

# Mutual Evaluation Report

## Anti-Money Laundering and Combating the Financing of Terrorism

28 November 2012

Iraq

Iraq is a member of the Middle East and North Africa Financial Action Task Force for combating Money laundering and Terrorism financing (MENAFATF). This evaluation was conducted by the World Bank and discussed and adopted by the Plenary of the MENAFATF as a 1<sup>st</sup> mutual evaluation on 28 November 2012.

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## Acronym List

|          |                                                                |
|----------|----------------------------------------------------------------|
| AML/CFT  | Anti-Money Laundering and Combating the Financing of Terrorism |
| ATL      | Anti-Terrorism Law                                             |
| BSA      | Board of Supreme Audit                                         |
| BCP      | Basel Core Principles                                          |
| CBI      | Central Bank of Iraq                                           |
| CDD      | Customer Due Diligence                                         |
| COI      | Commission of Integrity                                        |
| COM      | Council of Ministers                                           |
| CPA      | Coalition Provisional Authority                                |
| CTR      | Cash Transaction Report                                        |
| CL       | Companies Law                                                  |
| CTS      | Counter Terrorism Service                                      |
| CPL      | Criminal Procedure Law of 1971                                 |
| DNFBP    | Designated Non-Financial Businesses and Professions            |
| EITI     | Extractive Industries Transparency Initiative                  |
| FATF     | Financial Action Task Force                                    |
| FI       | Financial institution                                          |
| FIU      | Financial Intelligence Unit                                    |
| FSRB     | FATF-style Regional Body                                       |
| FT       | Financing of terrorism                                         |
| GDP      | Gross Domestic Product                                         |
| GOI      | Government of Iraq                                             |
| IAIS     | International Association of Insurance Supervisors             |
| IOSCO    | International Organization of Securities Commissions           |
| ISC      | Iraq Securities Commission                                     |
| ISX      | Iraq Stock Exchange                                            |
| IQD      | Iraqi Dinar                                                    |
| IRFFI    | International Reconstruction Fund Facility for Iraq            |
| KDP      | Kurdistan Democratic Party                                     |
| KRG      | Kurdistan Regional Government                                  |
| KYC      | Know your customer/client                                      |
| MENAFATF | Middle East and North Africa Financial Action Task Force       |
| LEA      | Law Enforcement Authority                                      |
| LLC      | Limited Liability Company                                      |
| MEF      | Ministry of Economy and Finance                                |
| MER      | Mutual Evaluation Report                                       |
| MFA      | Ministry of Foreign Affairs                                    |
| MOU      | Memorandum of Understanding                                    |
| ML       | Money laundering                                               |
| MLA      | Mutual legal assistance                                        |
| MLRO     | Money Laundering Reporting Office                              |
| MOI      | Ministry of Interior                                           |
| NGO      | Non-government organization                                    |
| NIC      | National Investment Commission                                 |
| NPO      | Nonprofit organization                                         |
| NSA      | National Security Agency                                       |
| PC       | Penal Code of 1969                                             |

|       |                                              |
|-------|----------------------------------------------|
| PEP   | Politically exposed person                   |
| PSC   | Production Sharing Contracts                 |
| PUK   | Patriotic Union of Kurdistan                 |
| R.    | Recommendation of FATF 40+9                  |
| SRO   | Self-regulatory organization                 |
| SR    | Special Recommendation of FATF 40+9          |
| STR   | Suspicious Transaction Report                |
| UN    | United Nations Organization                  |
| UNCAC | United Nations Convention against Corruption |
| UNSCR | United Nations Security Council Resolution   |

## PREFACE

### INFORMATION AND METHODOLOGY USED FOR THE EVALUATION OF THE REPUBLIC OF IRAQ

This assessment of the anti-money laundering (AML) and combating the financing of terrorism (CFT) regime of the Republic of Iraq is based on the Forty Recommendations 2003 and the Nine Special Recommendations on Terrorist Financing 2001 of the Financial Action Task Force (FATF), and was prepared using the AML/CFT assessment Methodology. The assessment team considered all the materials supplied by the authorities, the information obtained on site during their mission from 13 May 2012 to 2 June 2012, and other verifiable information subsequently provided by authorities. During the mission, the assessment team met with officials and representatives of all relevant government agencies and the private sector.

The assessment was conducted by a team of assessors from the World Bank Group (WBG), which consisted of Cari Votava, Team Leader and Financial Sector Expert, The World Bank, Dr. Badr N. El Banna, FIU & Legal Expert, Special Investigation Commission, Lebanon (Consultant), Kristen Hecht Financial Sector Expert, Policy Advisor, Office of Terrorist Financing and Financial Crimes, U.S. Department of the Treasury (Consultant), and Martin Comley, Law Enforcement Expert (Consultant). The assessors reviewed the institutional framework, the relevant AML/CFT laws, regulations, guidelines systems and procedures in place to prevent, detect and punish money laundering (ML) and the financing of terrorism (FT) through financial institutions and designated non-financial businesses and professions (DNFBPs). The assessors also examined the capacity, implementation, and effectiveness of all of these systems.

The assessment team would like to thank the following for their special efforts in support of this report and logistics of the on-site mission: Jocelyn Taylor, FFSFI; Eron Allen, FFSFI; Marie-Helene Bricknell (MNCIQ); Raghad Hussein (MNCIQ); Hanan Nawar Obaid (MNCIQ); Iman Sachet Yousif (MNCIQ); Saymaa Hassan (MNCIQ); George Griffin (MNCIQ); in Erbil, Soran Hama Tahir Ali and all others including drivers and interpreters.

This report provides a summary of the AML/CFT measures in place in the Republic of Iraq at the time of the mission and adopted through July 1, 2012, which were provided to assessment team. The assessors would like to express their gratitude to the authorities of the Republic of Iraq for their collaboration throughout the assessment mission. This report will be presented as a Draft Mutual Evaluation Report to the Middle East and North Africa Financial Action Task Force (MENAFATF) Plenary Meeting in November 2012.



