of the performance of the MLCH and should therefore be shared with partners on a national level. • Statistics on ML / TF investigations and on property frozen, seized or confiscated are not comprehensive. • No statistics are kept with regard to the informal (not on the basis of MLA) exchange of information between the Finnish LEA and foreign LEAs. • The effectiveness of the preventative AML/CFT system is not reviewed. • No statistics are maintained on spontaneous referrals made by the FIU to foreign authorities.
33 – Legal persons – beneficial owners	PC	<ul style="list-style-type: none"> • There are no requirements for legal persons to keep or make available information on beneficial ownership or control. • There are limited requirements for legal persons to submit updated information to the trade register. • Requirements that limited liability companies maintain share registers and shareholder registers are not supervised.
34 – Legal arrangements – beneficial owners	N/A	<ul style="list-style-type: none"> • Trusts do not exist under Finnish law.
International Co-operation		
35 – Conventions	PC	<ul style="list-style-type: none"> • Some shortcomings exist in relation to implementation of article 3(1) of the <i>Vienna Convention</i> and article 6(1) of the <i>Palermo</i>

Recommendations	Rating	Summary of Factors Underlying Rating ⁵⁵
		<p><i>Convention</i>, namely the Finnish money laundering offence does not criminalise all possession or acquisition of the proceeds of crime.</p> <ul style="list-style-type: none"> • Self-laundering is not an offence in Finland and this is not due to any fundamental principle of law. • The ancillary offence of conspiracy to money laundering is not punishable, the conspiracy offence does not apply to all forms of the aggravated money laundering offence, and members of a joint household with the offender cannot be prosecuted if they only used or consumed the proceeds of crime for ordinary needs in the joint household. • The sanctions for conspiracy to commit aggravated money laundering and for participation in a criminal organisation are not effective, proportionate and dissuasive. • Article 18(1)(b) of the <i>Terrorist Financing Convention</i> is not fully implemented, in particular the requirement for measures to ascertain the identity of beneficial owners.
36 – Mutual legal assistance (MLA)	LC	<ul style="list-style-type: none"> • As dual criminality is required for exercise of coercive measures in response to a mutual legal assistance request, the limitations in the ML and TF offences limit the extent and effectiveness of mutual legal assistance provided by Finland. • Effectiveness could not be fully assessed due to limited statistics and information on practical cases being available.
37 – Dual criminality	C	<ul style="list-style-type: none"> • This Recommendation is fully observed.
38 – MLA on confiscation and freezing	LC	<ul style="list-style-type: none"> • It is not possible to confiscate property of corresponding value to the proceeds derived from ML. • Finland has not considered establishing an asset forfeiture fund.
39 – Extradition	LC	<ul style="list-style-type: none"> • Conspiracy to conduct money laundering is not criminalised, the offence of conspiracy to conduct aggravated ML laundering is limited in scope, self-laundering is not an offence and funding a terrorist or a terrorist organisation without a specific link to a terrorist act is not punishable in Finland. These factors could be obstacles to extradition limit the extraditions because of the requirement of dual criminality. • Effectiveness could not be fully assessed due to limited statistics and information on practical cases being available.
40 – Other forms of co-operation	LC	<ul style="list-style-type: none"> • Statistics are not available which would allow for sufficient evaluation of Finland's investment in international co-operation.
Nine Special Recommendations		
SR.I – Implement UN instruments	PC	<ul style="list-style-type: none"> • Article 18(1)(b) of the <i>Terrorist Financing Convention</i> is not fully implemented, in particular the requirement for measures to ascertain the identity of beneficial owners. • Finland does not have a national mechanism to give effect to requests for freezing assets and designations from other jurisdictions and it does not have a de-listing process. • The definition of funds does not explicitly cover funds owned directly or indirectly by designated persons or those controlled directly or indirectly by designated persons. • There are no procedures for accessing funds/assets that are frozen and that are determined to be necessary on humanitarian grounds in a manner consistent with S/RES/1452(2002).
SR.II – Criminalise TF	LC	<ul style="list-style-type: none"> • Funding a terrorist or a terrorist organisation without a specific link to a terrorist act is not punishable in Finland.

Recommendations	Rating	Summary of Factors Underlying Rating ⁵⁵
		<ul style="list-style-type: none"> The maximum corporate fine is very low.
SR.III – Freeze and confiscate terrorist assets	PC	<ul style="list-style-type: none"> Finland does not have a national mechanism to consider requests for freezing from other countries or to freeze the funds of EU internals. The definition of funds in the EU regulations does not explicitly cover funds owned ‘directly or indirectly’ by designated persons or those controlled directly or indirectly by designated persons. Finland does not have an established national procedure for the purpose of considering delisting requests. Due to the limited nature of the terrorist financing offence, it is not clear how Finland would freeze funds or other assets where the suspect is an individual terrorist or involved in a terrorist organisation without a link to a specific terrorist act. Finland has issued little specific and clear guidance to financial institutions and other persons or entities that may be holding targeted funds in Finland.
SR.IV – Suspicious transaction reporting	LC	<ul style="list-style-type: none"> Suspicious transaction reporting is not required re TF unless the transaction is potentially connected to an act of terrorism.
SR.V – International co-operation	LC	<ul style="list-style-type: none"> As dual criminality is required for exercise of coercive measures in response to a mutual legal assistance request, limitations in the TF offence limits the extent and effectiveness of mutual legal assistance provided by Finland where the funds / assets are being collected / provided for a terrorist organisation or individual terrorist and are not connected with a terrorist act. Effectiveness could not be fully assessed due to limited statistics and information on practical cases being available. The application of dual criminality may create an obstacle to extradition in cases involving TF where there is no link between the funding and a specific terrorist act.
SR.VI – AML requirements for money/value transfer services	PC	<ul style="list-style-type: none"> Remittance services are obliged parties under the <i>AML/CFT Act</i> and are thus subject to the same limitations in the scope of those obligations as the other obliged parties. Remittance services are not required to develop internal controls (R.15). There is a registration system but no supervision of this sector and therefore no inspections are conducted (R.23) of these businesses. Remittances services are subject only to criminal sanctions (R.17). Effectiveness of the STR reporting obligation cannot be fully ascertained as there is no breakdown of STRs submitted by each money remittance business in Finland (R.16).
SR.VII – Wire transfer rules	PC	<ul style="list-style-type: none"> The provisions relating to originator information for wire transfers within the EU (classified as domestic transfers) is not in compliance with the FATF requirements under SR.VII⁵⁶. There is no obligation in Finland for institutions to maintain address details, thus leading to incomplete identification procedures relating to wire transfers. There are no provisions on penalties applicable to infringements of the wire transfer requirements for the money remittance sector.
SR.VIII – Non-profit organisations	PC	<ul style="list-style-type: none"> There has been no review of the NPO sector and no identification of its vulnerabilities for terrorist financing.

⁵⁶ The FATF decided at the June 2007 plenary meeting to further consider this subject.

Recommendations	Rating	Summary of Factors Underlying Rating ⁵⁵
		<ul style="list-style-type: none"> • Information is only obtained on those NPOs which are registered and an unknown number of NPOs are not registered with authorities. • No inspections are conducted of the NPO sector. • The many authorities which have some information on NPOs do not share this information. • Authorities do not conduct outreach or provide guidance on terrorist financing to the NPO sector. • The system for obtaining information on NPOs is weakened by the overall lack of measures in Finland to record and obtain information on beneficial ownership.
SR.IX – Cross Border Declaration & Disclosure	PC	<ul style="list-style-type: none"> • Measures are very new; coming into force almost 2 months after the date of this assessment and thus it is too early to ascertain the effectiveness of this system. • The EU regulation and relevant national legislation do not cover the transfer of cash or bearer negotiable instruments between Finland and another EU member state.

Table 2: Recommended Action Plan to Improve the AML/CFT System

AML/CFT SYSTEM	RECOMMENDED ACTION (LISTED IN ORDER OF PRIORITY)
1. General	
2. Legal System and Related Institutional Measures	
2.1 Criminalisation of ML (R.1 & 2)	<ul style="list-style-type: none"> • It is recommended that Finland review its ML offence to cover all physical elements of the crime, as required in accordance with the <i>Palermo Convention</i> and introduce the offence of self-laundering. • The exemption from prosecution for members of a joint household with the offender should be removed. • It is recommended that Finland remove the requirement to prove a connection between the proceeds of crime and a specific predicate offence. • The offence of conspiracy should be broadened to apply to the basic offence of ML, in addition to its application to the offence of aggravated ML. • The penalties for conspiracy offences should be raised. Similarly, the penalties for legal persons convicted of ML offences should be raised.
2.2 Criminalisation of TF (SR.II)	<ul style="list-style-type: none"> • It is recommended that Finland amend its <i>Penal Code</i> to broaden the definition of TF to cover financing an individual terrorist or providing funds to a terrorist organisation where there is no link to a terrorist act or to terrorist acts that will occur in the future. • As with the corporate fines available for ML, it is recommended that Finland increase the penalty available for legal persons convicted for TF. • In addition to raising the level of fines which can be levied, terms of imprisonment for responsible senior executives could be introduced.
2.3 Confiscation, freezing and seizing of proceeds of crime (R.3)	<ul style="list-style-type: none"> • It is recommended that Finland conduct a review of its provisional measures to ensure provisional measures can be used in all ML cases, including where the proceeds of crime cannot be identified and when a connection to the offence from which the proceeds were derived cannot be proven. • Similarly, it is recommended that other gaps in the coverage of the confiscation provisions be closed: it is not possible to confiscate property of organisations that are found to be primarily criminal in nature without a specific link to a certain crime; confiscation of property that has been the target of ML is not possible if the object is completely mingled with licit assets; it is not possible to void actions where the persons involved knew or should have known that as a result of those actions the authorities would be prejudiced in their ability to recover property subject to confiscation. • Provisions on confiscation of the proceeds of crime, and on confiscation of instrumentalities and other property should be harmonised to make confiscation of equivalent value possible in connection with assets that have been the target of ML. • It is also recommended that the restriction be removed regarding the confiscation of equivalent value when the property has likely been destroyed or consumed.
2.4 Freezing of funds used for TF (SR.III)	<ul style="list-style-type: none"> • Finland should implement a national mechanism to give effect to requests for freezing assets and designations from other jurisdictions and to enable freezing funds of EU internals (citizens and residents). • Finland has not established a TF offence which meets all requirements of Special Recommendation II. It is recommended that Finland enact measures to allow for freezing funds or other assets where the suspect is an individual terrorist, belongs to a

AML/CFT SYSTEM	RECOMMENDED ACTION (LISTED IN ORDER OF PRIORITY)
	<p>terrorist organisation or is otherwise involved in terrorism unconnected with a terrorist act.</p> <ul style="list-style-type: none"> • It is also recommended that a national de-listing process be established as part of these measures. • Finnish authorities should consider providing clear and practical guidance to financial institutions and other entities that may hold terrorist funds concerning their responsibilities under the freezing regime and provide procedures for authorising access to funds/assets that are determined to be necessary on humanitarian grounds in a manner consistent with S/RES/1452(2002)
<p>2.5 The Financial Intelligence Unit and its functions (R.26)</p>	<ul style="list-style-type: none"> • It is recommended that the MLCH treat its development of a new database as a priority and that the Finnish Police fully resource this project. • It is recommended that the MLCH (in co-operation with other stakeholders such as the supervisory authorities) pay more attention to the reasons why only a limited number of institutions submit STRs and how the reporting behaviour in general can be improved. • It is recommended that the MLCH improve the guidance provided to all types of obliged parties and provide feedback to assist with STR reporting. A list of indicators of suspicious activity or indicators for different sectors may also assist in this regard. The current situation where one member of personnel acts as the central contact point for all obliged parties and is responsible for training all obliged parties is not realistic. • The MLCH should pay more attention to the development of trends and typologies related to the STRs received and matters forwarded to pre-trial investigation. It is recommended that more experienced members of personnel involved in the day-to-day work of the MLCH focus on development of typologies, guidance and support to work with the reporting institutions. Similarly, it is recommended that the MLCH strengthen mechanisms to obtain information on the outcomes of matters disseminated and examine the statistics and feedback from investigators and prosecutors with a view to improving its understanding of the effectiveness of the AML/CFT system in Finland.
<p>2.6 Law enforcement, prosecution and other competent authorities (R.27 & 28)</p>	<ul style="list-style-type: none"> • It is recommended that Finland develop a more proactive approach to pursuing ML charges. • Flexibility for prosecutors to pursue ML and TF charges and the possibility to allow for prosecution of self-laundering are recommended. • There appears not to be a lack of resources with regard to prosecuting authorities but the resources could be focussed more on ML and TF matters. • More strategic analysis and the development of typologies, trends and indicators would be beneficial to support the LEA and prosecuting authorities in their activities and to draw the attention of policy makers to problems that currently occur when pursuing ML and TF. Further awareness raising would complement the ongoing training initiatives of the MLCH. To assist this, investigative and prosecutorial authorities should give feedback to the MLCH on the results of the pre-trial investigations started on the basis of an STR. • Statistics should be collected on a systematic basis concerning the ML and TF investigations, prosecutions, convictions and types of sanctions (criminal and administrative) imposed for ML and TF as well as on property frozen, seized or confiscated.
<p>2.7 Cross Border Declaration & Disclosure (SR.IX)</p>	<ul style="list-style-type: none"> • It is recommended that Finland develop a declaration system which applies movement of currency between Finland and other

AML/CFT SYSTEM	RECOMMENDED ACTION (LISTED IN ORDER OF PRIORITY)
	<p>EU member States.</p> <ul style="list-style-type: none"> There is a need for co-ordination between the customs, immigration and other related authorities in order to fully implement the EU regulation and national legislation in order to meet the requirements of Special Recommendation IX.
3. Preventive Measures – Financial Institutions	
3.1 Risk of ML or TF	-
3.2 Customer due diligence, including enhanced or reduced measures (R.5 to 8)	<p>Recommendation 5</p> <ul style="list-style-type: none"> It is recommended that the new AML/CFT Act strengthen the existing identification requirements by requiring obliged parties to take and keep a copy of the identification documents presented by their customer as these records are important, for instance, to permit the Police to progress investigations even where false documents are involved. Finland should regulate the general obligation to identify the beneficial owner and verify the information about him/her in legal persons and arrangements. This is particularly necessary when a foreign trust operates in Finland. They should include a general provision about this issue in the act to extent the requirement to all the situations, not only in case of suspicion, in order to cover all the obliged parties. Finland should implement measures to make sure that the review of the information of the customers is performed, especially in cases of enhanced due diligence. The monitoring of transactions should be established clearly in the AML legislation for all obliged parties. Finland should implement a domestic list of territories that don't comply with international standards and should extend enhanced due diligence to other high risk categories such as for PEPs, private banking and foreign trusts. It is recommended that Finland provide an effective simplified CDD obligation where appropriate rather than an exemption. Finland could implement a list of low risk categories where this "simplified CDD measures" could be applied. Finland should consider including an obligation to reject an existing customer when the CDD obligations can't be fulfilled; and, in this cases, consider making an STR. In the new <i>AML/CFT Act</i>, it is recommended that Finland establish more clearly the obligation to identify the person who is acting on behalf the legal person in general terms, not only in case of enhanced due diligence and ensure this applies to obliged parties, including insurance, money remitters and foreign exchange companies. <p>Recommendation 6</p> <ul style="list-style-type: none"> Finland should implement legislation which specifically provides for enhanced due diligence with respect to politically exposed persons. <p>Recommendation 7</p> <ul style="list-style-type: none"> Finland should implement legislation which specifically deals with correspondent banking. <p>Recommendation 8</p> <ul style="list-style-type: none"> Finland should establish provisions about non face to face transactions (ongoing due diligence) for all sectors and with respect to establishing that financial institutions must have policies to deal with the misuse of technological developments.
3.3 Third parties and introduced business (R.9)	<ul style="list-style-type: none"> The existing provisions could be elaborated with greater specificity with respect to the outsourcing of customer due diligence

AML/CFT SYSTEM	RECOMMENDED ACTION (LISTED IN ORDER OF PRIORITY)
	<p>activities, the provision of identification information to the institution, related controls of the contractual arrangement and requirements when the third party is located in another country.</p>
3.4 Financial institution secrecy or confidentiality (R.4)	<ul style="list-style-type: none"> Finland should implement provisions which specifically deal with CDD measures for correspondent banking, including detailing the information which must be kept by institutions with respect to their correspondent banking relationships and transactions.
3.5 Record keeping and wire transfer rules (R.10 & SR.VII)	<p>Special Recommendation VII</p> <ul style="list-style-type: none"> Finland fully relies on the implementation of the EU regulation on the payer accompanying transfers of funds as its system of requirements for originator information in wire transfers. The regulation classifies wire transfers within the EU as domestic and therefore only seeks limited originator information on wire transfers within the European Community. It is recommended that Finland exercise its option to apply the EU regulation requirements to transfers within the EU. Finland should consider introducing a clear mechanism to monitor compliance of money remitters with the regulation, and establish the sanctions available for any non-compliance by that sector.
3.6 Monitoring of transactions and relationships (R.11 & 21)	<p>Recommendation 11</p> <ul style="list-style-type: none"> It is recommended that strengthened provisions in relation to unusual transactions be included in the new <i>AML/CFT Act</i>. In particular, this legislation should clearly require all financial institutions, not just those supervised by the FSA, to examine the background and purpose of unusual transactions and should require obliged parties to keep such findings in writing and accessible by competent authorities for at least five years. <p>Recommendation 21</p> <ul style="list-style-type: none"> It is recommended that strengthened provisions in relation to jurisdictions which do not or do not sufficiently apply the FATF Recommendations be included in the new <i>AML/CFT Act</i> or its regulations. In particular, this legislation should clearly require all financial institutions to document their findings when enquiring into these transactions and to keep such findings accessible for competent authorities or auditors. In addition, it is recommended that Finland ensure that a system is in place to advise all obliged parties of the countries and jurisdictions which do not or insufficiently apply the FATF Recommendations so the obliged parties may effectively comply with s.11a of the <i>AML/CFT Act</i> and s.10 of the <i>AML/CFT Decree</i>. Finland may also want to consider creating additional types of counter-measures which could be applied by it to countries or territories which do not or insufficiently apply the FATF Recommendations.
3.7 Suspicious transaction reports and other reporting (R.13-14, 19, 25 & SR.IV)	<p>Recommendation 13</p> <ul style="list-style-type: none"> As noted previously in relation to SR.II, it is recommended that Finland expand the scope of the terrorist financing offence beyond funds connected with a terrorist act as this limited definition of terrorist financing means the obligation to report STRs does not arise where there is a suspicion that the funds or assets are related to or used for terrorism other than terrorist acts. It also does not arise where there is a suspicion that the funds or assets are linked to or related to terrorist organisations or those who finance terrorism. It is recommended that Finland specify that the STR reporting obligation in its new <i>AML/CFT Act</i> applies to attempted transactions as well as completed transactions. This provision would also benefit from a clear statement that the

AML/CFT SYSTEM	RECOMMENDED ACTION (LISTED IN ORDER OF PRIORITY)
	<p>reporting obligation applies to transactions that may involve tax matters.</p> <ul style="list-style-type: none"> Finland should ensure that a robust supervisory regime addresses the widespread lack of filing by many sectors and institutions. <p>Recommendation 14</p> <ul style="list-style-type: none"> It is recommended that in its new <i>AML/CFT Act</i> Finland should express the ‘good faith’ standard more clearly to ensure that there is a complete protection in law from criminal and civil liability for those who report suspicions in good faith. In addition, Finland should consider whether the fines associated with non-compliance with the disclosure provision are a sufficient deterrent. <p>Recommendation 19</p> <ul style="list-style-type: none"> As it appears Finland last considered the feasibility and utility of having currency transaction reporting when devising the Finnish AML legislation in 1992-1993, it is recommended that the FATF Working Group consider whether such a system is now desirable in Finland. In addition, Finland should clarify or amend the suspicious reporting system in place for the gaming, money transfer, and money exchange sectors as this applies a threshold but is in fact suspicious transaction reporting. <p>Recommendation 25</p> <ul style="list-style-type: none"> Finland should consider establishing a more robust supervisory system for DNFBPs with supervisory authorities issuing guidelines to more comprehensively supervise the money remittance, foreign exchange, accounting, lawyer, real estate agent, and trust and company service providers sectors. Finland should address the concerns created by SROs with voluntary membership (parts of sector remain unsupervised or do not receive appropriate guidance). <p>Special Recommendation IV</p> <ul style="list-style-type: none"> Finland’s limited definition of terrorist financing should be expanded to include transactions not connected to a terrorist act (See SR II), thereby requiring suspicious transaction reporting for funds linked or related to terrorism, terrorist acts, or terrorist organisations. This obligation should include an explicit provision requiring reporting for attempted transactions, as well as transactions that may involve tax matters in connection with terrorist financing.
3.8 Internal controls, compliance, audit and foreign branches (R.15 & 22)	<p>Recommendation 15</p> <ul style="list-style-type: none"> The money remittance and foreign exchange sectors should have explicit rules that require internal controls, compliance officers, and training to ensure compliance with the identification, reporting, and customer due diligence requirements of the AML/CFT Act. Sectors not supervised by the FSA need explicit binding requirements to have an independent audit function for AML compliance and to ensure appropriate screening procedures are in place when hiring employees. <p>Recommendation 22</p> <ul style="list-style-type: none"> Finland should consider implementing standards for non-FSA supervised institutions similar to s.1(5) of FSA standard 2.4, <i>Customer Identification and Customer Due Diligence - Prevention of Money Laundering, Terrorism Financing and Market Abuse</i>. Finland should require, not simply allow, all institutions to inform their supervisory authority when a foreign branch or subsidiary is prohibited by the local rules from observing AML/CFT measures.

AML/CFT SYSTEM	RECOMMENDED ACTION (LISTED IN ORDER OF PRIORITY)
3.9 Shell banks (R.18)	<ul style="list-style-type: none"> • Finland should consider expressly prohibiting the operation of shell banks, rather than relying on the licensing system for financial institutions to uncover shell bank operations. • The FSA should clarify explicitly in its CDD and Customer ID standards that institutions cannot maintain correspondent banking relationships with shell banks. • More generally, such requirements should be binding for other non-bank sectors, including the insurance, money remitter, and foreign exchange sectors. • Finland should require all institutions to perform due diligence to satisfy themselves that their correspondent institutions do not allow indirect access to their accounts by shell banks.
3.10 The supervisory and oversight system - competent authorities and SROs. Role, functions, duties and powers (including sanctions) (R.23, 29, 17 & 25)	<p>Recommendation 17</p> <ul style="list-style-type: none"> • Finland should consider adopting additional binding requirements for the money remittance and foreign exchange sectors beyond the <i>AML/CFT Act</i>, and appointing a supervisory authority to monitor these sectors' compliance with all AML/CFT provisions and sanction non-compliance. • It is recommended that Finland clearly clarifying its sanction provisions to note their applicability to directors and senior management within obliged parties. • It is recommended that Finland clearly review and raise the strength of the sanctions available to supervisors for non-compliance with AML/CFT obligations and that supervisory authorities in fact apply sanctions where appropriate. <p>Recommendation 23</p> <ul style="list-style-type: none"> • It is recommended that Finland clearly clarifying its sanction provisions to note their applicability to directors and senior management within obliged parties. • It is recommended that there be specific requirements for all financial institutions to apply fit and proper tests to persons who are not directly owners or senior managers but who exert influence and have decision-making powers impacting on the institution. • It is recommended that the supervisory authorities increase the number of inspections specifically focussed on AML/CFT matters. • It is recommended that the FSA consider taking a more active role in AML-focused inspections and enforcement and rely less on AML/CFT matters to be uncovered during the prudential inspection programme. • It is recommended that the FSA and ISA clearly require reports submitted by institutions as part of off-site control include all AML/CFT-related internal control information. • Finland is encouraged to continue with its planned implementation of supervision as part of the next AML/CFT law. Standards and guidance will need to be provided to these businesses and measures will be needed which prevent criminals from having a controlling interest in a business that provides remittance services. <p>Recommendation 25</p> <ul style="list-style-type: none"> • It is recommended that the FSA and ISA clearly require reports submitted by institutions as part of off-site control include all AML/CFT-related internal control information. • It is recommended that the MLCH, FSA and ISA work together to produce guidance for all obliged parties specifically on AML/CFT obligations and that this guidance be tailored to the characteristics and needs of each type of obliged party. • It is recommended that the FSA and ISA issue further guidance to the entities they supervise which specifically addresses AML/CFT matters and that these authorities work with the MLCH to produce updated best practices guidance which targets the needs of each

AML/CFT SYSTEM	RECOMMENDED ACTION (LISTED IN ORDER OF PRIORITY)
	<p>of the types of obliged parties.</p> <p>Recommendation 29</p> <ul style="list-style-type: none"> • Finland should consider clarifying the scope of the FSA's stated mandate to explicitly not that it includes AML/CFT supervision, similar to the ISA authority provided in s.5, chapter 14, <i>ISA Act</i>. • Supervisors with AML/CFT authority should be appointed over the money remittance and currency exchange sectors. Until such a supervisory regime is established for the money remittance and currency exchange sector, the MLCH should be authorised to compel records from such businesses related to compliance matters, not just as part of investigations of ML/TF. • It is recommended that the FSA and ISA consider a more robust use of their respective enforcement powers, and that money remittance and currency exchange sectors be subject to a greater range of sanctions than provided under the current criminal penalties.
3.11 Money value transfer services (SR.VI)	<ul style="list-style-type: none"> • Finland should address the concerns raised previously in Recommendations 13, 14, 15, 21, 22, and 23 with respect to the remittance sector as well as other obliged parties. • Finland is encouraged to establish an AML/CFT supervisor for the sector, with sufficient powers and sanctions available to it to ensure compliance by these businesses with the full range of AML/CFT obligations. It is recommended that this supervisor work with the MLCH to ensure an effective STR reporting system is put in place for the sector and is implemented throughout the sector.
4. Preventive Measures – Non-Financial Businesses and Professions	
4.1 Customer due diligence and record-keeping (R.12)	<ul style="list-style-type: none"> • The same recommendations made previously for action by Finland with respect to Recommendations 5 to 8 are also applicable for the DNFBP sector. • Finland is encouraged to apply the new <i>AML/CFT Act</i> to trust and company service providers. • The same recommendations for action by Finland expressed previously with respect to Recommendations 10 and 11 are applicable for the DNFBP sector. • It is recommended that a targeted programme be put in place to increase implementation of the FATF standards by DNFBPs and that active AML/CFT supervision of these business and professions be conducted. • It is further recommended that a review be conducted of the obligations in the gaming sector, including a review of requirements for non face-to-face activities. • Finland should ensure that AML/CFT obligations are applied completely and consistently, including in the Åland Islands.
4.2 Suspicious transaction reporting (R.16)	<ul style="list-style-type: none"> • It is recommended that Finland ensure its new AML/CFT legislation is widened in scope to capture trust and company service providers as obliged parties. • Finland's limited definition of the financing of terrorism (see SR11) should be expanded to include the reporting of transactions not directly linked to a terrorist act. • Finland should explicitly clarify that both transactions related to tax matters and any attempted transactions that otherwise meet the suspicious transaction reporting criteria should be reported. • It is strongly recommended that in the new AML/CFT legislation Finland implement supervision and inspection of DNFBPs' compliance with the obligation to report STRs to address the widespread lack of filing by many sectors and institutions. This

AML/CFT SYSTEM	RECOMMENDED ACTION (LISTED IN ORDER OF PRIORITY)
	<p>supervision could draw on the expertise of existing supervisors in terms of provision of standards for all DNFBPs similar to those for FSA-supervised entities requiring internal controls, fully empowered compliance officers, independent audit, comprehensive employee training, and employee screening procedures to manage AML/CFT risks.</p> <ul style="list-style-type: none"> • It is recommended that Finland ensure that all DNFBPs are notified by an appropriate government authority of high-risk jurisdictions or other areas of concern. • Finland should address the jurisdictional disagreements between the Finnish government and the government of the Åland Islands with respect to gaming and should ensure that AML/CFT obligations and robust controls and supervision are applied consistently across the entire gaming sector.
4.3 Regulation, supervision and monitoring (R.24-25)	<p>Recommendation 24</p> <ul style="list-style-type: none"> • The relevant supervisory authorities should consider issuing more exhaustive binding rules for casinos to supplement the minimum requirements of the <i>AML/CFT Act</i>. • Finland should clarify to the gaming sector the difference between threshold-based reporting and true suspicious transaction reporting as defined by the FATF, as well as clarify that existing sanctions can be imposed against the directors or senior management of a casino. • In addition, Finland should empower the appropriate supervisory authorities with other powers of enforcement in addition to the criminal sanctions for failure to comply with the <i>AML/CFT Act</i>. • Finland must address the jurisdictional concerns that are precluding the equitable and consistent enforcement of AML/CFT measures for the casino sector in the Åland Islands. • It is recommended that Finland evaluate the vulnerabilities in the system of voluntary membership in SROs for the legal and accounting sectors, recognising the importance of ensuring compliance by all businesses within a certain sector. • In addition to subjecting the trust and company service provider sector to AML requirements, Finland should establish a relevant and adequately empowered supervisor for both the trust and company service providers and the dealers in precious metals and stones. <p>Recommendation 25</p> <ul style="list-style-type: none"> • Finland should consider establishing a more robust system of provision of guidance and feedback to DNFBPs with information tailored for the nature of their activities. It is recommended that in doing so, Finnish authorities address the need to provide guidance to businesses which are not members of SROs as well as those which are members.
4.4 Other non-financial businesses and professions (R.20)	<ul style="list-style-type: none"> • Implementation of a risk-based approach is one of the expected features of the new AML/CFT legislation. It is recommended that Finnish authorities conduct a comprehensive assessment to identify AML/CFT risks.
5. Legal Persons and Arrangements & Non-Profit Organisations	
5.1 Legal Persons – Access to beneficial ownership and control information (R.33)	<ul style="list-style-type: none"> • It is recommended that legal persons be required to keep and make available to authorities information on beneficial ownership and control. This requirement may be incorporated in the <i>Companies Act, Trade Register Act</i> and related legislation so as to strengthen the Trade Register system and availability of information on beneficial ownership and control. • It is recommended that Finland consider implementing a programme of monitoring or supervision by the PRH of the full

AML/CFT SYSTEM	RECOMMENDED ACTION (LISTED IN ORDER OF PRIORITY)
	range of obligations of legal persons to hold and submit updated information for the trade registers.
5.2 Legal Arrangements – Access to beneficial ownership and control information (R.34)	<ul style="list-style-type: none"> • While the Finnish legal system does not allow for the creation of trusts, and the legal concept of trust does not exist in Finnish law, it may nevertheless be useful for Finland to consider examining issues with respect to trusts and provide information to raise awareness of Finnish financial institutions of these types of legal arrangements.
5.3 Non-profit organisations (SR.VIII)	<ul style="list-style-type: none"> • It is recommended that Finland conduct a review of its non-profit sector, including reviews of TF risks, and a review of the legislation in place to ensure the transparency of and appropriate conduct within the sector. It should use this information to fully implement a registration requirement for all bodies operating in the sector and to begin a program of outreach and awareness-raising with the NPOs with a view to strengthening their resistance to terrorist financing abuse. • Finland should implement measures to effectively supervise the non-profit sector, including implementation of an effective range of sanctions for inappropriate conduct. In support of this supervision system, exchanges of information and co-ordination between authorities should be improved in order to increase the volume of useful information about NPOs.
6. National and International Co-operation	
6.1 National co-operation and co-ordination (R.31)	<ul style="list-style-type: none"> • Is it recommended that the national FATF Working Group treat this need for information collection and information sharing and as a priority issue so that an overall picture of the effectiveness of Finland's AML/CFT system can be developed. • In addition, as AML/CFT supervisors for the remittance and currency exchange sectors are established, it is recommended that Finland ensure that they are sufficiently able to co-operate and exchange information with other supervisory and enforcement authorities.
6.2 The Conventions and UN Special Resolutions (R.35 & SR.I)	<ul style="list-style-type: none"> • As noted previously, it is recommended that Finland amend its ML offence as it does not currently implement all physical elements of the ML offence required by the <i>Vienna and Palermo Conventions</i>. • In addition it is recommended that the ancillary offence of conspiracy to conduct ML be created and the conspiracy to conduct aggravated ML widened to cover conspiracy to conduct all aspects of the aggravated ML offence. • In order to fully implement the Vienna and Palermo conventions, it is further recommended that Finland criminalise self-laundering and ML by members of a joint household with the offender who use or consume the proceeds of crime for ordinary needs in the joint household. • Further conduct of a review of the adequacy of penalties is recommended, particularly penalties for conspiracy to commit aggravated money laundering and for participation in a criminal organisation. • Finland should enact stronger measures for customer identification so as to more fully implement article 18 of the <i>Terrorist Financing Convention</i> and should include an explicit provision in its <i>Penal Code</i> clarifying that criminal acts under the scope of the <i>Terrorist Financing Convention</i> are under no circumstances justifiable by considerations of political, philosophical, ideological, racial, ethnic, religious or other similar nature. • With respect to full implementation of S/RES/1267(1999) and its successor resolutions and S/RES/1373(2001), it is recommended that Finland implement a national mechanism to give effect to

AML/CFT SYSTEM	RECOMMENDED ACTION (LISTED IN ORDER OF PRIORITY)
	requests for freezing assets and designations from other jurisdictions, a de-listing process, and procedures for accessing funds/assets that are frozen and that are determined to be necessary on humanitarian grounds.
6.3 Mutual Legal Assistance (R.36-38 & SR.V)	<ul style="list-style-type: none"> • In order to ensure that coercive measure could consistently be applied for all requesting countries, it is recommended that Finland criminalise (1) conspiracy to conduct ML, (2) conspiracy to conduct all aspects of aggravated ML, (3) self-laundering, and (4) collecting or providing funds/assets where these are for a terrorist organisation or individual terrorist without a connection to a terrorist act. • Finland should consider establishing an asset confiscation fund into which all or a portion of confiscated property would be deposited for use by law enforcement, health, education or other appropriate programs.
6.4 Extradition (R.39, 37 & SR.V)	<ul style="list-style-type: none"> • It is recommended that Finland amend its Penal Code to broaden the definition of TF to cover financing an individual terrorist or providing funds to a terrorist organisation where there is no link to a specific terrorist act. • It is also recommended that the offence of conspiracy be broadened to apply to basic ML and all forms of aggravated ML.
6.5 Other Forms of Co-operation (R.40 & SR.V)	-
7. Other Issues	
7.1 Resources and statistics (R. 30 & 32)	<ul style="list-style-type: none"> • Finland should keep (or provide if they are kept) statistics regarding requests received or made by the various supervisory authorities. In addition, statistics collection with respect to training and inspections conducted could be improved. • Authorities may benefit from collecting and analysing more detailed statistics on the declaration system. • It is recommended that Finland keep a complete set of statistics pertaining to mutual legal assistance, thus enabling it to better track the requests it receives and makes and enabling it to ensure that these are being handled in a timely way. In particular, it would be useful to have statistics on the nature of requests, whether they were granted or refused, what crimes they related to, and the length of time taken to respond to the request. • Finland should collect and maintain more comprehensive statistics on extraditions from Finland, the duration for the requests to be actioned and the specific offences they relate to. • Statistics are not available which would allow for sufficient evaluation of Finland's investment in international co-operation. The MLCH and the FSA maintain some statistics concerning international co-operation, however these are not sufficient to fully assess the effectiveness of the system. It is recommended that Finnish authorities collect, maintain and share statistics concerning international co-operation involving the FIU, enforcement and supervisory authorities.
7.2 Other relevant AML/CFT measures or issues	-
7.3 General framework – structural issues	-

Table 3: Authorities' Response to the Evaluation

RELEVANT SECTIONS AND PARAGRAPHS	COUNTRY COMMENTS

ANNEXES

Annex 1: Abbreviations

Annex 2: All Bodies Met During the On-site Visit.

Annex 3: Provisions of Key Laws, Regulations and Other Measures

Annex 4: List of all laws, regulations and other material received

Annex 5: Additional charts and tables

ANNEX 1: Abbreviations

AGM	Annual General Meeting
AML	Anti-ML
BOF	Bank of Finland
BSC	Banking Supervision Committee
CDD	Customer due diligence
CEBS	Committee of European Banking Supervisors
CESR	Committee of European Securities Regulators
CID	Criminal Intelligence Unit
CFT	Combating the Financing of Terrorism
CTIF-CFI	Cellule de Traitement des Informations Financières - Cel voor Financiële Informatieverwerking (Belgian FIU)
DNA	Deoxyribonucleic Acid
DNFBP	Designated non-financial businesses and profession
EBR	European Business Register
EC	European Commission
EEA	EEA
ESW	Egmont Secure Web
EU	European Union
EUROJUST	European Union's Judicial Co-operation Unit
FATF	Financial Action Task Force
FinCEN	Financial Crimes Enforcement Network
FIU	Financial Intelligence Unit
FSA	Financial Supervision Authority
GRECO	Group of States Against Corruption
GRAF	Gaming Regulators European Forum
HTM	
IAGR	International Association of Gaming Regulators
IMEI	International Mobile Equipment Identity
IP	Internet Protocol
ISA	Insurance Supervisory Authority
KHT	
km	Kilometres
ML	ML
MLCH	Money Laundering Clearing House (FIU)
MOFA	Ministry of Foreign Affairs
NBI	National Bureau of Investigation
OECD	Organisation for Economic Co-operation and Development
OSCE	Organisation for Security and Co-operation in Europe
PAF	Ålands Penningautomatförening (gambling operator on the Åland Islands)
PCB Authorities	Police, Customs and Border Guard
PEP	Politically exposed person
PRH	National Board of Patents and Registration of Finland (Registration Authority)
RAY	Raha-automaattiyhdistys (Finland's Slot Machine Association)
SRO	Self-regulatory organisation
STR	Suspicious transaction report
UN	United Nations
UNSC	United Nations Security Council
USA	United States of America
VIRKE project	Project for the development of co-operation between authorities
<i>Currency Units</i>	
EUR	Euro
USD	United State Dollar

ANNEX 2: All Bodies Met During the On-site Visit

Government Agencies

The Bank of Finland	Ministry of Social Affairs and Health
Customs	Ministry of the Interior (Lottery and Firearms Administration Unit)
Financial Supervisory Authority	Ministry of Trade and Industry
Insurance Supervisory Authority	Provincial State Office of Southern Finland
Ministry of Finance	Security Police
Ministry for Foreign Affairs	1 judge
Ministry of Justice	

Industry Bodies

Association of Certified Estate Agents in Finland	Finnish Goldsmith Association
Association of Finnish Accounting Firms	Finnish Institute of Authorised Public Accountants
Federation of Finnish Financial Services	Finnish Lottery (Veikkaus)
Finland's Slot Machine Association (RAY)	Fintoto
The Finnish Association of Mutual Funds	Money Laundering Clearing House (National Bureau of Investigation)
Finnish Association of Securities Dealers	National Board of Patents and Registration of Finland
Finnish Bar Association	Office of the Prosecutor General
Finnish Central Organisation for Motor Trades and Repairs	Registered Association of Certified HTM-Auditors

Financial Sector

Insurance Company IF	Nordea Bank Finland
Foreign Exchange Companies	Representatives of Auditing and Accounting Professionals
OP Bank Group Central Co-operative	1 lawyer

ANNEX 3: Provisions of Key Laws, Regulations and Other Measures

NB: Unofficial translation
Ministry of Justice, Finland

The Penal Code of Finland

(39/1889; amendments up to 650/2003 as well as 1372/2003, 650/2004 and 1006/2004 included)

Selected chapters of most relevance to AML/CFT

Chapter 1 - Scope of application of the criminal law of Finland (626/1996)

Section 1 - Offence committed in Finland

Finnish law applies to an offence committed in Finland.

Section 2 - Offence connected with a Finnish vessel

- (1) Finnish law applies to an offence committed on board a Finnish vessel or aircraft if the offence was committed
 - (1) while the vessel was on the high seas or in territory not belonging to any State or while the aircraft was in or over such territory, or
 - (2) while the vessel was in the territory of a foreign State or the aircraft was in or over such territory and the offence was committed by the master of the vessel or aircraft, a member of its crew, a passenger or a person who otherwise was on board.
- (2) Finnish law also applies to an offence committed outside of Finland by the master of a Finnish vessel or aircraft or a member of its crew if, by the offence, the offender has violated his/her special statutory duty as the master of the vessel or aircraft or a member of its crew.

Section 3 - Offence directed at Finland

- (1) Finnish law applies to an offence committed outside of Finland that has been directed at Finland.
- (2) An offence is deemed to have been directed at Finland
 - (1) if it is an offence of treason or high treason,
 - (2) if the act has otherwise seriously violated or endangered the national, military or economic rights or interests of Finland, or
 - (3) if it has been directed at a Finnish authority.

Section 4 – Offence in public office and military offence

- (1) Finnish law applies to an offence referred to in chapter 40 of this Code that has been committed outside of Finland by a person referred to in chapter 40, section 11, paragraphs 1, 2, 3 and 5 (604/2002).
- (2) Finnish law also applies to an offence referred to in chapter 45 that has been committed outside of Finland by a person subject to the provisions of that chapter.

Section 5 - Offence directed at a Finn

Finnish law applies to an offence committed outside of Finland that has been directed at a Finnish citizen, a Finnish corporation, foundation or other legal entity, or a foreigner permanently resident in Finland if, under Finnish law, the act may be punishable by imprisonment for more than six months.

Section 6 - Offence committed by a Finn

- (1) Finnish law applies to an offence committed outside of Finland by a Finnish citizen. If the offence was committed in territory not belonging to any State, it is a precondition for the imposition of punishment that, under Finnish law, the act is punishable by imprisonment for more than six months.
- (2) A person who was a Finnish citizen at the time of the offence or is a Finnish citizen at the beginning of the trial is deemed to be a Finnish citizen.
- (3) The following are deemed equivalent to a Finnish citizen:
 - (1) a person who was permanently resident in Finland at the time of the offence or is permanently resident in Finland at the beginning of the trial, and
 - (2) a person who was apprehended in Finland and who at the beginning of the trial is a citizen of Denmark, Iceland, Norway or Sweden or at that time is permanently resident in one of those countries.