## EXECUTIVE SUMMARY

### Key Findings

1. The Republic of Iraq faces very serious risks of money laundering and terrorist financing amid its period of state-building, transition and rapid economic growth. Domestic crime indicators reveal proceeds and profit from financial crime exist in Iraq. Corruption is a serious problem and will continue to escalate with the high growth rates expected in the financial and economic sectors. Terrorism continues to be a serious threat to Iraq, and sustaining terrorist operations require funding. Greater attention at the decision making levels needs to be given to the investigation (i.e., following the money trail) of, proceeds of crime and terrorist funding.
2. Although Iraq has had an AML law in place since 2004, implementation is limited due to complex political and other circumstances the country faces. The existing law contains some important elements of an AML system, but improvements are needed in the provisions criminalizing money laundering and terrorist financing, and greater detail is needed to more effectively implement preventive measures. As a middle income country, resources to build an effective AML/CFT system should not be a significant challenge.
3. Greater clarity in legislative provisions is needed to delineate roles and responsibilities of several ministries and agencies which play important roles in supporting the national AML/CFT system. Appropriate units in the respective ministries and agencies need adequate staffing, resources and training to fulfill the assigned roles, as well as carry out and implement components of the system for which they are responsible.
4. Stronger political level commitment is needed to enable the financial intelligence unit (FIU) to undertake its functions to become fully operational and independent. The FIU also lacks capacity, and resources, both human and technical.
5. While money laundering and terrorist financing risks in Iraq are known to be high, the lack of implementation of many provisions under the existing AML law prevents competent authorities, including financial sector supervisors and law enforcement officials from implementing various components necessary to prevent and detect corruption, money laundering, and terrorist financing.
6. Although some preventive measures covering the financial sector exist in the AML law, provisions on implementation are not sufficiently detailed for effective implementation or compliance monitoring. In sectors where implementation has begun, supervision and compliance monitoring are not effective, and the lack of coverage of AML controls for state-owned financial entities presents serious risks given the large portion of the financial sector that remains in state hands. Implementation of AML controls has not yet begun in the insurance, securities sectors or for dealers in precious metals/stones. Several designated non-financial businesses and professions are also not yet covered by the AML law.
7. Necessary policies and procedures for domestic and international co-operation are not sufficiently implemented in the daily operations of ministries and agencies. Where inter-agency coordination and international cooperation exist, the process is slow and bureaucratic, which prevents the spontaneous sharing of information and application of other enforcement measures.
8. It is important for Iraq to strengthen its national AML/CFT system in order to effectively cooperate at the international level where crime proceeds traverse borders. Neither Iraq, nor any other country can trace cross-border movements of crime proceeds without the help of the other affected countries.

Therefore, all jurisdictions must work together to put in place strong AML/CFT systems that meet international standards.

### Legal system and related institutional framework

9. Due to the fact that Iraq has very few investigations and no convictions for money laundering, the number of criminal investigations for predicate offenses reflects the ineffectiveness of the current legal and operational law enforcement framework for combating money laundering and terrorist financing.
10. The definition of money laundering does not meet the requirements of the Vienna and Palermo Conventions. The money laundering definition partially covers concealment or disguise. Although criminal liability for money laundering extends to all legal persons, the requirement for a special motive for all AML offenses is inconsistent with international standards.
11. The AML offense covers all required predicate offenses. Although it extends to any type of property, it does not apply to self-laundering.
12. The AML and anti-terrorism laws, even read in conjunction with each other, do not cover the financing of individual terrorists nor the financing of most acts which constitute an offense within the scope and as defined in the treaties annexed to the UN Convention on the Suppression of the Financing of Terrorism. Terms of imprisonment for both money laundering and most terrorist financing offenses in the AML Law are insufficient to the seriousness of these crimes in comparison with other profit generating crimes in Iraq and the high risks of terrorism Iraq is facing.
13. There is legal uncertainty about applicability of the Iraqi AML Law in the Kurdistan Region (KRG). The current autonomous status of KRG creates an environment where enforceability of the AML law is not certain. Although KRG has its own law on terrorism, this law does not cover the financing of individual terrorists nor the financing of most acts which constitute an offense within the scope and as defined in the treaties annexed to the UN Convention on the Suppression of the Financing of Terrorism. Moreover, the generic definition in this law is inconsistent with the definition in this Convention.
14. Iraq's legal framework on post-conviction confiscation of property in money laundering cases does not extend to property owned by a 3rd party or property of corresponding value. Provisional measures (i.e., seizing of accounts and freezing of assets prior to conviction) are applicable only to felony crimes. However, most terrorist financing offences, predicate offences, and all money laundering offences are categorized pursuant to the Penal Code as misdemeanors and thus, are not subject to seizing and freezing during an investigation. When applicable, seizing and freezing provisions do not cover instrumentalities, property of corresponding value or property owned by 3rd parties. This enables criminals to transfer of money and assets out of the country as soon as they realize an investigation has commenced, and impedes the ability of Iraqi authorities will lose the opportunity to control of the property while completing the investigation in preparation for a criminal trial.
15. Only some (but not all) Iraqi names listed pursuant to United Nations Security Council Resolution (UNSCR) 1267<sup>1</sup> are to appropriate ministries and agencies with AML/CFT roles or to private sector institutions that should use the lists to identify possible terrorist financing. Iraq has no laws and procedures in place to implement the requirements of UNSCR 1373, which requires countries to

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<sup>1</sup> Al Qaida and Taliban lists

actively takes steps to prevent those involved in terrorist financing and supporting terrorism from using the national financial system and other infrastructure for this purpose.

16. Although established 5 years ago, the FIU is not centralized or operationally independent as required by international standards, and it is not legally empowered to undertake many required tasks or duties. The FIU has almost no powers and little access to information to perform its necessary tasks. It has no separate budget and lacks qualified and experienced personnel, as well as adequate financial and technical resources. Security measures in the FIU are insufficient to securely protect information, documents and data.
17. The FIU in Baghdad does not have jurisdiction in the Kurdistan region. The Central Bank offices in Erbil and Sulaymaniah have recently established FIUs which are not yet operational. Moreover, the CBI branches in Basra and Mosel have their own AML units. These four “FIUs” are not administratively subordinated to the main FIU.