Section 7 - International offence

- (1) Finnish law applies to an offence committed outside of Finland where the punishability of the act, regardless of the law of the place of commission, is based on an international agreement binding on Finland or on another statute or regulation internationally binding on Finland (international offence).
- (2) Further provisions on the application of this section shall be issued by Decree.
- (3) Regardless of the law of the place of commission, Finnish law applies also to an offence referred to in chapter 34a committed outside of Finland. (17/2003)

Section 8 - Other offence committed outside of Finland

Finnish law applies to an offence committed outside of Finland which, under Finnish law, may be punishable by imprisonment for more than six months, if the State in whose territory the offence was committed has requested that charges be brought in a Finnish court or that the offender be extradited because of the offence, but the extradition request has not been granted.

Section 9 - Corporate criminal liability

If, under this chapter, Finnish law applies to the offence, Finnish law applies also to the determination of corporate criminal liability.

Section 10 - Place of commission

- (1) An offence is deemed to have been committed both where the criminal act was committed and where the consequence contained in the statutory definition of the offence became apparent. An offence of omission is deemed to have been committed both where the offender should have acted and where the consequence contained in the statutory definition of the offence became apparent.
- (2) If the offence remains an attempt, it is deemed to have been committed also where, had the offence been completed, the consequence contained in the statutory definition of the offence either (i) would probably have become apparent or (ii) would in the opinion of the offender have become apparent.
- (3) An offence by an inciter and abettor is deemed to have been committed both where the act of complicity was committed and where the offence by the offender is deemed to have been committed.
- (4) If there is no certainty as to the place of commission, but there is justified reason to believe that the offence was committed in the territory of Finland, said offence is deemed to have been committed in Finland.

Section 11 - Requirement of dual criminality

- (1) If the offence has been committed in the territory of a foreign State, the application of Finnish law may be based on sections 5, 6 and 8 only if the offence is punishable also under the law of the place of commission and a sentence could have been passed for it also by a court of that foreign State. In this event, a sanction that is more severe than what is provided by the law of the place of commission shall not be imposed in Finland.
- (2) Even if the offence is not punishable under the law of the place of commission, Finnish law applies to it if it has been committed by a Finnish citizen or a person referred to in section 6(3)(1), and the penalty for it has been laid down in
 - (1) sections 1 - 9 of chapter 15, by virtue of section 12a of the same chapter;
 - (2) sections 1 - 3 of chapter 16 and even if the object of the offence is a person referred to in chapter 40, section 11, paragraph 2, 3 or 5 of a foreign public official who is in the service of the International Criminal Court;
 - (3) sections 13, 14 and 14a of chapter 16 and even if the provisions are applied on the basis of section 20 of the same chapter;
 - (4) section 18 or 19 of chapter 17;
 - (5) sections 6 - 8 of chapter 20;
 - (6) section 9 of chapter 20, where the act is directed at a person younger than eighteen years of age; or
 - (7) sections 1 - 4 of chapter 40, where the offender is a member of Parliament, a foreign public official or a member of a foreign parliament. (604/2002)

Section 12 - Prosecution order by the Prosecutor-General (205/1997)

- (1) A criminal case shall not be investigated in Finland without a prosecution order by the Prosecutor-General, where
 - (1) the offence was committed abroad, or
 - (2) a foreigner has committed an offence on board a foreign vessel when the vessel was in Finnish territorial waters or on board a foreign aircraft when the aircraft was in Finnish air space and the offence was not directed at Finland, a Finnish citizen, a foreigner permanently resident in Finland or a Finnish corporation, foundation or other legal entity.
- (2) However, the order by the Prosecutor-General is not be required, if
 - (1) the offence was committed by a Finnish citizen or a person who, under section 6, is equivalent to a Finnish citizen and it was directed at Finland, a Finnish citizen, a foreigner permanently resident in Finland, or a Finnish corporation, foundation or other legal entity,

- (2) the offence was committed in Denmark, Iceland, Norway or Sweden and the competent public prosecutor of the place of commission has requested that the offence be tried in a Finnish court,
- (3) the offence was committed aboard a Finnish vessel while it was in or over such territory,
- (4) the offence was committed aboard a vessel or aircraft while it was in scheduled traffic between points in Finland or between a point in Finland and a point in Denmark, Iceland, Norway or Sweden,
- (5) the offence is to be tried as a criminal case in accordance with the Military Court Procedure Act (326/1983), or
- (6) there is a statutory provision to the effect that the President of the Republic or Parliament is to order any charges to be brought.

Section 13 - Foreign judgment

- (1) A charge shall not be brought in Finland if a judgment has already been passed and has become final in the State where the act was committed or in another member state of the European Union and
 - (1) the charge was dismissed,
 - (2) the defendant was found guilty but punishment was waived,
 - (3) the sentence was enforced or its enforcement is still in progress or
 - (4) under the law of the State where the judgment was passed, the sentence has lapsed. (814/1998)
- (2) The provisions of paragraph (1) notwithstanding, the Prosecutor-General may order that the charge be brought in Finland if the judgment passed abroad was not based on a request of a Finnish authority for a judgment or on a request for extradition granted by the Finnish authorities and
 - (1) under section 3, the offence is deemed to be directed at Finland,
 - (2) the offence is an offence in public office or a military offence referred to in section 4,
 - (3) the offence is an international offence referred to in section 7, or
 - (4) under section 10, the offence is deemed to have been committed also in Finland. However, the Prosecutor-General shall not order a charge to be brought for an offence that has been partially committed in the territory of that member state of the European Union where the judgment was passed. (814/1998)
- (3) If a person is sentenced in Finland for an offence for which he/she has already served in full or in part a sanction imposed abroad, a reasonable amount shall be deducted from the sentence. If the sanction that has been imposed has been a custodial sentence, the court shall deduct from the sentence the time corresponding to the loss of liberty. The court may also note that the sanction that has been served is to be deemed a sufficient sanction for the offence.

Section 14 - Reference provision

Separate provisions apply to extradition on the basis of an offence and to other international legal assistance and to the immunity in certain cases of persons participating in a trial or a criminal investigation.

Section 15 - Treaties and international custom binding on Finland

If an international treaty binding on Finland or another statute or regulation that is internationally binding on Finland in some event restricts the scope of application of the criminal law of Finland, such a restriction applies as agreed. The provisions in this chapter notwithstanding, the restrictions on the scope of application of Finnish law based on generally recognised rules of international law also apply.

Chapter 2 - Penalties

Section 1 (613/1974)

- (1) The general penalties are imprisonment, community service, fine and summary penal fee. (1056/1996)
- (2) The special penalties for public officials are dismissal and warning. (792/1989)
- (3) The disciplinary penalties for soldiers and other persons subject to chapter 45 are detention, confinement to barracks, disciplinary fine and warning. Separate provisions apply to the same. Where provisions with disciplinary punishment as their sanction apply to a person not subject to chapter 45, that person shall instead be sentenced to a fine. (651/1991)

Section 2 (697/1991)

- (1) A sentence of imprisonment shall be passed either for a fixed period or for life. A sentence of imprisonment for a fixed period shall be at least fourteen days and at most twelve years or, when sentencing to a joint punishment in accordance with chapter 7, at most fifteen years.
- (2) A sentence of imprisonment shorter than three months shall be passed by the day. Other sentences of imprisonment for a fixed period shall be passed by the month and day, by the month, by the year or by the year and month and, when sentencing to a joint punishment, also by the year, month and day.

Section 3 (613/1974)

- (1) Where an offence is by law punishable by hard labour, a sentence of imprisonment shall be passed instead of hard labour.
- (2) A sentence of life imprisonment shall be passed instead of hard labour for life. A sentence of imprisonment for a fixed period shall be passed instead of hard labour for a fixed period; the sentence scale provided for the hard labour shall be used. If no specific minimum and maximum periods have been provided, a sentence of imprisonment for at least six months and at most twelve years shall be passed instead of hard labour.
- (3) Unless otherwise provided, the maximum period of imprisonment on the basis of a penal provision enacted before 1 July 1975 is four years.
- (4) The provisions on hard labour for life also apply to life imprisonment.

Sections 4 and 5 have been repealed.

Section 6

If a penalty is to be set on the basis of the value of given property, the value of the property at the time of the commission of the offence is decisive.

Section 7 (792/1989)

- (1) Dismissal referred to in the penal provisions in chapter 40 of this Code comprises the forfeiture of the public office or function in which the offence was committed. If the public official has transferred from the office in which the offence was committed to another corresponding office, the dismissal comprises the forfeiture of that office. (604/2002)
- (2) In cases referred to in section 10 of this chapter the dismissal comprises the forfeiture of the public office, function or the public offices and functions that the offender has at the time when the sentence is passed.

Sections 8 and 9 have been repealed.

Section 10 (604/2002)

- (1) A public official, a person elected to a public office or a person who exercises public authority who is sentenced to imprisonment for life shall also be dismissed from office. He/she shall be dismissed also if he/she is sentenced to imprisonment for a determinate period that is at least two years, unless the court deems that the offence does not demonstrate that the sentenced person is unsuitable to serve as a public official or to attend to a public function.
- (2) If a person referred to in subsection 1 is sentenced for an intentional offence to imprisonment for a period that is less than two years, he/she may at the same time be dismissed from office if the offence demonstrates that he/she is apparently unsuitable to serve as a public official or to attend to the public function.
However, a member of the representative body of a public corporation who has been elected in a general election shall not be dismissed from said office by virtue of this section.

Sections 11 and 12 have been repealed.

Section 13 (352/1990)

- (1) If a prisoner, while in a penitentiary or otherwise under the supervision of a prison authority, commits an offence that according to the general law would be punished by a fine, he/she shall be subjected to a disciplinary punishment within the institution, as separately provided. If the offence is deemed to require a more severe penalty than a fine, charges against the offender shall be brought before a court.
- (2) If a person referred to in paragraph (1) is sentenced by a court for an offence, the disciplinary punishment for which he/she has completely or partially served, the sentence shall be subject to a reasonable reduction, unless there are justifiable grounds for not reducing the sentence or for considering the disciplinary punishment a full penalty for the act.
- (3) If a prisoner commits an offence outside of an institution, charges against him/her shall be brought before a court.

Section 14 has been repealed.

Section 14a (578/1995)

- (1) A person sentenced for treason or high treason, or sentenced for another offence to imprisonment for at least two years, shall be stripped of his/her military rank, unless this, with regard to the nature of the offence, its causes and effects and the other consequences of the loss of military rank to the offender, is to be deemed unreasonable.
- (2) However, no one shall be stripped of the lowest military rank. (559/2000)

Section 15

- (1) The times to be determined on the basis of this Code by the year or month shall be counted by the calendar. A day equals 24 hours.
- (2) Paragraph has been repealed.

Section 16 has been repealed.

Section 17

If the contents of a publication, document or visual presentation are declared to be offensive, the copies in the possession of the author, publisher, editor, producer, distributor, exhibitor or seller, as well as the plates and the patterns which are solely intended for the production of said product, regardless of their ownership, shall be ordered forfeit and rendered unusable. If only a part of the said product is found to be offensive and if it can easily be separated from the other parts, only the offending part and the corresponding plates and patterns are to be ordered forfeit and rendered unusable.

Section 18

In certain cases also sanctions other than those referred to here shall be used, as separately provided in this Code.

Chapter 2a - Fine, conversion sentence and summary penal fee (550/1999)

Fine

Section 1 - Number of day fines (550/1990)

- (1) A fine shall be passed as day fines, the minimum number of which is one and the maximum number 120.
- (2) The maximum and minimum numbers for a joint punishment to a fine are provided in chapter 7.
- (3) A specific minimum or maximum number, within the limits laid down in paragraph (1), may, for a special reason, be provided by an Act.
- (4) A specific minimum or maximum number provided by an Act enacted before 1 June 1969 does not apply.

Section 2 - Amount of a day fine (550/1999)

- (1) The amount of a day fine shall be set so that it is reasonable in view to the solvency of the person fined.
- (2) One sixtieth ($\frac{1}{60}$) of the average monthly income of the person fined, less the taxes and fees defined by a Decree and a fixed deduction for basic consumption, is deemed to be a reasonable amount of a day fine. The maintenance liability of the person fined may decrease the day fine and his/her assets may increase it.
- (3) The primary basis for the calculation of the monthly income and the assessment of the assets of the person fined is his/her income and assets as indicated in the most recent tax record. If the income and assets of the person fined cannot be reliably ascertained from the tax records or they have been essentially changed since the most recent tax record, they can be assessed also on the basis of other information.
- (4) In a court, the day fine is set on the basis of the information available at the trial; in penal order proceedings, the day fine is set on the basis of the information available when the request for a penal order is being made. However, the prosecutor shall set the day fine on the basis of the information available at the time of issuance of the penal order, if it has become evident that the solvency of the person for whom the penal order has been requested has in the meantime essentially changed.
- (5) More detailed provisions on the calculation of the monthly income, the rounding-off of the amount of the day fine, the amount of the fixed deduction for basic consumption, the manner in which the maintenance liability and the assets are to be taken into account, and the minimum amount of a day fine shall be issued by a Decree.

Section 3 - Total amount of the fine (550/1999)

- (1) The total amount of the fine is equal to the number of day fines times the amount of a day fine.
- (2) It may be provided by Decree that the total amount of the fine imposed for given offences is to be increased to equal the maximum summary penal fee payable for the same sort of offence.

Conversion sentence

Section 4 - Passing a conversion sentence (550/1999)

A person who has been sentenced to a fine and from whom the collection of the fine has failed, shall be ordered to imprisonment in lieu of the unpaid fine. A conversion sentence shall be passed for an unpaid threat of a fine, the collection of which has failed.

Section 5 - Duration of the conversion sentence (550/1999)

- (1) When passing a conversion sentence, two unpaid day fines correspond to imprisonment for one day. If there is an odd number of day fines to be converted, one day fine shall be left unconverted. If only a part of a day fine has been paid, the day fine shall be deemed unpaid.
- (2) When passing a conversion sentence for a threat of a fine, imposed as a lump sum, every 20 euros correspond to imprisonment for one day. (971/2001)
- (3) However, a conversion sentence shall be passed for at least four days and at most 90 days.
- (4) If two or more fines are to be converted at the same time, only one conversion sentence shall be passed, in accordance with paragraph (3). In this event, a threat of a fine corresponds to a fine.
- (5) For reasons referred to in section 6(1) or 7, a court may pass a conversion sentence that is shorter than what has been provided in this section, but nevertheless for at least four days.

Section 6 - Waiver of conversion (550/1999)

- (1) A court may waive a conversion sentence, if
 - (1) the offence giving rise to the fine, taking its detrimental nature into account, is to be deemed petty when assessed as a whole,
 - (2) the offence giving rise to the fine has been committed by a person under 18 years of age, or
 - (3) the conversion sentence is to be deemed unreasonable or pointless in view of the personal circumstances of the person fined, the other consequences of the offence to that person, the measures undertaken by the social welfare or health authorities, or other circumstances.
- (2) When passing a conversion sentence for a joint punishment of a fine, the court shall assess the proportion of the fines that are not susceptible to conversion in the joint punishment and waive conversion for that part.
- (3) The part of the total amount of the fine that has been increased under section 3(2) shall not be converted.

Section 7 - Waiver of conversion of a threat of a fine (550/1999)

A court may waive the conversion of a threat of a fine into imprisonment, if

- (1) the main obligation has been complied with in full or in part, or
- (2) the conversion sentence is to be deemed unreasonable or pointless in view of the personal circumstances of the person fined, the other consequences of the failure to comply with the main obligation to that person, or other circumstances.

Section 8 - Summary penal fee (550/1999)

- (1) A summary penal fee is a pecuniary penalty of a fixed amount and less severe than a fine. (971/2001)
- (2) A summary penal fee shall not exceed 200 euros. The summary penal fees payable for various infractions shall be provided by a Governmental Decree. (971/2001)
- (3) An unpaid summary penal fee shall not be converted into imprisonment.

Section 9 - Infractions giving rise to summary penal fees (550/1999)

- (1) A summary penal fee may be provided as a sanction, in accordance with paragraphs (2) - (4), for infractions which are subject to public prosecution and for which the most severe penalty provided is a fine or imprisonment for at most six months.
- (2) A summary penal fee may be provided as a sanction for minor infractions of the Road Traffic Act (267/1981), the Vehicle Act (1090/2002), or the regulations or orders issued on their basis, and pertaining to
 - (1) pedestrians,
 - (2) the operators of non-motor powered vehicles,
 - (3) the structure, equipment or condition of motor vehicles or trailers, the documents required for the driving of motor vehicles, the disturbing or needless driving of motor vehicles, passenger transport, the use of personal protective equipment of the driver or passenger, the other traffic regulations pertaining to drivers, or the commands, prohibitions and restrictions issued by way of traffic signals,
 - (4) exceeding the speed limit with a motor vehicle, or
 - (5) the inspection and registration of vehicles. (1094/2002)
- (3) A summary penal fee may also be provided as a sanction for minor infractions of the littering prohibition laid down in the Waste Act (1072/1993) and neglect of the payment of the fisheries management fee or the fee for fishing with a lure, laid down in the Fishing Act (286/1982), or failure to present within a specified period a receipt showing payment of said fee. (515/2002)
- (4) More detailed provisions on the infractions referred to in paragraphs (2) and (3) are issued by Decree.

Section 10 - Imposing a summary penal fee (550/1999)

- (1) A summary penal fee is imposed by a police officer or another official carrying out a statutory monitoring function.
- (2) A summary penal fee shall not be imposed if
 - (1) the infraction has been conducive to causing danger or disturbance that is not minor,

- (2) the person committing the infraction has by the act shown indifference to the commands and prohibitions of the law, or
 - (3) it is evident that the injured party will make a prosecution request to the police or a prosecutor because of the infraction or make a claim for damages.
- (3) The procedure for imposing a summary penal fee is provided in the Act on the Procedure on Summary Penal Fees (66/1983).

Section 11 - Summary penal fee for numerous offences (550/1999)

- (1) If a summary penal fee is to be imposed for two or more infractions at the same time, the summary penal fee shall be imposed for the offence for which the summary penal fee provided is the highest.
- (2) A joint punishment shall not be passed for a summary penal fee and a fine or a sentence of imprisonment for a fixed period.

Chapter 3 - Vindication and mitigation (621/1967)

(NB. By Act 515/2003, this chapter is to be replaced by a new Chapter 3 as of 1 January 2004; see the text immediately following this chapter)

Section 1 (263/1940)

- (1) An otherwise punishable act is not punishable when committed by a child under fifteen years of age.
- (2) The measures that can be applied to such a child are provided in the Child Welfare Act.

Section 2 (613/1974)

A person at least fifteen but under eighteen years of age who commits an offence shall be sentenced, when said offence could have been punishable by life imprisonment, to imprisonment for at least two and at most twelve years. If the penalty in the provision in question is imprisonment for a fixed period or a fine, the sentence shall be at most three fourths of the most severe penalty provided and at least the minimum penalty provided in chapter 2.

Section 3

- (1) An act of an insane person and an act by a person who is mentally deficient due to senility or another similar reason is not punishable.
- (2) If someone is temporarily deranged so that he/she is not in possession of his/her mental faculties, an act that he/she commits while in such a condition is also not punishable.
- (3) Separate provisions apply to the choice between conditional and unconditional imprisonment and to sanctions imposed in addition to conditional imprisonment. (515/2003; enters into force on 1 January 2004)

Section 4

- (1) If someone is regarded as not having been in full possession of his/her mental faculties at the time he/she committed an offence, but he/she cannot be regarded as totally irresponsible in accordance with section 3, the general penalty is that provided in section 2.
- (2) In this case the state of voluntary intoxication or other such self-induced mental aberration is not by itself a reason for such reduction of penalty.

Section 5

- (1) An act which is deemed to have occurred more through accident than through negligence is not punishable.
- (2) If the penalty provision contains a specific minimum period of imprisonment, the court may, unless the public interest demands otherwise, and for special reasons which are to be mentioned in the judgment, pass a sentence shorter than the minimum period or, when no penalty more severe than a fixed term of imprisonment is provided, pass a sentence of a fine. (613/1974)
- (3) A court can waive punishment in cases where
 - (1) the offence, when assessed as a whole, considering its harmfulness and the degree of culpability of the offender indicated by it, is to be deemed of minor significance;
 - (2) the offence is to be deemed excusable because of special reasons concerning the act or the offender;
 - (3) punishment is to be deemed unreasonable or pointless, considering the settlement reached by the offender and the injured party or the action taken by the offender to prevent or remove the effects of his/her offence, or to further its being cleared up, his/her personal circumstances, the other consequences of the offence to him/her, the actions by the social security and health authorities, or other circumstances; or
 - (4) the offence would not have an essential effect on the total sentence owing to the provisions on sentencing to a joint punishment. (1060/1996)

(4) In addition of the provisions in paragraph (3), a court can waive the punishment for an offence committed while the offender was under eighteen years of age, if the act is deemed to be the result of his/her thoughtlessness or imprudence rather than his/her being heedless of the prohibitions and commands of the law. (302/1990)

Section 6

If someone has committed an act to protect himself/herself or another or his/her or another's property against an ongoing or imminent unlawful attack, and this act, though otherwise punishable, was necessary for the repelling of the attack, he/she shall not be sentenced to a punishment for such self-defence.