#### **Preventive measures – Financial institutions**

18. The AML Law sets out the basic AML/CFT preventive measures for financial institutions. Implementation does not yet extend much beyond the banking sector, and there has been very limited awareness raising undertaken among officials and the private sector stakeholders about ML/TF risks, the internal controls necessary to mitigate them, and obligations to report suspicious and cash transactions are still limited. Although some preventive measures exist in laws and regulations, few are implemented and ambiguity impedes compliance by entities as well as compliance monitoring by supervisory authorities.
19. There is no obligation to designate any accounts as having higher risk (including those of Politically Exposed Persons), nor apply enhanced due diligence measures to such accounts to mitigate the risks they represent. The requirement to identify the beneficial owner of funds in accounts does not apply in all cases, but only if the customer is not clearly the owner of the funds. Also there are no requirements for financial institutions to implement preventive measures to mitigate ML/TF risks that arise in the use financial products and services utilizing new technologies, and non-face-to-face transactions. Financial institutions are under no obligation to ensure that the correspondent banks with which they do business are implementing effective AML/CFT internal control policies and procedures.
20. Although there is a requirement to report suspicious transactions, this obligation requires that only suspicious transactions exceeding the 4 million Iraqi dinar (USD \$3,400) threshold should be reported. The emphasis of the AML/CFT reporting requirement is on the reporting of transactions above specified thresholds rather than suspicion-based reporting. Such requirement has only resulted in 1 suspicious transaction report in all of 2011. Attention should also be given to addressing corporate governance issues of banks which may prevent staff from reporting suspicious transactions.
21. There are weaknesses in the supervision of the preventive AML/CFT requirements are further hindered by lack of technical expertise and lack of financial and human resources. The sanctions available for supervisory officials to enforce compliance and ensure effective remedial measures should encompass higher monetary penalties in order to be commensurate with the seriousness of the violations.

## **Preventive measures – Designated non-financial businesses and professions**

22. The AML preventive measures that exist in law do not yet apply to some non-financial businesses and professions that should be subject to AML obligations. Although the AML Law covers dealers in precious metals, stones, and jewels, most are not yet aware of their AML obligations, and compliance monitoring of this sector has not yet commenced. However, the MLRO is aware of this deficiency, as well as the risks of laundering the proceeds of crime through precious metals and stones in a cash-based society.
23. Those not yet covered by the AML law include real estate agents, accountants, lawyers, notaries, and other independent legal professionals, and trust and company service providers. Casinos are criminalized pursuant to the Penal Code of 1971, and do not exist.
24. Continued improvements in the security situation are contributing to rapid re-building of infrastructure that involves large scale public and private sector construction projects. The vast sums of funds are involved in these projects can present risks for money laundering or terrorist financing abuse that should be mitigated. Real estate agents should be subject to Iraq's AML/CFT regime.
25. It is unclear what role accountants, lawyers, notaries, or other independent legal professionals play in the management of financial services. Trust and company service providers are not yet formally regulated, but must be subject to AML/CFT obligations. The ML and TF risks in this sector will only increase due to the importance of their role in Iraq's growing and diverse financial services market.
26. Consideration should also be given to requiring some additional sectors to be subject to AML/CFT controls. These include companies involved in extractive industries and antiquities dealing. Iraq derives 90% of its GDP from oil revenues. Therefore, authorities should seriously consider subjecting public and private companies involved in oil extraction, refinement, import/export, and other relevant intermediaries, to AML/CFT obligations. Given Iraq's rich cultural history dating back thousands of years, antiquity dealers, markets and auction houses should also be included in Iraq's AML/CFT regime.

## **Legal persons and arrangements & non-profit organizations**

27. Legal persons are obliged to register legal entities at the Registrar of Companies (Ministry of Trade). This Registry collects ample data on companies including the owners of the shares, but it does not have sufficient information regarding beneficial ownership and control of legal persons. The public doesn't have a right to access the information recorded in the Registrar. However, competent authorities, pursuant to a judicial authorization, have the right to obtain all information needed from the Registrar. However, the Registry system does not have effective procedures in place to ensure companies update information which the registry holds when changes take place in ownership of legal entities.
28. In Iraq, as in most countries of the region, legislation does not provide for the creation of trusts or other similar legal arrangements. At the time of the assessment, there was no information available that would indicate that the private sector holds funds under foreign trusts and/or provides other trust services.
29. The legal framework requires non-governmental organizations (NGOs) to be registered by the NGO Department, of the Council of Ministers. However, Iraq has not undertaken an assessment of ML/TF risks in the NGO sector, nor raised awareness of the NGO sector to the risks of being misused for purposes of terrorist financing.

## National and international co-operation

30. Iraq has acceded to the Vienna and Palermo Conventions but has not fully implemented all necessary provisions. Iraq is not party yet to the UN Convention on Suppression of Terrorist Financing and most of these provisions are not yet implemented. Money laundering and terrorist financing have been criminalized but lack the level of detail required to comply with the requirements set out in these Conventions. In addition, Iraq has not yet implemented procedures necessary to meet the requirements under UNSCRs 1267 and 1373.
31. With regard to money laundering and terrorist financing, or any other offence, mutual legal assistance relations are primarily governed by the bilateral and multi-lateral treaties to which Iraq is party. In case of the absence of such treaty or agreement, mutual legal assistance can be provided on the basis of reciprocity. Dual criminality is formally required for all mutual legal assistance and extradition requests, even for less intrusive and non compulsory measures. Both money laundering and terrorist financing offences are extraditable offences.
32. On the legal side, Iraq cannot respond positively to all mutual legal assistance requests especially with the shortcomings regarding the criminalization of money laundering and terrorist financing and to the confiscation and provisional measures framework.
33. Iraq lacks a coherent national AML/CFT strategy and designated leader to undertake multi-agency coordination efforts necessary to build an effective AML/CFT system. The various departments and agencies within Iraq which are currently charged with AML/CFT responsibilities are either operating in isolation from each other or have not fully implemented their responsibilities. Certain legal provisions which authorize authorities to undertake AML/CFT functions are insufficiently clear and result in duplication as well as creating gaps in the AML/CFT system.
34. Technical knowledge and expertise, along with adequate financial, human and technical resources is lacking among law enforcement and other officials responsible for inter-agency cooperation and coordination at the national level and mutual legal assistance at the international level.

## Primary Recommendations

35. Based on assessment of ML/TF risks and an evaluation of the entire AML/CFT system, the assessment team suggests that priority attention be given to following areas as foundational steps in building an effective AML/CFT system:
  - Ensure the criminalization of ML and TF is in line with all international standards and applicable in all regions in the territory of Iraq.
  - Establish a policy level inter-agency AML/CFT coordination task force (or committee) comprised of appropriate level officials from all relevant ministries and agencies to coordinate and prioritize steps toward building an AML/CFT system that meets international standards. This body should take steps to reduce the various institutional impediments that prevent ministries and agencies from communicating and working together on policy, operational and administrative levels. This is necessary as an effective AML/CFT system most heavily depends on close inter-agency cooperation and coordination of a number of key ministries and agencies.
  - The AML/CFT coordination task force should undertake the following steps toward establishing an AML/CFT system: (1) commence a Money Laundering and Terrorist Financing Risk and Threat Assessment to identify the various risks Iraq currently faces and risks likely to emerge in

the near future, based on development strategies and economic growth projections; (2) develop a National AML/CFT Strategy as a framework to build an AML/CFT system; and (3) coordinate efforts to improve the basic legislative and legal frameworks necessary to support an effective AML/CFT system.

- Each ministry/agency with AML/CFT responsibilities should draft an AML/CFT training strategy. In particular, this should include training and capacity building to develop skills to conduct financial investigations to “follow the money,” as well as building a culture of identifying and tracing crime proceeds and where appropriate, using tools for freezing, seizing and confiscation.
- The FIU, law enforcement, prosecution authorities, financial supervisors and other authorities involved in combating ML/TF should be adequately structured, funded, staffed, and provided with financial, human and technical resources to fully and effectively perform their functions.
- Due to the lack of statistics, the AML/CFT coordination task force should identify relevant information resources and statistics that can be collected and used in building, implementing and improving the AML/CFT system. Such data should be collected and analyzed systematically over time so it can be used to measure effectiveness of the AML/CFT system and as a basis to make recommendations that would result in operational or policy related improvements in AML/CFT efforts.
- Policy officials responsible for strategic implementation of a national AML/CFT system should: (1) ensure clearly designated and adequately resourced supervisory bodies are responsible for implementation of AML/CFT controls in all relevant sectors; (2) task these supervisory bodies to amend appropriate laws and regulations to ensure appropriate AML/CFT controls and reporting obligations can be implemented in each of the various sectors; (3) ensure awareness raising programs are conducted in all relevant sectors so persons and entities subject to AML/CFT obligations know how to adequately implement AML/CFT controls; and (4) implement compliance monitoring systems that allow for enforcement of effective sanctions to address instances of non-compliance.
- Undertake a review of terrorist financing risks and threats in the sector of non-profit organizations and develop programs to educate organizations in this sector about how to protect them from terrorist financing risk. Relevant authorities should further develop policies, procedures and monitoring systems that are based in appropriate legal frameworks that can help identify when non-profit organizations might be misused for terrorist financing purposes.
- Improve the legal frameworks applicable to registration of legal entities, trusts and other similar legal arrangements to ensure that the beneficial owner and those that own/control assets held under such arrangements can be clearly identified. Ensure appropriate laws and regulations obligate timely updating of information, and that relevant authorities that would need such information in the course of investigations and prosecutions can obtain this information.
- Become a party to the U. N. Convention on the Suppression of Terrorist Financing and implement its provisions. Complete the process of implementing the U.N. Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna Convention 1988) and the U.N. Convention Against Transnational Organized Crime (Palermo Convention, 2004).

## 1. GENERAL

### 1.1 *General information on the Republic of Iraq*

#### **Geography and Demography**

36. Iraq covers an area of 438,317 square kilometers, and shares land borders with Saudi Arabia, Kuwait, Iran, Turkey, Jordan and Syria. Iraq has a narrow section of coastline measuring 58 km (36 mi) on the northern Arabian Gulf. Iraq is divided into 18 governorates, and has a population of 31.13 million (2012). The capital of Iraq is Baghdad. Two major rivers, the Tigris and Euphrates, flow through central Iraq. Almost 75% of Iraq's population lives in the flat, alluvial plain surrounding these rivers stretching southeast from Baghdad and Basrah to the Persian Gulf. These rivers provide Iraq with agriculturally capable land and contrast with the steppe and desert landscape that covers most of Western Asia.
37. Iraq's two largest ethnic groups are Arabs and Kurds. Other distinct groups include Turkomen, Assyrians, and Armenians. Arabic is the most commonly spoken language. Kurdish is spoken in the north, and Armenian is also spoken by some in the remaining Christian community.
38. Iraqi Kurdistan (major cities include Erbil, Duhok, Sulaymaniya) is the only legally defined region within Iraq, with its own government. The Kurdistan Region Government (KRG) has de facto control over portions of Ninewa, Kirkuk, and Diyala provinces, largely in areas where Kurds constitute a majority of the population.
39. In practice, much of the KRG region has been autonomous since the 1991 Gulf War and establishment of the northern no-fly zone. In 1992, the Iraqi Kurdistan Front, an alliance of political parties, held parliamentary and presidential elections and established the KRG region as autonomous. However, in 1994, power-sharing arrangements between the Kurdistan Democratic Party (KDP) and the Patriotic Union of Kurdistan (PUK) fell apart, leading to civil war and two separate administrations, in Erbil and Sulaymaniyah respectively. KDP-PUK fighting finally concluded in 1998, with the two parties signing the Washington Agreement.
40. The literacy rate is 74.1%, the life expectancy is 71 years and the national languages are Arabic and Kurdish. Iraq ranked 132 out of 187 countries in the United Nation's (UN) Human Development Index.