Section 7

Self-defence is also justified when someone forces his/her way unlawfully into the room, house, estate or vessel of another, or when someone caught in the act resists another who is trying to take back his/her own property.

Section 8 (621/1967)

- (1) Paragraph has been repealed.
- (2) When a person being apprehended, arrested or detained attempts to avoid capture by resisting or escaping, or when a prisoner or another person apprehended, arrested or detained attempts to escape or resists the prison guard or other person who is assigned to prevent escape or keep him in order, the use of forcible measures is also allowed in order to capture him/her, to prevent the escape, or to keep order, when these measures can be justified in view of the circumstances. The same applies when the resisting person is someone other than the aforesaid person.
- (3) When someone has the right under paragraph (1) or (2) to use forcible measures, those assisting in the performance of the official duty also have this right.
- (4) Also a person who has apprehended another person by virtue of chapter 1, section 1 of the Coercive Measures Act and meets with resistance has the right, as referred to above, to use forcible measures. (496/1995)
- (5) Paragraph has been repealed.

Chapter 3 - The general conditions for criminal liability (515/2003; enters into force on 1 January 2004)

Section 1 - The principle of legality

- (1) A person may be found guilty of an offence only on the basis of an act that has been specifically criminalized in law at the time of its commission.
- (2) The punishment and other sanction under criminal law must be based on law.

Section 2 – Temporal application

- (1) The law in force at the time an offence was committed applies to the offence.
- (2) However, if a law other than the one in force at the time of the commission of the offence is in force at the time of conviction, the new law applies if its application leads to a more lenient result.
- (3) If the law is intended to be in force only for a fixed period of time, and there are no provisions to the contrary, the law in force at the time of the commission of the act applies to an act committed during this period.
- (4) If the specific contents of a penal provision in law are determined by other provisions in law or by provisions or rules issued on its basis, the punishability of an act is assessed on the basis of the provisions or rules in force at the time of the act, unless there are provisions to the contrary or unless the new provisions demonstrate that the attitude towards the punishability of the act has changed.

Section 3 – The punishability of omission

- (1) An omission is punishable if this is specifically provided in the statutory definition of an offence.
- (2) An omission is punishable also if the offender has not prevented the causing of a consequence that accords with the statutory definition, even though he/she had had a special legal duty to prevent the causing of the consequence. Such a duty may be based on:
 - (1) an office, function or position;
 - (2) the relationship between the offender and the victim;
 - (3) the assumption of an assignment or a contract;
 - (4) the action of the offender in creating danger; or
 - (5) another reason comparable to these.

Section 4 – The age of criminal liability and criminal responsibility

- (1) Conditions for criminal liability are that the offender had reached the age of fifteen years at the time of the act and is criminally responsible.
- (2) The offender is not criminally responsible if at the time of the act, due to mental illness, severe mental deficiency or a serious mental disturbance or a serious disturbance of consciousness, he/she is not able to understand the factual

nature or unlawfulness of his/her act or his/her ability to control his/her behaviour is decisively weakened (criminal irresponsibility).

- (3) If the offender is not criminally irresponsible pursuant to 2 but, due to mental illness, mental deficiency, mental disturbance or disturbance of consciousness, his/her ability to understand the factual nature or unlawfulness of his/her act or his/her ability to control his/her behaviour is significantly weakened (diminished responsibility), the provisions in chapter 6, section 8(3) and (4) are to be taken into account in the determination of the sentence.
- (4) Intoxication or other temporary mental disturbance induced by the offender himself/herself is not taken into account in the assessment of criminal responsibility unless there are particularly weighty reasons for this.
- (5) If, due to the mental condition of the person accused of an offence, the court waives punishment, the court shall, unless this is obviously unnecessary, submit for clarification the question of his/her need for treatment, as provided in section 21 of the Mental Health Act (1116/1990).

Section 5 – Imputability

- (1) Intent or negligence are conditions for criminal liability.
- (2) Unless otherwise provided, an act referred to in this Code is punishable only as an intentional act.
- (3) What is provided in subsection 2 applies also to an act referred to elsewhere in law for which the statutory maximum sentence is imprisonment for more than six months or on which the penal provision has been issued after this law entered into force.

Section 6 – Intent

An offender has caused the consequence described in the statutory definition intentionally if the causing of the consequence was the offender's purpose or he/she had considered the consequence as a certain or quite probable result of his/her actions. A consequence has also been caused intentionally if the offender has considered it as certainly connected with the consequence that he/she has aimed for.

Section 7 – Negligence

- (1) The conduct of a person is negligent if he/she violates the duty to take care called for in the circumstances and required of him/her, even though he/she could have complied with it (negligence).
- (2) Whether or not negligence is to be deemed gross is decided on the basis of an overall assessment. In the assessment, the significance of the duty to take care, the importance of the interests endangered, the probability of the violation, the deliberateness of the taking of the risk and other circumstances connected with the act and the offender are taken into account.
- (3) An act which is deemed to have occurred more through accident than through negligence is not punishable.

Chapter 4 - Attempt

(NB. By Act 515/2003, this chapter is to be replaced by a new Chapter 4 as of 1 January 2004; see the text immediately following this chapter)

Section 1

- (1) When, by law, an attempt is punishable, and no specific punishment is provided for it, the sentence shall be passed according to the penalty provision for a completed offence; however, this punishment shall be reduced as provided in chapter 3, section 2 for offenders at least fifteen but under eighteen years of age.
- (2) The provisions on dismissal and other sanctions for the completed offence shall apply also when punishing for an attempt. (2/1969)

Section 2

- (1) If the offender, on his/her own free will and not owing to external obstacles, has withdrawn from the completion of the offence, or prevented the consequence of the offence which makes the offence completed, the attempt is not punishable.
- (2) If such an attempt involves an act which in itself is a separate offence, a sentence shall be passed for this offence.

Section 3

- (1) The preparation of an offence is punishable only where it is specifically so provided.
- (2) The provisions in section 2 on attempt apply to punishable preparation.

Chapter 5 - Participation

(NB. By Act 515/2003, this chapter is to be replaced by a new Chapter 5 as of 1 January 2004; see the text immediately following this chapter)

Section 1

If two or more persons have committed an offence together, each shall be punished as an offender.

Section 2

A person who orders, employs, harasses or otherwise intentionally persuades or entices another person into committing an offence shall be punished, if the offence is completed or constitutes a punishable attempt, for incitement as if he/she was the offender.

Section 3

- (1) A person who, during or before the commission of an offence by someone else, intentionally furthers the act through advice, action or exhortation, shall be sentenced for complicity, if the offence is completed. If an attempt and the completion of the offence are punishable in the same manner, the person shall be punished for complicity also if the offence remains an attempt. In both cases the person shall be sentenced according to the provision that would have been applied if he/she was the offender; however, a general punishment shall be reduced as provided in chapter 3, section 2 for offenders at least fifteen but under eighteen years of age. If the offence remained an attempt punishable under chapter 4, section 1, the accomplice shall be sentenced to at most half of the punishment he/she could have received had the offender completed the offence.
- (2) In punishing the accomplice, the provisions on dismissal as well as the other sanctions for the offence apply. (2/1969)
- (3) Incitement to punishable complicity is punishable as complicity.

Section 4

Where a special circumstance vindicates, mitigates or aggravates an act, it applies only to the offender, inciter or accomplice to whom the circumstance pertains.

Section 5

The above provisions on punishing an accomplice do not apply if otherwise provided in this Code.

Chapter 5 – On attempt and complicity (515/2003; enters into force on 1 January 2004)

Section 1 – Attempt

- (1) An attempt of an offence is punishable only if the attempt has been denoted as punishable in a provision on an intentional offence.
- (2) An act has reached the stage of an attempt at an offence when the offender has begun the commission of an offence and brought about the danger that the offence will be completed. An attempt at an offence is involved also when such a danger is not caused, but the fact that the danger is not brought about is due only to coincidental reasons.
- (3) In sentencing for an attempt at an offence, chapter 6, section 8, subsections (1)(2), (2) and (4) apply, unless, pursuant to the criminal provision applicable to the case, the attempt is comparable to a completed act.

Section 2 – Withdrawal from an attempt and elimination of the effects of an offence by the offender

- (1) An attempt is not punishable if the offender, on his/her own free will, has withdrawn from the completion of the offence, or otherwise prevented the consequence referred to in the statutory definition of the offence.
- (2) If the offence involves several accomplices, the offender, the instigator or the abettor is exempted from liability on the basis of withdrawal from an offence and elimination of the effects of an offence by the offender only if he/she has succeeded in getting also the other participants to desist withdraw from completion of the offence or otherwise been able to prevent the consequence referred to in the statutory definition of the offence or in another manner has eliminated the effects of his/her own actions on the completion of the offence.
- (3) In addition to what is provided in subsections 1 and 2, an attempt is not punishable if the offence is not completed or the consequence referred to in the statutory definition of the offence is not caused for a reason that is independent of the offender, instigator or abettor, but he/she has voluntarily and seriously attempted to prevent the completion of the offence or the causing of the consequence.
- (4) If an attempt, pursuant to subsections 1 through 3, remains unpunishable but at the same time comprises another, completed, offence, such offence is punishable.

Section 3 – Complicity in an offence

If two or more persons have committed an intentional offence together, each is punishable as an offender.

Section 4 – Commission of an offence through an agent

A person is sentenced as an offender if he/she has committed an intentional offence by using, as an agent, another person who cannot be punished for said offence due to the lack of criminal responsibility or intention or due to another reason connected with the conditions for criminal liability.

Section 5 – Instigation

A person who intentionally persuades another person to commit an intentional offence or to make a punishable attempt at such an act is punishable for incitement to the offence as if he/she was the offender.

Section 6 – Abetting

- (1) A person who, before or during the commission of an offence, intentionally furthers the commission by another of an intentional act or of its punishable attempt, through advice, action or otherwise, shall be sentenced for abetting on the basis of the same legal provision as the offender. The provisions of chapter 6, section 8, subsections (1)(3), (2) and (4) apply nonetheless to the sentence.
- (2) Incitement to punishable aiding and abetting is punishable as aiding and abetting.

Section 7 – Special circumstances related to the person

- (1) Where a special circumstance vindicates, mitigates or aggravates an act, it applies only to the offender, inciter or abettor to whom the circumstance pertains.
- (2) An inciter or abettor is not exempted from penal liability by the fact that he/she is not affected by a special circumstance related to the person and that is a basis for the punishability of the act by the offender.

Section 8 – Acting on behalf of a legal person

- (1) A member of a statutory body or management of a corporation, foundation or other legal person, a person who exercises actual decision-making power in the legal person or a person who otherwise acts on its behalf in an employment relationship in the private or public sector or on the basis of a commission may be sentenced for an offence committed in the operations of a legal person, even if he/she does not fulfil the special conditions stipulated for an offender in the statutory definition of the offence, but the legal person fulfils said conditions.
- (2) If the offence has been committed in organised activity that is part of an entrepreneur's business or in other organised activity that is comparable to the activity of a legal person, the provisions in subsection 1 on an offence committed in the operations of a legal person correspondingly apply.
- (3) The provisions of this section do not apply if different provisions elsewhere apply to the matter.

Chapter 6 - Sentencing

(NB. By Act 515/2003, this chapter is to be replaced by a new Chapter 6 as of 1 January 2004; see the text immediately following this chapter)

Section 1 (466/1976)

- (1) In sentencing, all the relevant grounds for increasing and reducing the punishment, as well as the uniformity of sentencing practice, shall be taken into consideration. The sentence shall be in just proportion to the damage and danger caused by the offence and to the culpability of the offender manifest in the offence.
- (2) In addition to the relevant circumstances referred to elsewhere in law, the grounds referred to in sections 2 and 3 of this chapter are grounds for increasing or reducing punishment.

Section 2 (466/1976)

The following are grounds for increasing the punishment:

- (1) the criminal activity has been methodical;
- (2) the offence has been committed as a member of a group organised for serious offences;
- (3) the offence has been committed for remuneration; and
- (4) the offender has a criminal history, if the relation between it and the new offence on the basis of the similarity between the offences or otherwise shows that the offender is apparently heedless of the prohibitions and commands of the law.

Section 3 (466/1976)

The following are grounds for reducing the punishment:

- (1) significant pressure, a threat or a similar influence has affected the commission of the offence;
- (2) strong empathy has led to the offence or an exceptional and sudden temptation or a similar circumstance has been conducive to decreasing the capability of the offender to obey the law; and
- (3) the offender has voluntarily attempted to prevent or remove the effects of the offence or to further it being cleared up.

Section 4 (466/1976)

If the offence or the judgment has caused to the offender another consequence which, together with the sentence passed on the basis of the application of the grounds mentioned above in this chapter, would lead to a result that is unreasonable in comparison with the nature of the offence, such a situation shall be taken into consideration as is reasonable when passing the sentence.

Chapter 6 – Sentencing (515/2003; enters into force on 1 January 2004)

General provisions

Section 1 – The types of punishment

- (1) The general punishments are summary penal fine, fine, conditional imprisonment, community service, and unconditional imprisonment.
- (2) The special punishments for public officials are warning and dismissal from office.
- (3) The disciplinary punishments for soldiers and other persons subject to chapter 45 are detention, confinement to barracks, disciplinary fine and warning. In applying a provision calling for disciplinary punishment on a person other than those subject to chapter 45, said person shall be sentenced to a fine instead of to a disciplinary punishment.
- (4) A corporate fine is imposed on a legal person as provided in chapter 9.

Section 2 – The penal latitude and deviations from the penal latitude

The sentence is determined in accordance with the penal latitude provided for the offence. Deviations from it may be made as provided in section 8. The maximum sentence provided in the scale may be exceeded as provided in chapter 7.

Section 3 – The general starting points

- (1) In sentencing, all grounds according to law affecting the amount and type of punishment, as well as the uniformity of sentencing practice, are taken into account.
- (2) The grounds affecting sentencing are those provided in sections 4 through 8 of this chapter as well as those provided elsewhere in law.
- (3) In deciding on the type of punishment, the provisions of sections 9 through 12 apply in addition to the grounds affecting sentencing.

Sentencing

Section 4 – The general principle

The sentence shall be determined so that it is in just proportion to the harmfulness and dangerousness of the offence, the motives for the act and the other culpability of the offender manifest in the offence.

Section 5 – Grounds increasing the punishment

- (1) The following are grounds for increasing the punishment:
 - (1) the criminal activity has been methodical;
 - (2) the offence has been committed as a member of a group organised for serious offences;
 - (3) the offence has been committed for remuneration;
 - (4) the offence has been directed at a person belonging to a national, racial, ethnic or other population group due to his/her membership in such a group; and
 - (5) the relation between the criminal history of the offender and the new offence, due to the similarity between the offences or otherwise, shows that the offender is apparently heedless of the prohibitions and commands of the law.

Section 6 – Grounds reducing the punishment

The following are grounds for reducing the punishment:

- (1) significant pressure, threat or a similar influence that has affected the commission of the offence;
- (2) strong empathy or an exceptional and sudden temptation that has led to the offence, the exceptionally great contribution of the injured party or a corresponding circumstance that has been conducive to decreasing the culpability of the offender to conform to the law;
- (3) reconciliation between the offender and the injured person, other attempts of the offender to prevent or remove the effects of the offence or his/her attempt to further the clearing up of the offence; and
- (4) the grounds mentioned in section 8(1) and (3).

Section 7 – Grounds mitigating the punishment

In addition to what is provided above in section 6, grounds mitigating the punishment that are also to be taken into consideration are

- (1) another consequence to the offender of the offence or of the sentence;
- (2) the advanced age, poor health or other personal circumstances of the offender; and
- (3) a considerably long period that has passed since the commission of the offence;

if the punishment that accords with established practice would for these reasons lead to an unreasonable or exceptionally detrimental result.

Section 8 – Mitigation of the penal latitude

- (1) The sentence is determined in accordance with a mitigated penal latitude if
 - (1) the offender has committed the offence under the age of 18 years;
 - (2) the offence has remained an attempt;
 - (3) the offender is convicted as an abettor in an offence, through application of the provisions of chapter 5, section 6, or his/her complicity in the offence is otherwise clearly less than that of other accomplices;
 - (4) the offence has been committed in circumstances that closely resemble those that lead to the application of grounds for exemption from liability; or
 - (5) there are special reasons for this pursuant to section 6 or 8 or on other exceptional grounds, mentioned in the sentence.
- (2) In determining the punishment pursuant to subsection 1, at most three fourths of the maximum sentence of imprisonment or fine and at least the minimum sentence provided for the offence may be imposed on the offender. If the offence is punishable by life imprisonment, the maximum punishment is instead twelve years of imprisonment and the minimum punishment is two years of imprisonment.
- (3) What is provided in subsection 2 also applies in determining the sentence for a person who committed an offence in a state of diminished responsibility. However, diminished responsibility does not affect the applicable maximum punishment.
- (4) If the maximum punishment for the offence is imprisonment for a fixed period, the court may in cases referred to in this section impose a fine as the punishment instead of imprisonment, if there are especially weighty reasons for this.

The choice of the type of punishment

Section 9 – The choice between conditional and unconditional imprisonment

- (1) A sentence of imprisonment for a fixed period not exceeding two years may be conditional (conditional imprisonment), unless the seriousness of the offence, the guilt of the offender as manifest in the offence, or the criminal history of the offender requires the imposition of an unconditional sentence of imprisonment.
- (2) However, an unconditional sentence of imprisonment shall not be imposed for an offence committed when the offender was under 18 years of age, unless this is demanded by weighty reasons.

Section 10 – Sanctions ancillary to conditional imprisonment

- (1) If conditional imprisonment by itself is to be deemed insufficient punishment for the offence, an ancillary fine may be imposed or, if the conditional imprisonment exceeds one year, an ancillary community service order for at least 20 and at most 90 hours may be imposed.
- (2) A person who has committed an offence when under 21 years of age may be subjected to supervision in order to reinforce conditional imprisonment, where this is to be deemed justified in view of the social adaptation of the offender and the prevention of further offences.
- (3) Fines, community service and supervision imposed in addition to conditional imprisonment are subject to the separate provisions on the sanction in question. However, ancillary community service may be commuted into imprisonment for at least four and at most 90 days.

Section 11 – Community service

- (1) An offender who is sentenced to a fixed term of unconditional imprisonment of at most eight months shall be sentenced instead to community service, unless unconditional sentences of imprisonment, earlier community service orders or other weighty reasons are to be considered bars to the imposition of the community service order.
- (2) A condition for the imposition of a community service order is that the offender has given his/her consent to the community service order and that he/she may be assumed to complete the community service order.

Section 12 – Waiving of punishment

A court may waive punishment if

- (1) the offence, when assessed as a whole, taking into account its harmfulness or the culpability of the offender manifested in it, is to be deemed of minor significance;

- (2) the offender has committed the offence under the age of 18 years and the act is deemed to be the result of lack of understanding or of imprudence;
- (3) due to special reasons related to the act or the offender the act is to be deemed comparable to an excusable act;
- (4) punishment is to be deemed unreasonable or pointless in particular taking into account the factors referred to above in section 6(3) and section 7 or the actions by the social security and health authorities; or
- (5) the offence would not have an essential effect on the total sentence due to the provisions on sentencing to a joint punishment.

Deductions to be made from the punishment imposed

Section 13 – Deduction of period of loss of liberty

- (1) If a sentence of imprisonment for a fixed period is imposed for an act for which the offender has been deprived of his/her liberty for a continuous period of at least one day, the court shall deduct from the punishment a period corresponding to this loss of liberty, or deem this loss of liberty to be full service of the punishment.
- (2) The same shall be done if the loss of liberty was due to the defendant having been taken into custody due to charges or a criminal investigation relating to the same matter or due to a court order to the effect that the defendant was to be brought before the court.
- (3) If the punishment imposed is a fine, the loss of liberty shall be taken into account to a reasonable amount, but nonetheless at least to an amount corresponding to the loss of liberty, or shall be deemed to be full service of the punishment.
- (4) If the punishment imposed is a juvenile penalty, the loss of liberty shall be taken into account to a reasonable amount by deduction from the hours of juvenile service otherwise to be imposed on the convicted offender.

Section 14 – Deduction of punishment imposed abroad

If a person is sentenced in Finland for an offence for which he/she has already served a sanction imposed abroad in full or in part, a reasonable amount shall be deducted from the sentence to be imposed. If the sanction that has been served has been a custodial sentence, the court shall deduct from the sentence the time corresponding to the loss of liberty. The court may also note that the sanction that has been served is to be deemed a sufficient sanction for the offence.

Section 15 – Deduction of disciplinary punishment for prisoners serving a sentence

Disciplinary punishment may be imposed on a prisoner serving a sentence, as separately provided, for an offence committed in a penal institution. If a prisoner serving a sentence is convicted in court for an offence for which he/she has served a disciplinary punishment in full or in part, a reasonable amount shall be deducted from the sentence, unless there are justifiable grounds not to make the deduction or for considering the served disciplinary punishment as full punishment for the act.

Section 16 – Deduction of disciplinary punishments for persons subject to chapter 45 of the Criminal Code

- (1) A person subject to chapter 45 of this Code may be sentenced through disciplinary procedure to a disciplinary punishment or disciplinary reprimand for an offence referred to in section 2 of the Military Court Procedure Act, as separately provided. If such a person has served punishment or a disciplinary reprimand imposed through disciplinary proceedings either in full or in part and he/she is subsequently sentenced in court for the same offence, the punishment and reprimand that has already been served shall be taken into account to a reasonable extent as a deduction or deemed to be full service of the sentence.
- (2) In calculating the deduction referred to above in subsection 1, one day of loss of liberty corresponds to one day of military confinement, two disciplinary day fines, two days of confinement to quarters or confinement to barracks and three extra duties.

Chapter 8 - Statute of limitations

Section 7 (875/2001)

Forfeiture shall not be ordered if the act is not punishable owing to the statute of limitations. However, the minimum limitation period for a request for forfeiture is five years. In any event, if the request for forfeiture pertains to an instrument of crime, as referred to in chapter 10, section 4, or to certain other property, as referred to in chapter 10, section 5, the request for forfeiture is not subject to the statute of limitations.

Section 12 (875/2001)

Forfeiture shall not be enforced after ten years of the date of the final judgment. However, if the request for forfeiture pertains to an instrument of crime, as referred to in chapter 10, section 4, or to certain other property, as referred to in chapter 10, section 5, the enforcement of the forfeiture shall not lapse.

Section 15 (138/1973)

- (1) Upon the death of the offender or another person liable for forfeiture, the sanction shall be enforced against the estate of the deceased, unless such forfeiture would be obviously unreasonable.
- (2) If the offender subjected to a forfeiture order has died, the enforcement shall be directed at his/her estate. However, the heirs of the deceased have the right, within three months from the day when property belonging to the estate has been placed under distraint for the enforcement of the sentence, or when said property had been taken into the possession of the State, to bring the matter before the court of first instance that heard the case against the offender, so as to have the court decide whether the enforcement is to lapse due to the manifest unreasonableness of the forfeiture.
- (3) The sanction of forfeiture of the financial benefit deriving from an offence, when imposed or enforced on the assets of the estate liable for forfeiture, shall not exceed the simple amount of the benefit.

Chapter 9 - Corporate criminal liability (743/1995)

Section 1 - Scope of application (61/2003)

- (1) A corporation, foundation or other legal entity⁵⁷ in whose operations an offence has been committed may on the request of the public prosecutor be sentenced to a corporate fine if such a sanction has been provided in this Code.
- (2) The provisions in this chapter do not apply to offences committed in the exercise of public authority.

Section 2 - Prerequisites for liability (61/2003)

- (1) A corporation may be sentenced to a corporate fine if a person who is part of its statutory organ or other management or who exercises actual decision-making authority therein has been an accomplice in an offence or allowed the commission of the offence or if the care and diligence necessary for the prevention of the offence has not been observed in the operations of the corporation.
- (2) A corporate fine may be imposed even if the offender cannot be identified or otherwise is not punished. However, no corporate fine shall be imposed for a complainant offence which is not reported by the injured party so as to have charges brought, unless there is a very important public interest for the bringing of charges.

Section 3 - Connection between offender and corporation (743/1995)

- (1) The offence is deemed to have been committed in the operations of a corporation if the offender has acted on the behalf or for the benefit of the corporation, and belongs to its management or is in a service or employment relationship with it or has acted on assignment by a representative of the corporation.
- (2) The corporation does not have the right to compensation from the offender for a corporate fine that it has paid, unless such liability is based on separate provisions on corporations and foundations.

Section 4 – Waiving of punishment (61/2003)

- (1) A court may waive imposition of a corporate fine on a corporation if:
 - (1) the omission referred to in section 2(1) by the corporation is slight, or the participation in the offence by the management or by the person who exercises actual decision-making authority in the corporation is slight; or
 - (2) the offence committed in the operations of the corporation is slight.
- (2) The court may waive imposition of a corporate fine also when the punishment is deemed unreasonable, taking into consideration:
 - (1) the consequences of the offence to the corporation;
 - (2) the measures taken by the corporation to prevent new offences, to prevent or remedy the effects of the offence or to further the investigation of the neglect or offence; or

Section 5 - Corporate fine (971/2001)

A corporate fine is imposed as a lump sum. The corporate fine shall be at least EUR 850 and at most EUR 850,000.

Section 6 - Basis for calculation of the corporate fine (743/1995)

- (1) The amount of the corporate fine shall be determined in accordance with the nature and extent of the neglect and the participation of the management, as referred to in section 2, and the financial standing of the corporation.
- (2) When evaluating the significance of the neglect and the participation of the management, the following shall be duly taken into account: the nature and seriousness of the offence; the status of the offender as a member of the organs of the corporation; whether the violation of the duties of the corporation manifests heedlessness of the law or the orders of the authorities; as well as the grounds for sentencing provided elsewhere in the law.

57 In the following, a “corporation”

- (3) When evaluating the financial standing of the corporation, the following shall be duly taken into account: the size of the corporation; its solvency; as well as the earnings and the other essential indicators of the financial standing of the corporation.

Section 7 –Waiving of the bringing of charges (61/2003)

- (1) The public prosecutor may waive the bringing of charges against a corporation, if:
 - (1) the corporate neglect or participation of the management or of the person exercising actual decision-making power in the corporation, as referred to in section 2(1), has been of minor significance in the offence, or
 - (2) only minor damage or danger has been caused by the offence committed in the operations of the corporation and the corporation has voluntarily taken the necessary measures to prevent new offences.
- (2) The bringing of charges may be waived also if the offender, in the case referred to in section 4(2)(3), has already been sentenced to a punishment and it is to be anticipated that the corporation for this reason is not to be sentenced to a corporate fine.
- (3) Service of a decision not to bring charges against a corporation or to withdraw charges against a corporation shall be given by post or through application as appropriate of what is provided in chapter 11 of the Code of Judicial Procedure.
- (4) The provisions of chapter 1, sections 10 and 11 of the Criminal Procedure Act (689/1997) on the waiving of charges apply correspondingly to the decision. In the case referred to in chapter 1, section 1(1) of the Act the prosecutor shall instead of the question of culpability, submit to the consideration of the court the question of the existence of grounds for corporate criminal liability.
- (5) The provisions of chapter 1, section 12 of the Criminal Procedure Act on the revocation of charges apply to the revocation of charges on the basis of subsection 1. However, service of the revocation shall only be given to the corporation.

Section 8 - Joint corporate fine (743/1995)

- (1) If a corporation is to be sentenced for two or more offences at one time, a joint sentence of corporate fine shall be passed in accordance with the provisions in sections 5 and 6.
- (2) No joint punishment shall be passed for two offences, one of which was committed after a corporate fine was imposed for the other. If charges are brought against a corporation which has been sentenced to a corporate fine by a final decision, for an offence committed before the said sentence was passed, a joint corporate fine shall also not be imposed, but the prior corporate fine shall be duly taken into account when sentencing to the new punishment.

Section 9 - Statute of limitations (743/1995)

- (1) If the offender is not to be sentenced to a punishment due to the statute of limitations, also the corporation on whose behalf he/she has acted shall not be sentenced to a punishment. However, the minimum period of limitations as regards corporate fines is five years.
 - (1) The enforcement of a corporate fine shall lapse in five years from the date of the final judgment imposing the fine.

Section 10 – Enforcement of a corporate fine (673/2002)

- (1) A corporate fine is enforced in the manner provided in the Enforcement of Fines Act (672/2002).
- (2) A conversion sentence may not be imposed in place of a corporate fine.

Chapter 10 — Forfeiture (875/2001)

Section 1 — General prerequisites of forfeiture (875/2001)

- (1) A prerequisite for a forfeiture order is an act criminalised by law (offence)..
- (2) A forfeiture order may be based on an act criminalised by law also
 - (1) where the person committing the act has not attained the age of fifteen years at the material time, or is without criminal capacity;
 - (2) where the person committing the act is free from criminal liability by virtue of chapter 3, section 9, 10 or 10a, or for a comparable reason; or(NB. By Act 515/2003, section 1(2)(2) is to be replaced by the following new paragraph as of 1 January 2004:)
 - (2) where the person committing the act is exempt from criminal liability pursuant to chapter 4, section 2, 4(2), 5(2), 6(3) or chapter 45, section 26b(2); or (515/2003; enters into force on 1 January 2003)
 - (3) where a corporation can be sentenced to a punishment in accordance with chapter 9 even if the individual committing the offence cannot be identified or sentenced to a punishment for some other reason.

Section 2 — Forfeiture of the proceeds of crime (875/2001)

- (1) The proceeds of crime shall be ordered forfeit to the State. The forfeiture shall be ordered on the offender, a participant or a person on whose behalf or to whose advantage the offence has been committed, where these have benefited from the offence.
- (2) If there is no evidence as to the amount of the proceeds of crime, or if such evidence is difficult to present, the proceeds shall be estimated, taking into account the nature of the offence, the extent of the criminal activity and the other circumstances.
- (3) Forfeiture of the proceeds of crime shall not be ordered in so far as they have been returned to the injured party, or in so far as they have been or will be ordered to be reimbursed to the injured party by way of compensation or restitution. If a claim for compensation or restitution has not been filed or if the claim has not been decided when the request for forfeiture is being decided, the forfeiture shall be ordered.

Section 3 — Extended forfeiture of the proceeds of crime (875/2001)

- (1) A full or partial forfeiture of property to the State may be ordered
 - (1) on a person who is found guilty of an offence which carries a possible penalty of imprisonment for at least four years, a punishable attempt of such an offence, or an offence referred to in chapter 32, sections 1 or 6, chapter 46, section 4, chapter 50, sections 1 or 4, of this Code, or in section 82 of the Alcohol Act (459/1968), and
 - (2) on a participant in an offence referred to in paragraph (1) above and on a person on whose behalf or to whose advantage the said offence has been committed, provided that the nature of the offence is such that it may result in considerable financial proceeds and that there is reason to believe that the property is fully or partially derived from criminal activity that is not to be considered insignificant. (61/2003)
- (2) Moreover, a full or partial forfeiture of property, referred to in paragraph (1), to the State may be ordered
 - (1) on a person whose relationship to a person referred to in paragraph (1) is one covered by section 3(1) of the Act on the Recovery of Assets to Bankruptcy Estates (758/1991) (close person) and
 - (2) on a private entrepreneur, a company, another corporation or foundation whose relationship to a person referred to in paragraph (1) or a close person of his/hers is one covered by section 3(2)(1) or 3(2)(2) of the Act on the Recovery of Assets to Bankruptcy Estates, if there is reason to believe that the property has been conveyed to the same in order to avoid forfeiture or liability.
 - (3) A forfeiture referred to in paragraph (2) shall not be ordered if the property has been conveyed more than five years before the commission of the offence referred to in paragraph (1).
 - (4) If the same forfeiture is ordered on several persons, their liability is joint and several.

Section 4 — Forfeiture of an instrument of crime (875/2001)

- (1) The following instruments shall be ordered forfeit to the State, when used in the commission of an offence:
 - (1) a firearm, edged weapon or another similar lethal instrument, and
 - (2) any other object or property the possession of which is punishable.
- (2) Also the following may be ordered forfeit to the State:
 - (1) an object or property that has been used in the commission of a deliberate offence, and
 - (2) an object or property that is closely connected to a deliberate offence under trial, where it has been obtained or prepared solely or mainly for the deliberate offence or where its characteristics make it especially suitable as an instrument of a deliberate offence.
 - (3) In the assessment of the need for forfeiture, specific note shall be taken of the prevention of further offences.

Section 5 — Forfeiture of certain other property (875/2001)

- (1) An object or property which has been produced, manufactured or brought about by way of an offence, or to which an offence has been directed, shall be ordered forfeit to the State if its possession is punishable.
- (2) An object or property which has been produced, manufactured or brought about by way of an offence, or to which an offence has been directed, may be ordered fully or partially forfeit, if forfeiture is necessary:
 - (1) owing to the object or property being hazardous to health or the environment;
 - (2) in order to prevent further offences, where the object or property is especially suitable as a target of an offence or as an instrument of crime;
 - (3) in order to achieve the objective of provisions or orders pertaining to economic regulation, import or export; or
 - (4) in order to achieve the objective of provisions or orders for the protection of nature and the environment.
- (3) A container, packaging or other material used for the storage of an object or property that is to be ordered forfeit may likewise be ordered forfeit, if the forfeiture of the object or property cannot otherwise be enforced without undue inconvenience.

Section 6 — Restrictions on forfeiture (875/2001)

- (1) An object or property referred to in section 4 or 5 shall not be ordered forfeit if it belongs in full or in part to someone else than the offender, a participant or a person on whose behalf or with whose consent the offence has been

committed. However, the object or property may be ordered forfeit from a person to whom it has been conveyed after the commission of the offence, if, when receiving it, he/she knew or had justifiable reason to believe that the object or property was linked to an offence, or if he/she has received it as a gift or otherwise free of charge.

- (2) Regardless of ownership, an object or property shall be ordered forfeit if also the owner would commit an offence by having the object or property in his/her possession.

Section 7 — Lapse of forfeiture (875/2001)

- (1) Upon deciding a request for forfeiture, the court may on the consent of the defendant order that the forfeiture is to lapse if the object or property referred to in section 4 or 5 is within a given period altered as specified in the judgment, or other measures specified in the judgment are carried out thereon, with the result that the forfeiture becomes unnecessary thereby.
- (2) An enforcement officer shall monitor compliance with the specifications in the judgment and decide whether the forfeiture is to lapse. The person subject to the forfeiture has standing to appeal against the decision in accordance with the procedure on enforcement appeals. For a special reason, the enforcement officer may extend the period referred to in paragraph (1). The Legal Register Centre shall be notified of a lapse of forfeiture.
- (3) The person subject to the forfeiture is liable for the costs of alteration and the other enforcement of the judgment.

Section 8 — Forfeiture of value (875/2001)

- (1) If an object or property referred to in section 4 or 5 cannot be ordered forfeit owing to a restriction referred to in section 6(1), or because the object or property has been hidden or is otherwise inaccessible, a full or partial forfeiture of the value of the object or property may be ordered on the offender, a participant or a person on whose behalf or with whose consent the offence has been committed. In addition, the forfeiture of value may be ordered on a person to whom the object or property has been conveyed, if, when receiving it, he/she knew or had justifiable reason to believe that the object or property was linked to an offence, or if he/she has received it as a gift or otherwise free of charge.
- (2) However, the forfeiture of value shall not be ordered if the person referred to in paragraph (1) shows that the object or property has probably been destroyed or consumed.
- (3) If the forfeiture of the value of the same object or property is ordered on several persons, their liability is joint and several. However, a person on whom the forfeiture of value has not been ordered in full, is liable only to the amount mentioned in the judgment.

Section 9 — Request for forfeiture (875/2001)

- (1) Forfeiture shall be ordered on the request of a prosecutor or an official referred to in section 3 of the Act on Penal Order Procedure (692/1993). Also an injured party may make a request for forfeiture when prosecuting a charge on his or her own in accordance with chapter 7 of the Criminal Procedure Act (689/1997).
- (2) Chapter 1, section 8b, of the Criminal Procedure Act contains provisions on the grounds on which a prosecutor may decline to make a request for forfeiture. (650/2003)

Section 10 — Adjustment of forfeiture (875/2001)

- (1) Forfeiture need not be ordered, if:
 - (1) the proceeds of crime are, or the value of the object or property is, insignificant;
 - (2) the punishment of the offender is waived in accordance with chapter 3, section 5(3) or (4), or another corresponding provision; or
 - (3) the forfeiture would be unreasonable in view of the nature of the offence and the object or property, the financial standing of the defendant, and the other circumstances.
- (2) On the conditions referred to in paragraph (1), the forfeiture may be ordered on value instead of the object or property, or only a part of the object, property or value. Likewise, a partial forfeiture of the object or property and a partial forfeiture of the value may be ordered. A partial forfeiture of the proceeds of crime may also be ordered.

Section 11 — Miscellaneous provisions (875/2001)

- (1) When the forfeiture liability of someone else than the suspect or the defendant is being looked into in a pre-trial investigation or in a trial, the procedural provisions on the suspect or the defendant apply to that person in so far as appropriate.
- (2) If compensation or restitution has been paid or ordered to be paid after the issue of the decision referred to in section 2(3), the forfeiture may be enforced to a correspondingly reduced amount. If the forfeiture has already been enforced, the amount may be ordered to be paid from State funds. An action to this effect shall be brought in the District Court of the plaintiff's domicile or the District Court of Helsinki within five years from the date when the judgment containing the forfeiture order became final. The State, represented by the Legal Register Centre, is the defendant in such a case.

- (3) A person who in good faith has obtained a mortgage, a lien or a right of retention to an object or property referred to in section 4 or 5 and ordered forfeit may foreclose on the same regardless of whether the underlying receivable has become due. An action to this effect shall be brought as provided in paragraph (2). Failing this, the mortgage, lien or right of retention expires.

Chapter 12 - Treasonable offences (578/1995)

Section 7 - Disclosure of a national secret (578/1995)

- (1) A person who unlawfully publishes or relays, delivers or discloses to another or, for such purpose, unlawfully obtains information on a matter that has been classified as secret by statute or by administrative order so as to safeguard the Finnish national security, or that to the knowledge of the offender is conducive to causing serious damage to the Finnish defence, national security, foreign relations or economy, shall be sentenced for disclosure of a national secret to imprisonment for at least four months and at most four years.
- (2) An attempt is punishable.

Section 8 - Negligent disclosure of a national secret (578/1995)

A person who, through gross negligence, unlawfully publishes or relays, delivers or discloses to another information on a matter that has been classified as secret by statute or by administrative order so as to safeguard Finnish national security, shall be sentenced for negligent disclosure of a national secret to a fine or to imprisonment for at most two years.

Chapter 16 - Offences against the public authorities (563/1998)

Section 5 - False identity (563/1998)

A person who in order to mislead a public authority provides a false name or otherwise provides false or misleading information on his/her identity, or for this purpose uses another person's identity card, passport, driver's license or other such certificate, shall be sentenced for false identity to a fine or to imprisonment for at most six months.

Section 6 - Fine deception (563/1998)

A person who in order to gain an economic advantage provides a public authority, for the purpose of imposing a fine, essentially false or misleading information on his/her income, assets, maintenance liability or other circumstance affecting his/her solvency, shall be sentenced for fine deception to a fine or to imprisonment for at most three months.

Section 7 - Registration offence (563/1998)

- (1) A person who
 - (1) in order to cause a legally relevant error in a public register kept by a public authority, provides false information to that authority, of
 - (2) in order to gain a benefit for himself/herself or another person, or in order to cause damage to another person, takes advantage of an error caused in the manner referred to in subparagraph(1),shall be sentenced for a registration offence to a fine or to imprisonment for at most three years.
- (2) An attempt is punishable.

Section 8 - Providing false documents to a public authority (563/1998)

- (1) A person who provides a public authority with a legally relevant false written document or a comparable technical record or, after having produced such a document or record, gives it to another person to be used for this purpose, shall be sentenced, unless a more severe penalty for the act is provided elsewhere in the law, for providing false documents to a public authority to a fine or to imprisonment for at most six months.
- (2) A sentence for providing false documents to a public authority shall be passed also on a person pursuing an activity under the specific supervision of an authority, the representative or employee of such a person, and an auditor of the corporation under supervision, who during a statutory inspection or when otherwise fulfilling a statutory reporting duty provides the supervising authority with legally relevant false oral information.

Section 10 - Breach of an official prohibition pertaining to property (563/1998)

- (1) A person who unlawfully
 - (1) breaks a lock, seal, barrier or mark installed by a public authority and intended for the closure or isolation of an object or other location, or otherwise breaks into such an object or location closed by the authority,
 - (2) forces his/her way into a building or room closed by a public authority or otherwise breaches a prohibition issued, for the investigation of crime, on the basis of chapter 6, section 2 of the Coercive Measures Act,
 - (3) handles property that has been seized, seized for security, confiscated or ordered by a public authority not to be moved, or

- (4) in violation of a prohibition on alienation or other official prohibition alienates or conveys property or in violation of a payment freeze pays a debt or wage,
shall be sentenced for a breach of an official prohibition pertaining to property to a fine or to imprisonment for at most one year.
- (2) For the purposes of paragraph (1)(1), a public authority means Finnish authorities and also foreign customs authorities.

Section 11 - Breach of a prohibition to pursue a business (563/1998)

- (1) A person who breaches a prohibition to pursue a business or a temporary prohibition to pursue a business shall be sentenced for a breach of a prohibition to pursue a business to a fine or to imprisonment for at most two years.
- (2) A sentence for a breach of a prohibition to pursue a business shall be passed also on a person who acts as an intermediary for another so as to evade a prohibition to pursue a business.