#### **History and Political Developments**

41. Straddling the Tigris and Euphrates rivers and stretching from the Gulf to the Anti-Taurus Mountains, modern Iraq occupies roughly what was once ancient Mesopotamia, one of the cradles of human civilization. Mesopotamia was the site of flourishing civilizations in antiquity, including the Sumerian, Babylonian, and Parthian cultures.
42. Iraq was the center of the Abbasid Arabic Islamic Empire. Formerly part of the Ottoman Empire, Iraq was occupied by Britain during the course of World War I, and in 1920, it was declared under the United Kingdom's administration by the League of Nations. In stages over the next dozen years, Iraq attained its independence as a kingdom in 1932. A "republic" was proclaimed in 1958, but in actuality a series of dictators ruled the country until 2003, the last of which was Saddam Hussein. Territorial disputes with Iran led to an inconclusive, mass casualty, and costly eight-year war (1980-88). In August 1990, Iraq seized Kuwait but was expelled by U.S.-led, UN coalition forces during the Gulf War of January-February 1991.

43. A second U.S.-led invasion of Iraq took place in March 2003 which led to the ouster of the Saddam Hussein regime. U.S. forces remained in Iraq under a UNSC mandate through 2009 and under a bilateral security agreement thereafter, helping to provide security and to train and mentor Iraqi security forces. On 28 June 2004 the Coalition Provisional Authority (CPA) transferred sovereignty to the Iraqi Interim Government. Many CPA laws were still in force at the time this report was drafted.
44. In October 2005, Iraqis approved a constitution in a national referendum and elected a 275-member Council of Representatives (COR) in December 2005. The COR approved most cabinet ministers in May 2006, marking the transition to Iraq's first constitutional government in nearly a half century. In January 2009, Iraq held elections for provincial councils in all governorates except for the three governorates comprising the Kurdistan Regional Government and Kirkuk Governorate. Iraq held a national legislative election in March 2010 - choosing 325 legislators in an expanded COR - and, after nine months of deadlock the COR approved the new government in December 2010. Nearly nine years after the start of the Second Gulf War in Iraq, U.S. military operations there ended in mid-December 2011.
45. Following the KRG peshmerga participation alongside coalition forces in the 2003 toppling of Saddam Hussein's Ba'athist regime, Kurdish leaders participated in Iraq's Transitional Government. In 2006, the PUK and KDP agreed to unify the two administrations which were still being run from both Erbil and Sulaymania.

*System of government, legal system and hierarchy of laws*

46. Iraq is a Parliamentary democracy and has a mixed legal system of civil and Islamic law. The Iraqi Constitution was adopted 15 October 2005. There are three branches of government: 1) the Executive: A Presidency Council consisting of one President and up to three Vice Presidents; and a Council of Ministers, which includes one Prime Minister, three Deputy Prime Ministers, and 30 Cabinet Ministers; 2) Legislative: Council of Representatives (COR), which has 325 members; and 3) Judicial: The Supreme Court is appointed by the Prime Minister and confirmed by the Council of Representatives.
47. The President is the head of state, protecting the constitution and representing the sovereignty and unity of the state, while the prime minister is the direct executive authority and commander in chief. The President and Vice Presidents are elected by the Council of Representatives. The Prime Minister is nominated by the president and must be approved by a majority of members of the Council of Representatives. Upon nomination, the prime minister-designate names the members of his cabinet, the Council of Ministers, which is then approved by the Council of Representatives. Subsequently, the Prime Minister and the new ministers are sworn in. Executive branch officials serve 4-year terms concurrent with that of the Council of Representatives.
48. Iraq's legislative branch consists of an elected Council of Representatives (COR). After the 2005 elections, the Council of Representatives consisted of 275 members, each of whom was elected to a 4-year term of service. Pursuant to provisions for the March 7, 2010, elections, the COR expanded to 325 members to reflect an increase in the population of Iraq. At least one-quarter of the members of the Council of Representatives is required to be female. The responsibilities of the Council of Representatives include enacting federal laws, monitoring the executive branch, and electing the President of the Republic.



49. Iraq's judicial branch is composed of the Higher Judicial Council, Federal Supreme Court, Court of Cassation, Public Prosecution Department, Judiciary Oversight Commission, and other federal courts. The Higher Judicial Council supervises the affairs of the federal judiciary. The Federal Supreme Court has limited jurisdiction related to intra-governmental disputes and constitutional issues. The appellate courts are the mid-level courts of appeal, and the highest level are the Courts of Cassation. The establishment of the federal courts, their types and methods for judicial appointments are set forth by laws enacted by the Council of Representatives.
50. The legislative body of the KRG is the regional parliament. The Parliament has one chamber, with 111 seats.

### *Economy*

51. Due to the past 25 years of dictatorship in Iraq, obtaining reliable information, data or statistics about any sector is a serious challenge. In fact, the 2012 Index of Economic Freedom states<sup>2</sup>, "Iraq remains unranked in this Index because of the lack of sufficiently reliable data on economic freedom within the country." International sanctions and war have undermined Iraq's institutions and crippled its economy, and the country now faces some significantly fundamental development challenges. These include rebuilding infrastructure, modernizing the legal system and institutional governance systems, and improving laws that can support and protect basic property rights and provide a clearer legal environment within which a private sector can grow and prosper. The challenges of these tasks are complicated by risks of political instability and excessive dependence on one commodity, crude oil for revenues.<sup>3</sup> Amid a challenging political and security environment, Iraq has achieved considerable progress toward macroeconomic stability, including single-digit inflation.<sup>4</sup> The lack of economic diversification makes Iraq's economic growth vulnerable to oil price and volume shocks.<sup>5</sup>
52. However, Iraq's economic growth prospects are favorable due to rising oil prices.<sup>6</sup> The currency of Iraq is the Iraqi Dinar (IQD) which is pegged to the USD. The official exchange rate at the time of the on-site evaluation mission (May 2012) was USD \$1 = IQD 1,145, an exchange rate the Central Bank has successfully held since January 2009. Inflation has remained under control since 2006 as security improved, and Iraq has made notable strides in improving management of its vast oil wealth with the renewal of the Development Fund for Iraq and its compliance with the Extractive Resources Transparency Initiative.<sup>7</sup>
53. Macroeconomic management has remained on course over the past 2 years, Government management and implementation of the public budget has improved and become more transparent, and commitments along with notable progress have been made in public financial management reform, budget design and implementation.<sup>8</sup> Due to many years of tight central control over the government and economy, significant challenges remain in translating macroeconomic gains to improving living standards for the citizens. In this regard, immediate challenges include improving security, restoring the rule of law and strengthening public sector governance to enable private and financial sector development.