Section 13 – Bribery (604/2002)

- (1) A person who promises, offers or gives to a public official or gives a public official in exchange for his/her actions in service a gift or other benefit intended for him/her or for another, that influences or is intended to influence or is conducive to influencing the actions in service of the public official, shall be sentenced for bribery to a fine or to imprisonment for at most two years.
- (2) Also a person who, in exchange for the actions in service of a public official, promises, offers or gives the gift or benefit referred to in subsection 1 shall be sentenced for bribery.

Section 14 - Aggravated bribery (563/1998)

If in the bribery

- (1) the gift or benefit is intended to make the person act in service contrary to his/her duties with the result of considerable benefit to the briber or to another person or of considerable loss or detriment to another person; or
- (2) the value of the gift or benefit is considerable
- and the bribery is aggravated also when assessed as whole, the offender shall be sentenced for aggravated bribery to imprisonment for at least four months and at most four years.

Section 14 a – Bribery of a member of Parliament (604/2002)

A person who promises, offers or gives a member of Parliament a gift or other unlawful benefit intended for him/her or for another, so that said member of Parliament would, in exchange for the benefit and in his/her parliamentary mandate, act so that a matter being considered or to be considered by Parliament would be decided in a certain way, shall be sentenced for bribery of a member of Parliament to a fine or to imprisonment for at most four years.

Section 15 - Unlawful release of a prisoner (563/1998)

- (1) A person who unlawfully
- (1) releases a prisoner, detained person, arrested person or apprehended person or a person serving a sentence of confinement referred to in the Military Discipline Act (331/1983) from a prison or other place of custody, or from the custody of an official or soldier guarding, escorting or transporting that person, or assists in the escape of that person, or
- (2) prevents a competent official or soldier from apprehending a person who is on the run and whose detention or arrest has been ordered,
- shall be sentenced for unlawful release of a prisoner to a fine or to imprisonment for at most two years.
- (2) An attempt is punishable.

Section 18 - Corporate criminal liability (604/2002)

The provisions on corporate criminal liability apply to bribery, aggravated bribery, and bribery of a member of Parliament.

Chapter 17 - Offences against public order (563/1998)

Section 1a – Participation in the activity of a criminal organisation (142/2003)

- (1) A person who
- (1) by establishing or organising a criminal organisation or by recruiting or attempting to recruit persons for it,
- (2) by equipping or attempting to equip a criminal organisation with explosives, weapons, ammunition or with materials or equipment intended for their production or with other dangerous supplies or materials,
- (3) by arranging, attempting to arrange or providing a criminal organisation training for criminal activity,
- (4) by obtaining, attempting to obtain or providing a criminal organisation premises or other facilities needed by it or means of transport or other equipment that is particularly important for the organisation,
- (5) by directly or indirectly giving or collecting funds to finance the criminal activity of a criminal organisation,

- (6) by managing financial affairs that are important for the criminal organisation or by giving financial or legal advice that is particularly important for the organisation or
- (7) by actively promoting the accomplishment of the aims of a criminal organisation in another substantial manner participates in the activities of a criminal organisation with the aim of committing one or more offences for which the maximum statutory sentence is imprisonment for a minimum of four years or one or more of the offences referred to in chapter 11(8) or chapter 15(9), and if such an offence or its punishable attempt is committed, shall be sentenced for participating in the activity of a criminal organisation to a fine or imprisonment for a maximum of two years. (1372/2003)
- (2) What is provided above in subsection 1(6) regarding legal advice does not apply to the performance of the duties of legal counsel or representative in connection with the pre-trial investigation or court proceedings regarding an offence or the enforcement of a sentence.
- (3) What is provided in subsection 1 does not apply if an equally or more severe penalty is provided elsewhere in law for the act.
- (4) A criminal organisation is defined as a structured association, established over a period of time, of at least three persons acting in concert to commit the offences referred to in subsection 1.

Section 16 - Organised gambling (563/1998)

- (1) A person who unlawfully arranges gambling or keeps a room or other premises for gambling, or as the proprietor of a hotel or restaurant establishment allows gambling to take place, shall be sentenced for organised gambling to a fine or to imprisonment for at most one year.
- (2) Gambling means pools, bingo, tote and betting games, money and goods lotteries, casino operations and other similar games and activities where winning is completely or partially dependent on chance or events beyond the control of the participants in the game or activity and where the possible loss is clearly disproportionate to at least one of the participants' ability to pay up.

Section 16a — Lottery offence (1051/2001)

A person who

- (1) arranges a lottery without a permit referred to in the Lottery Act (1047/2001),
- (2) uses lottery profits in a manner essentially contrary to the terms of the original lottery permit or a supplementary permit by which the legitimate uses of the profits have been redefined,
- (3) neglects to fulfil the accounting duties of lottery arrangers,
- (4) violates a prohibition referred to in section 62(1)–(4) of the Lottery Act, or
- (5) arranges a raffle, as referred to in section 27(1) of the Lottery Act, even if that person does not meet the criteria for lottery arrangers in section 5 of the Lottery Act,

shall be sentenced for a lottery offence to a fine or to imprisonment for at most six months, provided that a more severe penalty for the act has not been laid down elsewhere in the law.

Chapter 30 - Business offences

Section 7 - Bribery in business (769/1990)

A person who promises, offers or gives an unlawful benefit (bribe) to

- (1) a person in the service of a businessman,
- (2) a member of the administrative board or board of directors, the managing director, auditor or receiver of a corporation or of a foundation engaged in business, or
- (3) a person carrying out a duty on behalf of a business,

intended for the recipient or another, in order to have the bribed person, in his/her function or duties, favour the briber or another person, or to reward the bribed person for such favouring, shall be sentenced for bribery in business to a fine or to imprisonment for at most two years.

Section 8 - Acceptance of a bribe in business (604/2002)

(1) A person who

- (1) in the service of a business,
- (2) as a member of the administrative board or board of directors, the managing director, auditor or receiver of a corporation or of a foundation engaged in business or
- (3) in carrying out a duty on behalf of a business

demands, accepts or receives a bribe for himself/herself or another or otherwise takes an initiative towards receiving such a bribe, for favouring or as a reward for such favouring, in his/her function or duties, the briber or another, shall be sentenced for acceptance of a bribe in business to a fine or to imprisonment for at most two years.

Section 9 - Accounting offence (61/2003)

If a person with a legal duty to keep accounts, his/her representative, a person exercising actual decision-making authority in a corporation with a legal duty to keep books, or the person entrusted with the keeping of accounts,

- (1) in violation of the requirements of legislation on accounting neglects the recording of business transactions or the balancing of the accounts,
- (2) enters false or misleading data into the accounts, or
- (3) destroys, conceals or damages account documentation

and in this way impedes the obtaining of a true and sufficient picture of the financial result of the business of the said person or of his/her financial standing, he/she shall be sentenced for an accounting offence to a fine or to imprisonment for at most two years.

Section 9 a - Aggravated accounting offence (61/2003)

If in the accounting offence

- (1) the recording of business transactions or the closing of the books is neglected in full or to an essential degree,
 - (2) there is a considerable amount of false or misleading information, these pertain to large amounts or they are based on falsified certificates, or
 - (3) the accounts are destroyed or hidden in full or to an essential degree or they are damaged to an essential degree
- and the accounting offence is aggravated also when assessed as a whole, the offender shall be sentenced for an aggravated accounting offence to imprisonment for at least four months and at most four years.

Section 10 – Negligent accounting offence (61/2003)

If a person with a legal duty to keep accounts, the representative of such a person, a person exercising actual decision-making authority in a corporation with a legal duty to keep books, or a person commissioned to keep the accounts, through gross negligence

- (1) neglects in full or in part the recording of business transactions or the closing of the books, or
- (2) destroys, misplaces or damages account documents

and in this manner essentially impedes the obtaining of a true and sufficient picture of the financial result or financial position of the activity of the person with a legal duty to keep books, he/she shall be sentenced for a negligent accounting offence to a fine or to imprisonment for at most two years.

Section 11 - Definition (769/1990)

For the purposes of this chapter, a business secret is defined as a business or professional secret and to other corresponding business information that a businessman keeps secret and the revelation of which would be conducive to causing financial loss to him/her or to another businessman who has entrusted him/her with the information.

Section 12 - Right to bring charges (769/1990)

- (1) Before bringing charges for a marketing offence the public prosecutor shall reserve the consumer ombudsman an opportunity to give a statement in the case. When hearing a case dealing with a marketing offence and an unfair competition offence the court shall reserve the consumer ombudsman an opportunity to be heard.
- (2) The public prosecutor shall not bring charges for an offence referred to in section 2 or in sections 4 - 8 unless the injured party reports the offence for the bringing of charges or unless a very important public interest requires that charges be brought.

Section 13 - Corporate criminal liability (743/1995)

The provisions on corporate criminal liability apply to marketing offences, unfair competition offences, business espionage, misuse of a business secret and bribery in business.

Chapter 32 - Receiving and money laundering offences

Section 1 - Receiving offence (769/1990)

- (1) A person who hides, procures, takes into his/her possession or conveys property obtained from another through theft, embezzlement, robbery, extortion, fraud, usury or means of payment fraud or otherwise handles such property shall, unless the act is punishable as money laundering, be sentenced for a receiving offence to a fine or to imprisonment for at most one year and six months. (61/2003)
- (2) A person shall be sentenced for a receiving offence if he
 - (1) receives, transforms, conveys or transfer assets or other property which he/she knows to have been gained through an offence or to replace such assets or property, in order to conceal or launder its illicit origins or to assist the offender in evading the lawful sanctions provided for the offence; or
 - (2) conceals or launders the true nature, origin, location or transactions or rights pertaining to the property referred to in subparagraph (1), or (79/1998)

- (3) fails to make a notification referred to in section 10 of the Act on the Detection and Prevention of Money Laundering (68/1998) or, in violation of the prohibition provided in section 10, discloses a notification referred to therein. (79/1998)

Section 2 - Aggravated receiving offence (769/1990)

If the object of the receiving offence is very valuable property and the receiving offence is aggravated also when assessed as a whole, the offender shall be sentenced for an aggravated receiving offence to imprisonment for at least four months and at most four years.

Section 3 - Professional receiving offence (769/1990)

If the handling of property obtained through an offence, as referred to above in this chapter, is extensive and professional, the offender shall be sentenced for a professional receiving offence to imprisonment for at least four months and at most six years.

Section 4 - Negligent receiving offence (61/2003)

A person who procures, takes possession of or transfers property acquired through an offence referred to in section 1, or otherwise handles such property, even though he/she has reason to believe that the property has been acquired in said manner, shall be sentenced for a negligent receiving offence to a fine or to imprisonment for at most six months.

Section 5 - Receiving violation (769/1990)

If the receiving offence or negligent receiving offence, when assessed as a whole, with due consideration to the value of the property or to the other circumstances connected with the offence, is to be deemed petty, the offender shall be sentenced for receiving violation to a fine.

Section 6 – Money laundering (61/2003)

- (1) A person who
 - (1) receives, uses, converts, conveys, transfers or transmits property acquired through an offence, the proceeds of crime or property replacing such property in order to conceal or obliterate the illegal origin of such proceeds or property or in order to assist the offender in evading the legal consequences of the offence or
 - (2) conceals or obliterates the true nature, origin, location or disposition of, or rights to, property acquired through an offence, the proceeds of an offence or property replacing such property or assists another in such concealment or obliteration,shall be sentenced for money laundering to a fine or to imprisonment for at most two years.
- (2) An attempt is punishable.

Section 7 - Aggravated money laundering (61/2003)

- (1) If in the money laundering
 - (1) the property acquired through the offence has been very valuable or
 - (2) the offence is committed in a particularly deliberate manner,and the money laundering is aggravated also when assessed as a whole, the offender shall be sentenced for aggravated money laundering to imprisonment for at least four months and at most six years.
- (2) An attempt is punishable.

Section 8 – Conspiracy for the commission of aggravated money laundering (61/2003)

A person who agrees with another on the commission of aggravated money laundering directed at the proceeds of bribery, the acceptance of a bribe, or aggravated tax fraud or aggravated subsidy fraud directed at the tax referred to in chapter 29, section 9(1)(2), or at property replacing such proceeds, shall be sentenced for conspiracy for the commission of aggravated money laundering to a fine or to imprisonment for at most one year.

Section 9 – Negligent money laundering (61/2003)

A person who through gross negligence undertakes the actions referred to in section 6 shall be sentenced for negligent money laundering to a fine or to imprisonment for at most two years.

Section 10 - Money laundering violation (61/2003)

If the money laundering or the negligent money laundering, taking into consideration the value of the property or the other circumstances connected with the offence, is petty when assessed as a whole, the offender shall be sentenced for a money laundering violation to a fine.

Section 11 – Restrictive provisions (61/2003)

- (1) A person who is an accomplice in the offence through which the property was obtained or that produced the proceeds shall not be sentenced for the offence referred to in this chapter.
- (2) The provisions of this chapter do not apply to a person living in a joint household with the offender, and who only used or consumed property obtained by the offender for ordinary needs in the joint household.

Section 12 – Forfeiture (61/2003)

- (1) Property that has been the target of an offence referred to in section 6, 7 or 9, shall be ordered forfeit to the State. The provisions of chapter 10, section 11(3) apply to the forfeiture.
- (2) The provisions of chapter 10 apply to forfeiture of other property.

Section 13 - Right to bring a charge (61/2003)

The public prosecutor shall not bring charges for a receiving offence unless the injured party has reported the offence for the bringing of charges or unless a very important public interest requires that charges be brought.

Section 14 -Corporate criminal liability (61/2003)

The provisions on corporate criminal liability apply to a receiving offence, an aggravated receiving offence, a professional receiving offence, money laundering and aggravated money laundering.

Chapter 34 a – Terrorist offences (17/2003)

Section 1 – Offences made with terrorist intent

- (1) A person who, with terrorist intent and in a manner that is likely to cause serious harm to a State or an international organisation
 - (1) makes an unlawful threat or a false report of a danger shall be sentenced to imprisonment for at least four months and at most three years,
 - (2) deliberately causes a danger or commits a deliberate explosives offence or an offence against the Edged Weapons Act (108/1977) shall be sentenced to imprisonment for at least four months and at most four years,
 - (3) commits an aggravated theft or an aggravated theft for temporary use directed against a motor vehicle suitable for public transport or the transport of goods, sabotage, traffic sabotage, endangerment of health, aggravated damage to property, aggravated firearms offence or an export offence referred to in the Act on the Export and Transit of Defence Supplies (242/1990) shall be sentenced to imprisonment for at least four months and at most six years,
 - (4) violates a ban on chemical weapons, violates a ban on biological weapons or engages in deliberate aggravated pollution of the environment committed in the manner referred to in chapter 48, section 1(1)(1) shall be sentenced to imprisonment for at least four months and at most eight years,
 - (5) commits aggravated assault, kidnapping, the taking of a hostage, aggravated sabotage, aggravated endangerment of health, a nuclear weapon offence or hijacking shall be sentenced to imprisonment for at least two and at most twelve years,
 - (6) commits the offence of killing shall be sentenced to imprisonment for at least four and at most twelve years, or
 - (7) commits homicide shall be sentenced to imprisonment for at least eight years or for life.
- (2) A person who commits murder with terrorist intent shall be sentenced to imprisonment for life.
- (3) An attempt is punishable.

Section 2 – Preparation of an offence to be committed with terrorist intent

A person who, in order to commit an offence referred to in section 1(1)(2-7) or 1(2),

- (1) agrees with another person or prepares a plan to commit such an offence,
- (2) prepares, keeps in his/her possession, acquires, transports, uses or gives to another an explosive, a chemical or biological weapon or a toxin weapon, a firearm or a dangerous object or substance, or
- (3) acquires equipment or materials for the preparation of a nuclear explosive, a chemical or biological weapon or a toxin weapon or acquires formulas or diagrams for their production,

shall be sentenced for preparation of an offence to be committed with terrorist intent to a fine or to imprisonment for at most three years.

Section 3 –Directing of a terrorist group

- (1) A person who directs a terrorist group, the activity of which has involved the commission of an offence referred to in section 1(1)(2-7) or the offence referred to in section 1(2) or a punishable attempt at such an offence or the offence referred to in section 2 shall be sentenced for directing of a terrorist group to imprisonment for at least two and at most twelve years.
- (2) A person who directs a terrorist group in the activity of which only the offence referred to in section 1(1)(1) has been committed shall be sentenced to imprisonment for at least four months and at most six years.

- (3) A person who is sentenced for directing of a terrorist group shall also be sentenced for an offence referred to in section 1 or the punishable attempt of such an offence or an offence referred to in section 2 that he or she has committed or that has been committed in the activity of a terrorist group under his/her direction.

Section 4 – Promotion of the activity of a terrorist group

- (1) A person who in order to promote, or aware that his or her activity promotes, the criminal activity referred to in sections 1 or 2 of a terrorist group
- (1) establishes or organises a terrorist group or recruits or attempts to recruit persons for a terrorist group,
 - (2) supplies or seeks to supply a terrorist group with explosives, weapons, ammunition or material or equipment intended for the preparation of these or with other dangerous objects or material,
 - (3) implements, seeks to implement or provides training for a terrorist group for criminal activity,
 - (4) obtains or seeks to obtain or gives to a terrorist group premises or other facilities that it needs or means of transport or other implements that are especially important from the point of view of the activity of the group,
 - (5) obtains or seeks to obtain information which, if transmitted to a terrorist group, would be likely to cause serious harm to the State or an international organisation, or transmits, gives or discloses such information to a terrorist group,
 - (6) manages important financial matters for a terrorist group or gives financial or legal advice that is very important from the point of view of such a group, or
 - (7) commits an offence referred to in chapter 32, section 1(2)(1) or 1(2)(2),
- shall be sentenced, if the offence referred to in section 1 or a punishable attempt at such an offence is carried out in the activity of the terrorist group, and unless the act is punishable under section 1 or 2 or unless an equally or more severe punishment is decreed elsewhere in law for it, to promotion of the activity of a terrorist group to imprisonment for at least four months and at most eight years.
- (2) What is provided above in paragraph 6 regarding legal advice does not apply to the performance of the functions of a legal counsel or attorney in connection with the pre-trial investigation of an offence, court proceedings or the enforcement of a sentence.

Section 5 – The financing of terrorism

- (1) A person who directly or indirectly provides or collects funds in order to finance, or aware that these shall finance
- (1) the taking of a hostage or hijacking,
 - (2) sabotage, aggravated sabotage or preparation of an offence of general endangerment that is to be deemed an offence referred to in the International Convention for the Suppression of Terrorist Bombing (Treaty Series 60/2002),
 - (3) sabotage, traffic sabotage, aggravated sabotage or the preparation of an offence of general endangerment that is to be deemed an offence referred to in the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (Treaty Series 56/1973), the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation (Treaty Series 43/1998), the Convention for the Suppression of Unlawful Act Against the Safety of Maritime Navigation (Treaty Series 11/1999) or the Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf (Treaty Series 44/2000),
 - (4) a nuclear explosives offence, endangerment of health, aggravated endangerment of health, a nuclear energy use offence or other criminalised offence directed at a nuclear weapon or committed through the use of nuclear material, that is to be deemed an offence referred to in the Convention on the Physical Protection of Nuclear Material (Treaty Series 72/1989), or
 - (5) murder, homicide, killing, aggravated assault, deprivation of liberty, aggravated deprivation of liberty, kidnapping, taking of a hostage or aggravated disturbance of public peace or the threat of such an offence, when the act is directed against a person who is referred to in the Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, including Diplomatic Agents (Treaty Series 63/1978),
- shall be sentenced for the financing of terrorism to imprisonment for at least four months and at most eight years.
- (2) Also a person who directly or indirectly provides or collects funds in order to finance or aware that they are used to finance the offences referred to in section 1 shall be sentenced for the financing of terrorism.
- (3) An attempt is punishable.
- (4) What is provided in the foregoing in this section does not apply if the offence is punishable as an offence referred to in paragraph 1, subparagraphs 1 through 5 or an attempt of such an offence or complicity in such an offence or, according to sections 1 or two or elsewhere in law a more severe sentence is provided for it.

Section 6 - Definitions

- (1) An offender has a terrorist intent if it is his or her intent to:
- (1) cause serious fear among the population,

- (2) unjustifiably force the government of a state or another authority or an international organisation to perform, allow or abstain from performing any act,
 - (3) unjustifiably overturn or amend the constitution of a state or seriously destabilise the legal order of a state or cause particularly harm to the state economy or the fundamental social structures of the state, or
 - (4) cause particularly extensive harm to the finances or other fundamental structures of an international organisation.
- (2) A terrorist group refers to a structured group of at least three persons established over a period of time and acting in concert in order to commit offences referred to in section 1.
 - (3) An international organisation refers to an intergovernmental organisation or to an organisation which, on the basis of its significance and international recognised position, is comparable to an intergovernmental organisation.

Section 7 – Right of prosecution

The Prosecutor-General decides on the bringing of charges for offences referred to in this chapter. In so doing the Prosecutor-General shall also designate the person who is to bring the charges.