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2 <http://www.heritage.org/index/country/iraq>

3 IMF, Country Report No. 11/75 (March 2011).

4 World Bank Country Brief of Iraq, April, 2012;

<http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/MENAEXT/IRAQEXTN/0,,menuPK:313115~pagePK:141132~piPK:141107~theSitePK:313105,00.html>

5 Ibid.

6 Ibid.

7 Ibid.

8 Ibid.

54. With support of its development partners,<sup>9</sup> Iraq adopted a National Development Plan covering 2010-2014, which aims to build a market-based economy in Iraq. It aims to create a stronger role for the private sector in terms of investment and job creation, reduce poverty rates by 30% from 2007 levels, and improve provision of basic services such as education and healthcare. There are also plans to commercialize approximately 180 state-owned enterprises, improve governance to strengthen regulatory institutions, improve laws and regulatory reforms, as well as establish a Regulatory Reform Unit within the Council of Ministers Secretariat (COMSEC) to implement systematic reviews of existing regulations impacting the private sector.
55. Iraq's economy is primarily cash-based, and there is little data available on the extent of money laundering and terrorist financing in the country. International sanctions crippled the economy throughout the 1980s and 1990s, and officials confirmed contributed to increases in activities such as smuggling and document forgery which remain pervasive activities today. The evaluation team found that there remains a large black market in many goods, including consumer goods, cigarettes, foreign currency, subsidized petroleum products, false company registration documents, fake passports, and national identification cards. Bulk cash smuggling, counterfeit currency, trafficking in persons, and intellectual property rights violations are major problems.
56. Iraq's largely state-run economy remains dominated by the oil sector, which currently provides about 90% of government revenues<sup>10</sup> as well as foreign exchange earnings. Iraq has proven oil reserves of 143 billion barrels and the potential to recover and refine 2 billion barrels.<sup>11</sup> The oil industry still suffers from pipeline sabotage, electricity outages, and years of neglect, but improved security, gradual restoration of exports, and higher world oil prices are likely to contribute to economic growth.<sup>12</sup> This sector, which remains in government hands, holds Iraq's disparate factions together but also remains a source of tension among them.<sup>13</sup>
57. Oil production currently averages about 2.7 million barrels per day, of which about 2.2 million barrels per day are exported. Following three successful oil bid rounds, the Iraqi Government aims to dramatically increase production and export capacity over the next decade. However, the government must overcome some significant financial, technical and infrastructure constraints to achieve these goals. As global oil prices remained high for much of 2011, government revenues increased accordingly.
58. For 2012, Iraq's draft budget forecasts oil exports of 2.6 million barrels per day, a significant increase from Iraq's average of 2.2 million barrels per day in 2011. Iraq's contracts with major oil companies have the potential to further expand oil revenues, but Iraq needs to upgrade its oil and export infrastructure to reach economic potential. Iraq is making slow progress to enact a package of laws to establish a modern legal framework for the oil sector and mechanism to equitably divide oil revenues within the nation, although these reforms are still under contentious and sporadic negotiation.
59. In the KRG, oil and gas sectors gained momentum starting in 2003. This region holds a large share of Iraq's oil resources in the country, producing over 60,000 barrels per day. The Government of Iraq has opted to use Technical Service Agreements (TSAs) to increase production from existing

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9 Which include: Australia, Canada, European Commission, Finland, Iceland, India, Japan, Korea, Kuwait, Netherlands, Norway, Qatar, Spain, Sweden, Turkey, UK, and USA.

10 UNDP, Inter-Agency Information and Analysis Unit, Iraq Oil and Gas Fact Sheet, October 2011.

11 IMF, Country Report No. 11/75 (March 2011).

12 2012 Index of Economic Freedom, Heritage Foundation, <http://www.heritage.org/index/country/iraq>

13 Ibid.

fields. The KRG is using Production Sharing Contracts (PSCs) to create incentives for exploration. The TSA rewards producers for incremental production above an established production baseline. The PSCs, on the other hand, are structured to reward exploration risk.<sup>14</sup>

60. For most of Iraq's recorded history, agriculture has been a primary economic activity. The agricultural sector is the second-largest contributor to gross domestic product (GDP) after the oil and gas sector.<sup>15</sup> Agricultural production in Iraq remains well below its potential, due to declining yields of major crops, reduced animal production, government policies and subsidies that distort the market and undermine productivity and competition, as well as outdated technology in irrigation, drainage systems, and farm equipment, and unreliable electricity supply.<sup>16</sup>
61. Trade flows remain below potential as broad-based commercial activity remains suppressed, and non-tariff barriers add to the cost of trade.<sup>17</sup> Foreign investment is increasing, but bureaucratic inertia, policy uncertainty and security concerns deter investment growth, while state-owned banks dominate credit markets and the largely cash-based economy lacks the infrastructure of a modern financial system.<sup>18</sup> Individual and corporate income tax rates are capped at 15%, and tax revenue as a percentage of GDP is negligible due to high levels of evasion and lax enforcement.<sup>19</sup> Public spending is estimated at about 37.7% of total domestic output and the government budget records consistent surpluses because of oil revenue, which funds more than 90% of government expenses. Public debt has declined but still equals about 120% of GDP.<sup>20</sup>

#### *International Financial Programs*

62. Foreign assistance has been an integral component of Iraq's reconstruction efforts since 2003. At a donor conference in Madrid in October 2003, more than \$33 billion was pledged to assist in the reconstruction of Iraq. Following that conference, the UN and the World Bank launched the International Reconstruction Fund Facility for Iraq (IRFFI) to administer and disburse about \$1.7 billion of those funds; the rest is being disbursed bilaterally. Since 2003, international donors have pledged \$18 billion more in financial and technical assistance, soft loans or potential loan facilities, and trade finance, but have exceeded those pledges by an additional \$6.5 billion.
63. In February 2010, the IMF and World Bank approved \$3.8 billion and \$250 million of support to Iraq, respectively. The IMF's Executive Board completed the first program review on October 1, 2010, and the second review on March 18, 2011, bringing the total resources currently available to Iraq under the arrangement to about \$1.7 billion. At the time of the second review, the program duration was extended by 5 months to July 2012, along with a re-phasing of program disbursements based on a shift in financing needs from 2010 into 2011.
64. Both the IMF and World Bank programs are focused on helping the Iraqi Government maintain macroeconomic stability and mitigate Iraq's vulnerability to external shocks due to volatility in global oil markets. In 2008, the Iraqi Government completed an IMF Stand-By Arrangement after which Iraq received the balance of the Paris Club's 80% debt reduction.

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14 UNDP, Inter-Agency Information and Analysis Unit, Iraq Oil and Gas Fact Sheet, October 2011.

15 FAO, Agricultural Overview of Iraq, 2009.

16 Ibid.

17 2012 Index of Economic Freedom: Heritage Foundation, <http://www.heritage.org/index/country/iraq>

18 Ibid.

19 Ibid.

20 Ibid.

### *Transparency, good governance and measures against corruption*

65. Decades of rule during the previous regime resulted in a governance system that was rigidly centralized in decision-making, governance, regulation and rule making. As result, the rule of law culture in Iraq is weak, but improving, however, there remain low levels of trust among government officials and institutions. This presents significant challenges to improving inter-agency channels of communication, let alone cooperation and coordination.
66. Although laws are theoretically enforceable, it is believed that Iraq has thousands of laws, many with contradictory provisions that have not yet been repealed. The evaluation team found that among the population in general, as well as in the public and private sector, there are conflicting views about how and when laws apply, and what is written in the laws, as well as misperceptions about what is legal, illegal or obligatory. Directions and misperceptions at times appear to come from decision makers, which become the standards subordinates follow. As a result, one focus of donors is supporting the re-building of foundations on which a rule-of-law system can operate. This requires a massive effort to harmonize existing laws and ensure consistency among new laws. There is a need to improve capacity for drafting of laws, regulations, and other legal instruments.
67. Iraq has consistently scored low on Transparency International's Corruption Perception Index. In 2011, it was ranked eighth from the bottom out of 182 countries, ahead of only Sudan, Turkmenistan, Uzbekistan, Afghanistan, Myanmar, North Korea and Somalia. This score indicates a perception of prevalent corruption in Iraq at all levels, which was confirmed in many interviews during the on-site mission. The World Bank's Doing Business<sup>21</sup> 2011 report ranks Iraq 166 out of 183 economies and last among the 18 economies in the Middle East and North Africa (MENA) region. A World Bank Enterprise Survey (2011), which surveyed private companies in Iraq and many other countries, indicated that corruption is the 3rd leading constraint to firms operating in Iraq.<sup>22</sup>
68. Some basic positive steps are underway: Iraq has signed the United Nations Convention against Corruption (UNCAC). Corruption and bribery are predicate offenses for ML; and there are at least two institutions mandated by the Constitution that have been tasked with responsibilities for fighting corruption (the Commission of Integrity (COI) and the Board of Supreme Audit (BSA)).
69. To address corruption concerns in the oil industry, the country's largest source of government revenue:
  - Iraq was accepted as an Extractive Industries Transparency Initiative<sup>23</sup> (EITI) candidate country by the EITI Board on 10 February 2010. Iraq has until 9 August 2012 to undergo EITI Validation. On 23 December 2011, Iraq published its first EITI report, which disclosed that it received US\$ 41 billion in revenue from oil and gas exports in 2009. The report also includes detailed production figures.

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21 The Doing Business Report measures regulations that encourage or constrain business activity across 9 core areas or "indicators": starting a business; dealing with construction permits; registering property; getting credit; protecting investors, paying taxes, trading across borders, enforcing contracts and closing a business, in 183 economies. A higher ranking on the report's overall ease of doing business index corresponds to a more business-friendly regulatory environment.

22 World Bank Enterprise Surveys (2011), <http://www.enterprisesurveys.org/Data/ExploreEconomies/2011/iraq>

23 An outcome of the 2002 World Summit for Sustainable Development in Johannesburg, EITI is an organization responsible for working with governments to implement the principles of transparency, accountability, conservation, sustainable growth, and poverty reduction in the extractive industries.

- Oil and gas in Iraq is 100% state-owned. The EITI in Iraq has therefore focused at first on disclosing the revenues from oil export sales and reconciling these revenues with the figures that international oil buyers report to have paid for the oil. In the future, it is planned that the scope will include domestic sales, signature bonuses and non-cash oil exports.
- A National Secretariat has been established within the Inspector General's Office at the Ministry of Electricity. Seven persons will work at the Secretariat which is headed by the Inspector General.
- The General Secretary of the Iraqi Council of Ministers has been appointed as Iraq EITI Chair. The multi-stakeholder Iraqi Stakeholders Council has twenty representatives including the Iraq EITI Chair, the Secretary of the Iraq EITI, three government representatives, three international oil company representatives, three national oil company representatives, three civil society organizations, three 'monitoring' agencies, and three trade union representatives.