Section 8 – Corporate criminal liability

- (1) The provisions on the criminal liability of legal persons apply to the offences referred to in this chapter.
- (2) The provisions on corporate criminal liability apply also to robbery, aggravated robbery, extortion or aggravated extortion committed in order to commit an offence referred to in section 1 or section 2(1)(3) of this chapter as well as to forgery or aggravated forgery committed in order to commit the offence referred to in section 1, paragraph 1, subparagraphs 2-7 or paragraph 2, section 2, paragraph 1, subparagraph 3 or in section 4 or 5 of this Act.

Act on Preventing and Clearing Money Laundering
(68/1998; amendments up to 365/2003 included)

Section 1

Purpose and scope of application of the Act (365/2003)

- (1) The purpose of this Act is to prevent money laundering and financing of terrorism and to promote their detection and investigation and to reinforce the tracing and recovery of the proceeds from crime.
- (2) The provisions of this Act on preventing and clearing money laundering also apply to preventing and clearing financing of terrorism referred to in Chapter 34a, section 5 of the *Penal Code* (39/1889).

Section 2

Definitions (63/2003)

- (1) For the purposes of this Act:
 - 1) *money laundering* means activities referred to in Chapter 32, sections 6-10 of the *Penal Code* (39/1889); (365/2003)
 - 2) *clearing money laundering* means receiving, recording, examining and investigating suspicious transaction reports referred to in sections 5 and 10;
 - 3) *a party subject to the obligation to report* means institutions and businesses and professions referred to in section 3.

Section 3

Obligated parties

- (1) For the purposes of this Act, the following are obliged parties:
 - 1) credit and financial institutions referred to in the Act on Credit Institutions (1607/1993);
 - 2) branches and agencies of foreign credit and financial institutions referred to in the Act on the Operation of a Foreign Credit Institution or Financial Institution in Finland (1608/1993);
 - 3) investment firms referred to in the Act on Investment Firms (579/1996) and such other institutions which are not investment firms but which, as a business, practice professional activities referred to in section 16 of the Act on Investment Firms;
 - 4) branches and agencies of foreign investment firms referred to in the Act on the Right of a Foreign Investment Firm to Provide Investment Services in Finland (580/1996);
 - 4a) management companies and custodians referred to in the Act on Common Funds (48/1999); (54/1999)
 - 5) limited-liability companies or co-operatives practising restricted credit institution activities referred to in section 1a of the Act on Credit Institutions; (365/2003)
 - 6) insurance companies referred to in the Insurance Companies Act (1062/1979);
 - 7) agencies of foreign insurance companies referred to in the Act on Foreign Insurance Companies (398/1995);
 - 8) insurance brokers referred to in the Insurance Brokers Act (251/1993);
 - 9) pawnshops referred to in the Pawnshops Act (1353/1992);
 - 10) gaming operators referred to in section 12(1) of the Lotteries Act (1047/2001) practising pools, betting, totalisator betting or casino activities, as well as businesses, professions and institutions supplying registration and charges for participation in pools, betting and totalisator betting referred to in the Lotteries Act; (1052/2001)
 - 11) real estate businesses and apartment rental agencies referred to in the Act on Real Estate Businesses and Apartment Rental Agencies (1075/2000); (365/2003)
 - 12) the Central Securities Depository, account operators, and agencies located in Finland of other foreign institutions which have been granted the rights of an account operator referred to in the Act on the Book-entry System (826/1991); (365/2003)
 - 13) businesses or professions practising payments transfer activity other than payment intermediation referred to in the Act on Credit Institutions; (365/2003)
 - 14) businesses or professions carrying out duties referred to in section 1(1) of the Auditing Act (936/1994); (365/2003)
 - 15) businesses or professions performing external accounting functions; (365/2003)
 - 16) businesses or professions dealing in precious stones or metals, works of art or vehicles; (365/2003)
 - 17) businesses or professions holding auctions; (365/2003)
 - 18) businesses or professions providing assistance in legal matters. (365/2003)

- (2) Businesses or professions providing assistance in legal matters referred to in subsection 1(18) above are subject to the obligation to report when they prepare for or carry out transactions on behalf of their client concerning buying and selling of real estate and business entities, managing of client money, securities or other assets, opening or management of bank, savings or securities accounts, organisation of contributions for the creation, operation or management of companies, or creation, operation or management of trusts, companies or similar legal arrangements, and buying and selling of business entities on behalf of and for a client. Legal professionals carrying out duties of an attorney are not subject to the obligation to report. For the purposes of this Act, duties of an attorney include, in addition to duties related to actual legal proceedings, the provision of legal advice concerning a client's legal position in the pre-trial investigation of an offence or other pre-trial handling of the case, and instituting or avoiding proceedings. (365/2003)

Section 4
Money Laundering Clearing House

- (1) For carrying out duties pertaining to clearing money laundering, a Money Laundering Clearing House, hereafter the Clearing House, is located at the National Bureau of Investigation. The Clearing House shall also promote co-operation between different authorities in the prevention of money laundering, as well as co-operation and exchange of information with foreign authorities and international organisations responsible for clearing money laundering. The National Bureau of Investigation shall provide the ministry responsible for Police activities with an annual report on the activity of the Clearing House and the progress of anti-money laundering action in Finland in general.

Section 5
Obligation of public authorities and other supervisory bodies to supervise and report

- (1) Public authorities supervising obliged parties, the Savings Bank Inspectorate referred to in the Savings Banks Act (1270/1990), the central body for co-operative banks referred to in the Co-operative Banks Act (1271/1990) and an auditor of the savings fund operations referred to in the Co-operatives Act shall supervise the fulfillment of the obligations imposed by this Act or by provisions laid down under this Act. (2) If the authorities referred to in subsection 1 or any other supervisory bodies consider, on the basis of facts discovered in the context of their supervisory or other duties, that there are reasons to suspect that the assets or other property involved in a transaction are of illegal origin or that these are used to commit an offence referred to in section 1(2) or a punishable attempt of such an offence, they shall report the case to the Clearing House. (365/2003)

Section 6
Obligation to identify (365/2003)

- (1) In addition to what is provided hereafter, obliged parties shall always establish the identity of their customer if there are reasons to suspect that the assets or other property involved in a transaction are of illegal origin or that these are used to commit an offence referred to in section 1(2) or a punishable attempt of such an offence.
- (2) Obligated parties referred to in section 3(1)(1)-(8) and (11)-(18) above shall establish the identity of their regular customers. The same requirement shall also apply to other than regular customers when the sum of a transaction amounts to EUR 15 000 or more, whether the transaction is carried out in a single operation or in several operations which are linked to each other.
- (3) Obligated parties referred to in section 3(1)(6)-(8) above do not have to identify their customer if:
- 1) the assignment concerns an insurance policy the periodic premium amount of which does not exceed EUR 1 000 or if its single premium is not more than EUR 2 500;
 - 2) the assignment concerns a statutory employment pension insurance policy or a pension insurance policy of a self-employed person which contains no surrender clause and may not be used as collateral for a loan;
 - 3) the insurance premium is paid from the policyholder's account with a credit or financial institution duly authorised in a State belonging to the European Economic Area, or from an account with a branch located in a State belonging to the European Economic Area of a credit or financial institution duly authorised in a State belonging to the European Economic Area.
 - 4) Obligated parties referred to in section 3(10) above shall establish the identity of their customers in connection with:
 - 1) casino activities;
 - 2) pools and betting or totalisator betting when the stake placed by the player amounts to EUR 3 000 or more, whether the transaction is carried out in a single operation or in several operations which are linked to each other.
 - 5) A customer which is a credit institution, financial institution, investment firm or life insurance company duly authorised in a State belonging to the European Economic Area, or a branch located in a State belonging to the European Economic Area of a credit institution, financial institution, investment firm or life insurance

company duly authorised in a State belonging to the European Economic Area does not have to be identified. In addition, a customer does not have to be identified if it is a credit institution, financial institution, investment firm or life insurance company duly authorised in such other State whose system of preventing and clearing money laundering meets the international standards, or a branch located in such a State of a credit institution, financial institution, investment firm or life insurance company duly authorised in other than such a State.

Section 7

Obligation to identify when a customer is acting for another person

- (1) If it is likely that a customer is acting for another person, the identity of this person shall also be established by all available means.

Section 8

Keeping records on the identification data

- (1) Records shall be kept on customer identification data in a secure manner for at least five years after the business transaction or relation is ended.

Section 9

Customer due diligence obligation

- (1) Obligated parties shall examine with due diligence the grounds for and the purpose of the use of their services if they consider that transactions are unusual in respect of their structure or extent or the size or office of the party subject to the obligation to report, or if they have no apparent financial purpose or if they are inconsistent with the customer's financial position or business activity.

Section 10

Obligation to report

- (1) If, after fulfilling the customer due diligence obligation referred to in section 9 or otherwise, obliged parties have reasons to suspect that the assets or other property involved in a transaction are of illegal origin or that these are used to commit an offence referred to in section 1(2) or a punishable attempt of such an offence, they shall report the matter to the Clearing House without delay and supply on request all information and documents that could be significant to clearing the suspicion. (365/2003)
- (2) Obligated parties referred to in section 3(1)(9) above shall make a report referred to in subsection 1, if a transaction involves a pledge of a significant financial value.
- (3) Such reporting may not be disclosed to the person subject to the suspicion or to any other person.

Section 11

Suspending and refusing to conduct a transaction

- (1) If obliged parties have reasons to suspect that the assets or other property involved in a transaction are of illegal origin or that these are used to commit an offence referred to in section 1(2) or a punishable attempt of such an offence, they shall suspend the transaction for further inquiries or refuse to conduct the transaction. (365/2003)
- (2) If it is not possible to refrain from carrying out the transaction, or if suspending or refusing to conduct the transaction are likely to hamper the establishment of the beneficiary of the transaction, the transaction may be carried out, after which a suspicious transaction report referred to in section 10 shall be made without delay.
- (3) After receiving a suspicious transaction report, a commanding Police officer working at the Clearing House may give an order to refrain from carrying out the transaction for no more than five working days, if such refraining is necessary for clearing money laundering.

Section 11a

Enhanced identification, customer due diligence and reporting obligation (365/2003)

- (1) If a transaction is connected with a State whose system of preventing and clearing money laundering does not meet the international standards, an enhanced identification, customer due diligence and reporting obligation applies to the transaction.
- (2) To fulfil an enhanced obligation to report, obliged parties shall make a report referred to in section 10 to the Clearing House if their customers do not provide them with an account they have requested in order to fulfil the customer due diligence obligation, or if they consider that this account is unreliable. The same applies if the account obtained by obliged parties does not provide sufficient information on the grounds for the transaction and on the origin of the

assets. Obligated parties shall also make a report to the Clearing House if a legal person cannot be identified or beneficiaries established in a reliable way. The same also applies if a person on behalf of whom a customer is acting cannot be identified.

Section 12

Obtaining, recording, using and disclosing information

- (1) Notwithstanding the provisions on the confidentiality of information subject to business and professional secrecy or the financial circumstances or financial status of an individual, institution or foundation, the Clearing House has the right to obtain free of charge any information and documents necessary for clearing money laundering from an authority or a body assigned to perform a public function.
- (2) A decision on obtaining confidential information referred to in subsection 1 shall be made by a commanding Police officer working at the Clearing House.
- (3) Notwithstanding the obligation to observe secrecy binding a member, auditor, auditor of the savings fund operations, board member or employee of the institution, the Clearing House has the right to obtain at the written request of a commanding Police officer working at the Clearing House any information necessary for clearing money laundering from a private institution or person.
- (4) The Clearing House has the right to record information received on the basis of sections 5 and 10 and subsections 1 and 3. The information may be used and disclosed only for the purpose of preventing and clearing money laundering.

Section 13

Reference to certain Acts (365/2003)

- (1) In addition to this Act, the provisions of the Police Act (493/1995) on Police investigation apply to clearing money laundering, unless the Pre-trial Investigation Act (449/1987) is applied to clearing the matter.
- (2) In addition to this Act, the provisions of the Act on Police Personal Data Files (509/1995) on personal data files intended for the use of a Police unit apply to handling information on a suspicious transaction.

Section 13a

Obligation to notify of payments transfer activity (365/2003)

- (1) Financial institutions practising payments transfer activity referred to in section 3(1)(13) above and financial institutions practising payments transfer activity shall notify the State Provincial Office of Southern Finland, which acts as the central administrative authority, of their activity before starting their operation.
- (2) The notification shall include information on the institution practising the activity and on the activity referred to in the notification.

Section 14

Government decisions and further provisions (365/2003)

- (1) A list of States whose systems of preventing and clearing money laundering meet the international standards referred to in section 6(5), as well as a list of States whose systems of preventing and clearing money laundering, correspondingly, do not meet the international standards referred to in section 11a(1), may be approved by a decision made in a Government plenary session.
- (2) Further provisions on fulfilling the requirements laid down in sections 6-11 and 11a and the content of the notification referred to in section 13a(2) are given by decree of the Ministry of the Interior. Before issuing a decree, other relevant ministries, the Insurance Supervisory Authority and the Financial Supervision Authority shall be heard.

Section 15

Liability for damages

- (1) Obligated parties are liable for the financial loss sustained by their customers as a result of clearing a transaction, reporting a suspicious transaction or suspending or refusing to conduct a transaction, only if the parties have failed to carry out such customer due diligence measures as can be reasonably required from them, considering the circumstances.
- (2) Otherwise, what is provided in the Tort Liability Act (412/1974) applies to the liability for damages of a party subject to the obligation to report.

Section 16

Content of the obligation to identify (365/2003)

- (1) A person who, deliberately or through negligence, fails to fulfil the obligation to identify a customer laid down in sections 6, 7 or 11a or the obligation to keep records on the identification data referred to in section 8 shall be sentenced for *violation of obligation to identify* to a fine, unless a more severe penalty for the act is provided elsewhere in the law.

Section 16a

Violation of obligation to report money laundering (365/2003)

- (1) A person who, deliberately or through negligence, fails to make a report referred to in sections 10 or 11a, discloses such reporting in violation of the prohibition laid down in section 10, or fails to fulfil the customer due diligence obligation referred to in section 9 and, therefore, does not realise the existence of the obligation to report referred to in section 10 shall be sentenced for *violation of obligation to report money laundering* to a fine.

Section 16b

Violation of obligation to notify of payments transfer activity (365/2003)

- (1) A person who, deliberately or through negligence, fails to make a notification of payments transfer activity referred to in section 13a shall be sentenced for *violation of obligation to notify of payments transfer activity* to a fine, unless a more severe penalty for the act is provided elsewhere in the law.

Section 17

Entry into force

- (1) This Act comes into force on 1 March 1998.
- (2) Measures necessary for the implementation of this Act may be undertaken before the Act's entry into force.

Section 18

Transitional provisions

- (1) When this Act comes into force, such matters under consideration at the Financial Supervision Authority and the Ministry of Social Affairs and Health which, under this Act, belong to the Clearing House are transferred to be handled by the Clearing House.
- (2) When this Act comes into force, information on suspicious transactions recorded by the Financial Supervision Authority and the Ministry of Social Affairs and Health shall be transferred to be handled by the Clearing House. The provisions of section 12(4) apply to recording, using and disclosing this information.

Entry into force and application of amendments:

- (54/1999) This Act comes into force on 1 February 1999.
(92/1999) This Act comes into force on 1 April 1999.
(799/2000) This Act comes into force on 16 October 2000.
(1076/2000) This Act comes into force on 1 March 2001.
(1052/2001) This Act comes into force on 1 January 2002.
(63/2003) This Act comes into force on 1 April 2003.
(365/2003) This Act comes into force on 1 June 2003.

This Act also applies to such customers of obliged parties referred to in section 3(1)(5) and (11)-(18) whose business relationship with the parties has been established before the entry into force of this Act. Obligated parties shall identify such customers as provided in sections 6 and 11a and, if it is likely that the customers are acting on behalf of another person, this other person as provided in section 7 before carrying out a new transaction.

When this Act comes into force, financial institutions practising payments transfer activity referred to in section 3(1)(13) and financial institutions practising payments transfer activity shall make a notification referred to in section 13a of their activity within six months of the entry into force of this Act.

Decree on Preventing and Clearing Money Laundering
(890/2003)

Chapter 1 – General provisions

Section 1 – *Purpose and scope of application of the Decree*

- (1) This Decree lays down further provisions on fulfilment of the obligation to identify, the obligation to identify when a customer is acting for another person, the obligation to keep records of identification data, the customer due diligence obligation, the obligation to report, the obligation to suspend a transaction and the obligation to refuse to conduct a transaction, and the enhanced identification, customer due diligence and reporting obligations laid down in sections 6-11 and section 11a of the Act on Preventing and Clearing Money Laundering (68/1998) and on the detailed content of the notification of payments transfer activity referred to in section 13a(2) of the Act.
- (2) If special provisions have been given on a specific business sector by act, decree or order of an authority appointed to control the said sector, these must be observed in the said sector in addition to what this Decree provides.

Chapter 2 - Obligation to identify, customer due diligence obligation and obligation to report

Section 2 – *Identification of a natural person*

When identifying a natural person in accordance with sections 6 and 7 of the Act on Preventing and Clearing Money Laundering, parties obliged to report must ascertain the person's identity from a document issued by an authority or, for special reasons, from some other document from which identity can be reliably ascertained. The following personal data must be established:

- 1) full name and date of birth;
- 2) Finnish personal identity code if the person has one, or, in the case of an alien, the nationality; and
- 3) the number of an alien's passport or other travel document, or some other identification datum.

Section 3 – *Identification of a legal person*

When identifying a legal person in accordance with sections 6 and 7 of the Act on Preventing and Clearing Money Laundering, the party obliged to report must obtain an account required to ascertain the identity from an official register of, for special reasons, from some other source from which an account can be reliably obtained. The following data must then be established on the person:

- 1) full name of the legal person;
- 2) the legal person's registration number, if the legal person has one, the registration date and registration authority; and
- 3) full names, dates of birth and nationalities of the members of the legal person's board of directors or corresponding decision-making body.

Section 4 – *Remote identification*

If persons or parties acting for them or as their representatives are not present when identity is ascertained, they must identify themselves electronically by using a quality certificate or some other protected evidential identification technology. Parties obliged to report may, for special reasons, ascertain a person's identity through remote identification by obtaining the account required for identification from sources from which an account can be reliably obtained.

Section 5 – *Time of identification*

Identification must be carried out before a business relationship begins and at latest when the customer gains control over the financial or other assets involved in a single business transaction or before a single business transaction has been completed. If the obligation to identify arises from the fact that the aggregate sum of single business transactions is at least EUR 15 000, identification must be carried out when the said limit is reached.

Section 6 – *Keeping records of the identification data*

- (1) The data referred to in sections 2-4 of this Decree and information on the identification method used, information on the sources used in identification or copies of the documents used for identification must be kept for record as the identification data referred to in section 8 of the Act on Preventing and Clearing Money Laundering.
- (2) The data must be kept secure and in a form that allows them to be made available to the authorities if the need arises.

Section 7 – Fulfilment of customer due diligence obligation

Parties obliged to report must establish the reasons for any unusual transactions as referred to in section 9 and for acting for another person as referred to in section 7 of the Act on Preventing and Clearing Money Laundering.

Section 8 – Fulfilment of the obligation to report

When a party obliged to report reports a suspicious transaction in the manner referred to in section 10 of the Act on Preventing and Clearing Money Laundering, information must be included in the report on the reporting party, the names, personal identity codes or dates of birth and nationalities of the parties participating in the transaction, the nature of the transaction, the amount and currency of the financial or other assets involved in the transaction, the origin or object of the financial or other assets and the reason that rendered the transaction suspicious, as well as information on whether the transaction has been completed, suspended or refused.

Chapter 3 – Enhanced identification, customer due diligence and reporting obligations

Section 9 – Scope of application of the enhanced identification, customer due diligence and reporting obligations

The connections referred to in section 11a of the Act on Preventing and Clearing Money Laundering with a State whose systems of preventing and clearing money laundering do not meet the international standards include the following:

- 1) the customer is a citizen of the State concerned;
- 2) the customer is a legal person domiciled in the State concerned or registered there;
- 3) the financial or other assets involved in the transaction are owned entirely or in part by a natural person resident in the State concerned or a legal person domiciled or registered there;
- 4) the financial or other assets involved in the transaction are being transferred entirely or in part to a natural person resident in the State concerned or a legal person domiciled or registered there;
- 5) the payment involved in the transaction is being made from or to an account at a credit institution, financial institution, investment firm, management company, insurance company or insurance broker domiciled or registered in the State concerned, or holding a permit to operate there; or
- 6) the payment involved in the transaction is being paid from or to an account at a branch in the State concerned of a credit institution, financial institution, investment firm, management company, insurance company or insurance broker other than is referred to in paragraph 5.

Section 10 – Fulfilment of enhanced identification obligation

- (1) When identifying a natural person in accordance with sections 6 and 7 and section 11a(1) of the Act on Preventing and Clearing Money Laundering, parties obliged to report must ascertain the person's identity from a document issued by an authority or, for special reasons, from some other document from which identity can be reliably ascertained. The following personal data must be established:
 - 1) full name and date of birth;
 - 2) Finnish personal identity code if the person has one, or, in the case of an alien, the nationality;
 - 3) the number of an alien's passport or other travel document, or some other identification datum; and
 - 4) full address.
- (2) When identifying a legal person in accordance with sections 6 and 7 and section 11a(1) of the Act on Preventing and Clearing Money Laundering, the party obliged to report must obtain an account required to ascertain the identity from an official register or, for special reasons, from some other source from which the account can be reliably obtained. The following data must be established:
 - 1) full name of the legal person;
 - 2) the legal person's registration number, if the person has one, registration date and registration authority;
 - 3) full names, dates of birth and nationalities of the members of the legal person's board of directors or corresponding decision-making body;
 - 4) the owners of the legal person or other persons exercising controlling power in it;
 - 5) the legal person's sphere of operations; and
 - 6) if necessary, the persons that are the beneficiaries of the legal person.
- (3) Persons acting for or as representatives of a legal person must be identified in accordance with subsections 1 and 2.

- (4) If the legal person referred to in subsection 2 is a company which has issued shares that are traded on the stock exchange or via some other public form of trading, the account referred to in subsection 2(4) should be required only of persons who own at least one twentieth share of the total share capital or votes of the company.

Section 11 – *Fulfilment of enhanced identification duty*

- (1) Parties obliged to report must require an account of the transaction about to be conducted and its purpose for the purpose referred to in section 9 and 11a(1) of the Act on Preventing and Clearing Money Laundering. At the beginning of a customer or business relationship, the purpose and extent of the transaction and the scale of individual transactions must also be established. The credit institution, financial institution, investment firm, management company, insurance company or insurance broker obliged to report must if necessary require a letter of recommendation concerning the customer from a credit institution, financial institution, investment firm, management company, insurance company or insurance broker that is considered reliable.
- (2) In addition to what is provided in subsection 1, the nature and scope of the operations of a legal person must be established and its financial statements for the past three full financial years required or, if the legal person has been operating for a shorter period, for the entire operating period.
- (3) If the customer is a credit institution, financial institution, investment firm, management company, insurance company or insurance broker domiciled or registered in a State referred to in section 11a(1) of the Act on Preventing and Clearing Money Laundering, the party obliged to report must verify in which State the customer has been granted an operating licence and establish whether the customer is being supervised by an authority.
- (4) If a credit institution, financial institution, investment firm, management company, insurance company or insurance broker that has been granted an operating licence in a State referred to in section 11a(1) of the Act on Preventing and Clearing Money Laundering or a branch of some other credit institution, financial institution, investment firm, management company, insurance company or insurance broker operating in a State referred to in section 11a(1) of the Act on Preventing and Clearing Money Laundering is a party to the business transaction, the following must be established in addition to what is provided in subsections 1-3 concerning the person to whom financial or other assets are being transferred from Finland or who is transferring financial or other assets to Finland:
 - 1) name and address;
 - 2) bank or some other payment connection; and
 - 3) the reason for the payment or some other grounds for the transaction.

Chapter 4 – Notification on payments transfer activity

Section 12 – *Notification on payments transfer activity*

- (1) The notification on payments transfer activity referred to in section 13a of the Act on Preventing and Clearing Money Laundering must include the following information:
 - 1) in the case of a private entrepreneur, the full name and personal identity code, or if these are not available, the date of birth and nationality and company name, auxiliary business name if there is one, business identity code and the visiting addresses of all operating premises practising payments transfer activity;
 - 2) in the case of a Finnish legal person, the company name and auxiliary business name if there is one, business identity code, full names, dates of birth and nationalities of the members of the legal person's board of directors or corresponding decision-making body and the visiting addresses of all operating premises practising payments transfer activity;
 - 3) in the case of a branch registered in Finland by a foreign legal person, the company name, business identity code, name of the representative of the branch and visiting addresses of all operating premises practising payments transfer activity; and
 - 4) a description of the nature and scope of the operations to be carried out.
- (2) The State Provincial Office of Southern Finland must also be notified without delay of any changes in the information given.
- (3) The State Provincial Office of Southern Finland keeps a list of financial institutions practising the payments transfer activity referred to in section 3(1)(13) of the Act on Preventing and Clearing Money Laundering and financial institutions practising payments transfer activity that have made a notification of their payments transfer activity.

Chapter 5 – Entry into force

Section 13 – *Entry into force*

- (1) This Decree enters into force on 1 November 2003.
- (2) This Decree also applies to customers whose business relationship with a party obliged to report has begun before the entry into force of the Decree. If the customer or person for whom the customer probably acts has not been

identified previously or is not otherwise known to the party obliged to report, the party obliged to report must identify such a customer and person before conducting a new transaction. Identification must take place in the manner laid down in sections 2-4.

- (3) This Decree repeals the Ministry of the Interior order on preventing and clearing money laundering issued on 26 February 1998 (Dno 4/98) and the Ministry of the Interior Decree (57/2002) issued on 23 January 2002 on the enhanced identification obligation, the customer due diligence obligation and the obligation to report relating to preventing and clearing money laundering, including later amendments.

ANNEX 4: All Laws, Regulations and Other Material Received

The Constitution of Finland, 11 June 1999
Penal Code, 1889
Advocates Act, 12 December 1958
Sanctions Act, 29 December 1967
Extradition Act, 7 July 1970
Tort Liability Act, 31 May 1974
Insurance Companies Act, 28 December 1979
Pre-Trial Investigation Act, 30 April 1987
Coercive Measures Act, 30 April 1987
Act on Trading in Standardised Options and Futures, 26 August 1988
Securities Markets Act, 26 May 1989
Act on the Book-Entry System, 17 May 1991
Act on the Book-Entry Accounts, 17 May 1991
Act on Credit Institutions, 31 December 1993
Act on the Operation of a Foreign Credit Institution of Financial Institution in Finland, 30 December 1993
Customs Act 1466_1994, Customs Decree, 29 December 1994
International Legal Assistance in Criminal Matters, 5 January 1994
Police Act, 24 March 1995
Act on Investment Firms, 26 July 1996
Act on the Right of a Foreign Investment Firm to Provide Investment Services in Finland, 26 July 1996
Accounting Act and Ordinance, 30 December 1997
Act on Preventing and Clearing ML, 30 January 1998
Act on Common Funds, 29 January 1999
Act on Insurance Supervisory Authority, 29 January 1999
Personal Data Act, 22 April 1999
Act on the Openness of Government Activities, 21 May 1999
Lotteries Act, 23 November 2001, Act on Background Checks, 8 March 2002
Act on Electronic Signatures, 24 January 2003
Act on the Financial Supervision Authority, 27 June 2003
Act on Processing of Personal Data by the Police, 22 August 2003
EU Extradition Act, 30 December 2003
Act on the Supervision of Financial and Insurance Conglomerates, 30 July 2004
Act on Insurance Mediation, 15 July 2005
Money Collection Act, 31 March 2006
Decree on Insurance Supervisory Authority, 29 January 1999
Government Decree on Lotteries, 20 December 2001
Decree on Preventing and Clearing ML, 23 October 2003
Ministry of Finance Decree on Authorisation, 3 July 2003
Decree on Money Collections, 21 June 2006
ISA Regulation and Instructions Insurance Companies, 1 December 2006
ISA Regulations and Instructions Insurance Intermediaries, 1 December 2006
FSA Standard 4.1 Establishment and Maintenance of Internal Control and Risk Management, 27 May 2003
FSA Standard 1.5 Supervision of Financial and Insurance Conglomerates, 17 June 2003
FSA Standard 4.4b Management of Operational Risk, 25 May 2004
FSA Standard 2.4 Customer Identification and Customer Due Diligence, 10 June 2005
FSA Standard RA2.1 Notification of Suspicious Securities Transactions and Other Suspect Transactions, 10 June 2005
FSA Standard 2.1 Code of Conduct for the Provision of Financial Services, 16 June 2006
ML Clearing House Best Practises

ANNEX 5: Additional Charts and Tables

Figure A.1. Organisation chart of the Insurance Supervisory Authority, 1 February 2006

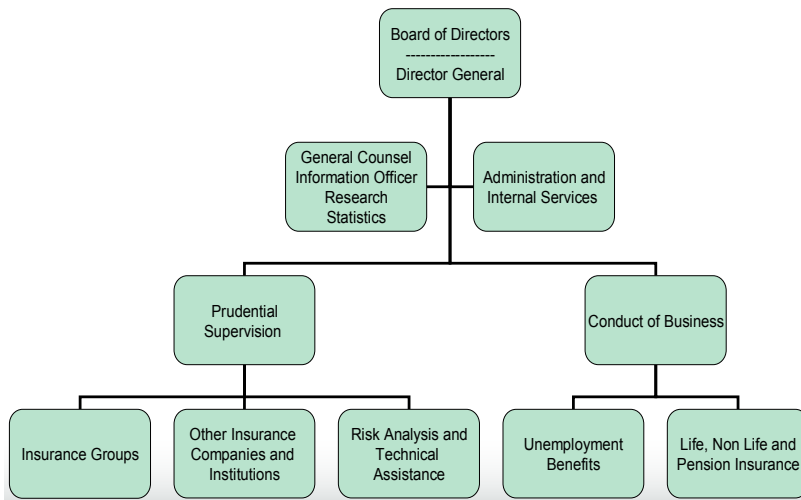
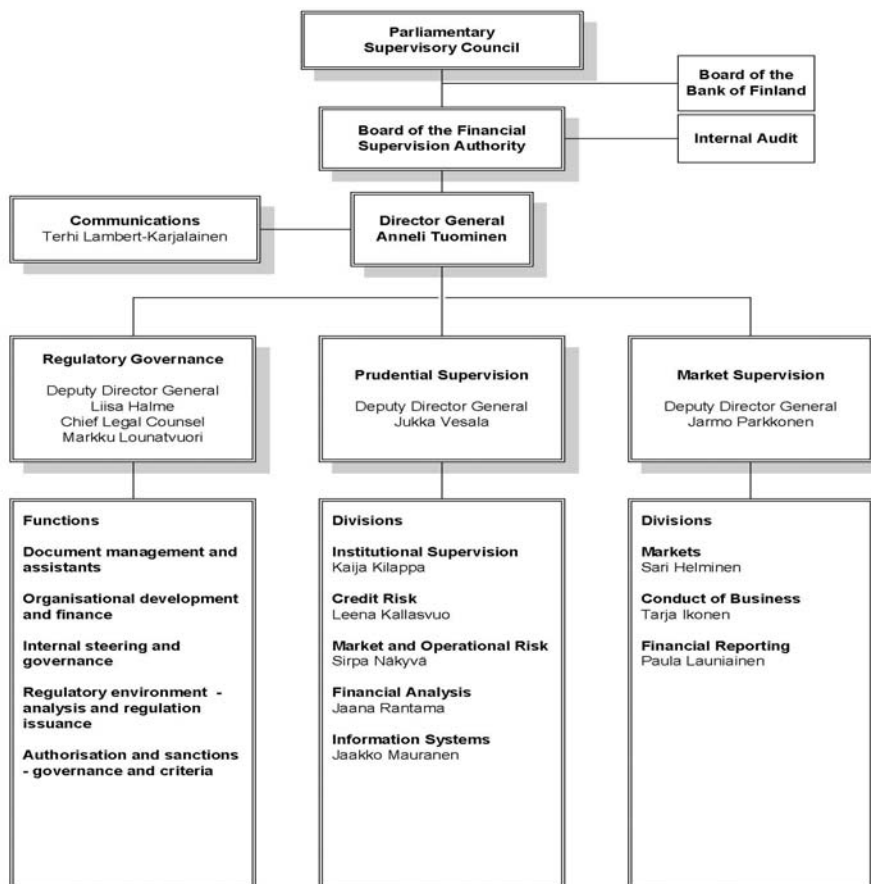


Figure A.2. Organisation chart of the Financial Supervision Authority, 1 June 2007



The Management Group members for the Finnish Financial Supervision Authority are Director General Anneli Tuominen, Deputy Directors General Jukka Vesala, Liisa Halme and Jarmo Parkkonen as well as Markku Lounatvuori (Chief Legal Counsel).

Figure A.3. Organisation chart of the FSA Market Supervision unit, 1 June 2007

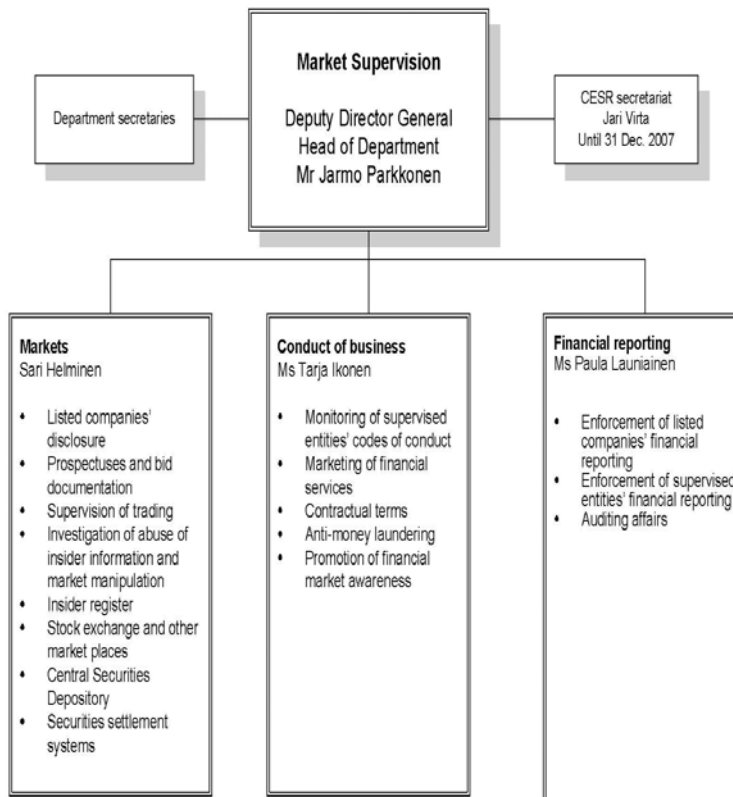


Figure A.4. Organisation chart of the FSA Prudential Supervision unit, 1 June 2007

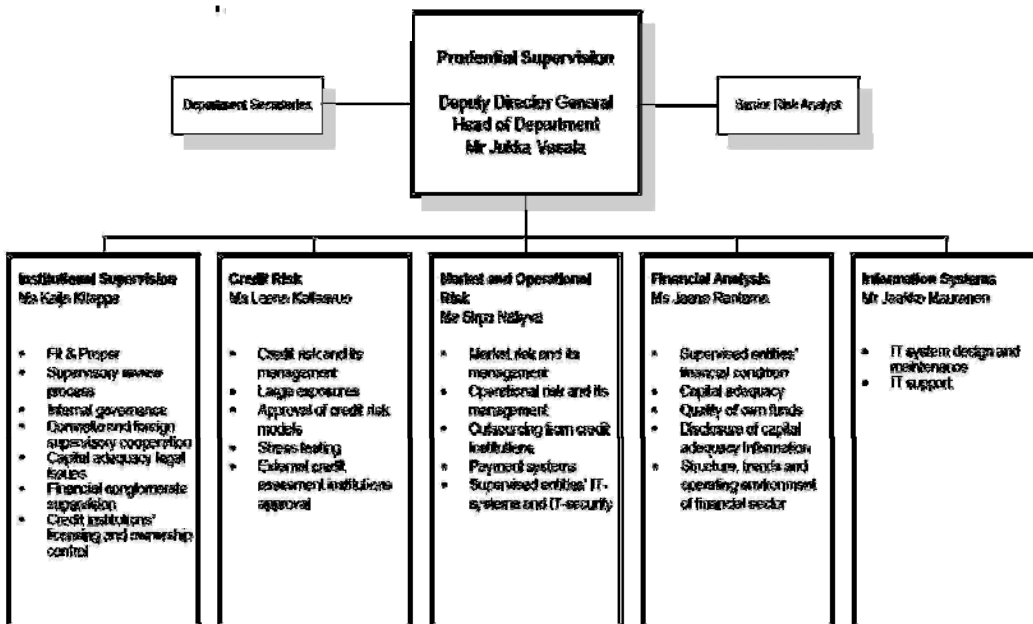


Figure A.5. Organisation chart of the Finnish National Bureau of Investigation

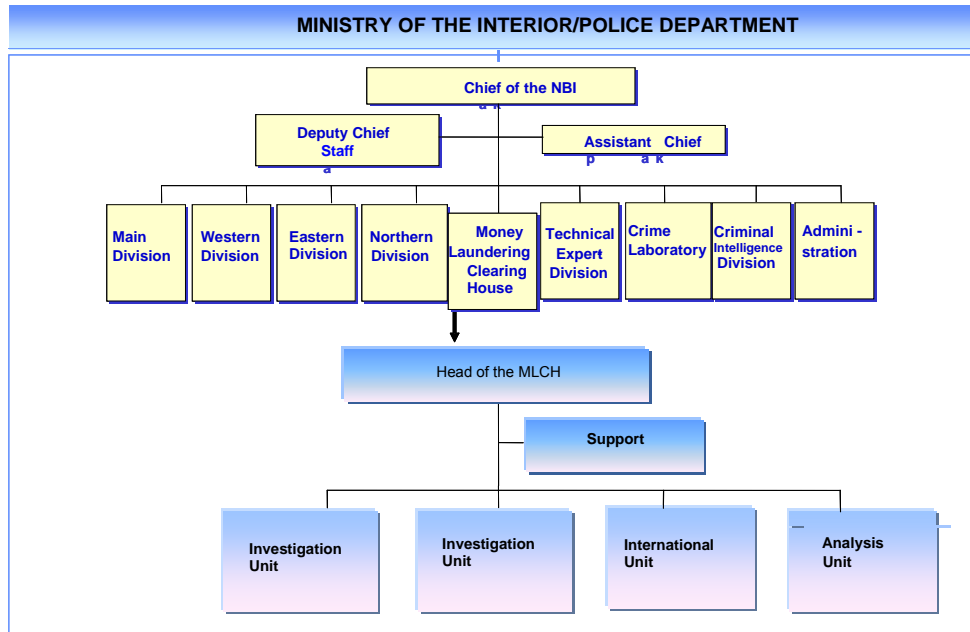


Figure A.6. Organisation chart of the Finnish Office of the Prosecution General, 1 March 2006

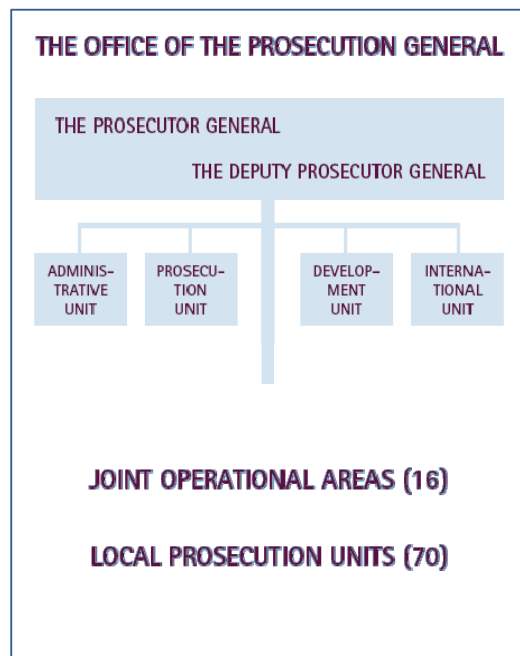


Figure A.7. Organisation chart of the Finnish Customs, 1 March 2006

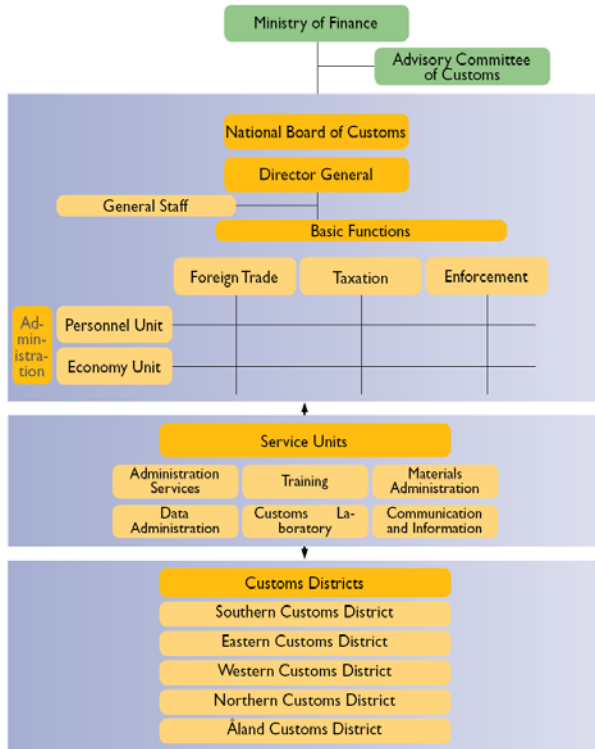


Figure A.8. The MLCH intelligence and investigation process