## *1.2 General situation of money laundering and financing of terrorism*

70. The current crime and terrorism situation and its resulting ML and TF has to be viewed in the context of the country's history leading up to and including events of 2003, which resulted in the breakdown of the rule of law system and established law enforcement infrastructure that supported it. Only recently has responsibility for applying the rule of law been returning to the control of Iraqi officials. Consequently, domestic LEA processes are in their infancy and are being rebuilt all the way from organizational structures to jurisdictional competencies.
71. A general lack of accurate or meaningful statistics resulted in the evaluation team basing their assessment of the ML and TF situation on interviews conducted during the on-site evaluation. It is the opinion of the evaluation team that the Republic of Iraq faces ongoing risks of money laundering from the proceeds of crime within the Republic of Iraq such as: a wide range of corruption, fraud, embezzlement, document forgery and counterfeiting, a source of human trafficking, narcotics smuggling, principally as a transit country for hashish with small quantities of heroin, and a destination for counterfeit pharmaceuticals, and smuggling of general taxable goods. Iraq also continues to face a significant threat from terrorism, and sustaining terrorist operations requires funding.
72. The risks posed by the predicate crime of corruption are very well recognized across the full range of ministries, agencies and departments seen during the on-site examination. The extent of corruption is spread throughout the whole of Iraq and across all ministry's, agencies and departments at different levels. Although reliable statistics are not available, it was indicated to the evaluation team during on-site interviews that some Iraqi government officials believed that in the 'refined oil' sector, losses could amount up to 5% of total production, roughly 5 billion USD, (this figure includes theft of oil from pipes). Although this figure of 5% is believed to be a significant, interdiction has recently improved. The oil sector does not make up the largest number of corruption cases dealt with by the lead agency for combating corruption. The Commission of Integrity (COI) has found incidents of corruption high in the Ministries of Defense, Interior, and in municipalities, and that the most prevalent predicate crimes include bribery, corruption, fraud and embezzlement. The vast majority of cases that have been prosecuted are focused on low-level civil servants rather than grand scale corruption.
73. Law enforcement officials indicated that the dominant cases they see (not including cases pursued by the COI) include corruption activities, are fraud/embezzlement, forgery and counterfeiting. The incidence of bank note forgery is high, particularly involving the 10,000 Iraqi Dinar note, as well as

the forgery of general and official documents, such as national identification cards and company registration certificates. Law enforcement officials believe that counterfeit currency notes are both imported from abroad and printed locally, as many printing machines have been seized. However, materials used in the counterfeiting process (paper, ink and printers) are likely to be imported. Human trafficking, known locally as 'white slavery,' was also identified by law enforcement officials as a problem principally with people being smuggled out of Iraq to neighboring countries for cheap labor in clubs, hotels and leisure industries, largely for sexual exploitation. Recent serious political unrest in neighboring countries reduced this activity. There have also been cases of inbound human trafficking associated with the Iraq construction industry.

74. While major robbery, including theft of payroll deliveries, motor vehicle theft and counterfeiting of pirated products occurs, there are indications that incidents of these crimes may be declining. Investigation of these crimes focuses on the predicate crimes with little or no emphasis placed on following the money trail.
75. Officials consider Iraq to be a transit country for illegal drugs, principally hashish with seizure sizes of up to 50 kilograms. Heroin seizures average around 200 grams (while small in international terms these are viewed as significant seizures in Iraq). It is estimated that drug consumption is low, but some evidence of domestically grown hashish is appearing. There is a Drug Directorate within the Ministry of Interior (MOI) dealing with drug related crimes but emphasis is confined to the predicate crimes rather than the financial aspects. While controlled drugs are not commonly consumed among the population, recent trends indicate that domestic consumption may be rising, as well as misuse and consumption of prescription controlled pharmaceutical drugs. Authorities who have attempted to tackle this emerging problem have found that neither the current laws on abuse or misuse of drugs, nor the pharmaceutical laws are adequate to combat this phenomenon.
76. Customs offenses outside of drug trafficking mainly deal with evasion of customs duty taxes and fraud, with the most common cases of smuggling involving chemicals, steroids, communications equipment, and food stuffs. These are primarily being smuggled into Iraq, usually by means of misrepresentation of the cargo on documents and false invoicing. As livestock can command 3 times the price outside Iraq, smuggling of livestock is generally in the outbound direction. Here, the lack of accurate and meaningful statistics means the true extent of these crimes or resulting loss of customs revenue cannot be quantified.
77. The primary agency for investigation of smuggling can vary as the Customs authority has approximately 18 controlled entry/exit points throughout Iraq. Other cross-border smuggling issues, which occur outside of the Customs stations along extensive borders with 6 neighboring countries, are dealt with by the Border Police. Neither the Customs authority nor the MOI (Economic Crime Directorate or Border Police) have ever focused (jointly or separately) on money laundering aspects of smuggling or violation of other customs laws or regulations.
78. Cross-border smuggling of cash and monetary instruments is quite commonplace, according to Iraqi officials, with most instances detected at airports. However, it is acknowledged that such cases could equally be taking place through the land crossing points where controls are limited due to lack of scanning equipment. Only cash of USD 10,000+ or equivalent value or gold weighing more than 100 grams is subject to interdiction.
79. According to Iraqi government officials cash smuggled via (licensed and unlicensed) hawala/money transmitter systems, primarily through false letters of credit and bills of lading which typically are under or over valued imports/exports. There is high demand for hard currency in neighboring countries; therefore, large amounts of cash are transported across borders. The Central Bank

organizes currency auctions which provide an important source of foreign currency for financial institutions operating in Iraq. Due to weaknesses in AML/CFT supervision, and lack of effective internal control systems, the funds traded in these auctions are widely considered by officials as well as the private sector as high risk vehicles for money laundering and terrorist financing. Money transmitters and exchange houses, over which AML/CFT oversight is weak, appear to be the largest foreign exchange purchasers from banks involved in the currency auctions.

80. The Republic of Iraq faces significant risks of terrorism, which authorities recognize as both domestic and foreign, and often sectarian. Due to the recently improving security situation, there has been a reduction in the number of terrorist incidents, also attributed in part to arrests of notable terrorists. Considerable domestic resources are and have been focused on combating and investigating terrorism. The extent and sophistication of some of the explosive devices used would suggest considerable training, access in some cases to precision machinery and material as well as logistical support, all of which have considerable cost to maintain a prolonged terrorist campaign. Funding for terrorist campaigns is believed to principally flow from domestic crime such as armed robbery (cash payroll deliveries and gold), kidnapping, and extortion. The lack of statistics does not allow any meaningful measurement of crime trends; whether they are stable, increasing or decreasing.
81. There is an insufficient understanding of the risks associated with ML and TF among officials which prevents correctly targeted policies from permeating down from the policy level through the operational workings of the financial and private sectors. Although an AML/CFT law was enacted in 2004 to start addressing these risks, its oversight by supervisory authorities is still limited and implementation by institutions subject to its obligations is negligible.

### *1.3 Overview of the Financial Sector and DNFBP*

#### Overview of the financial sector<sup>24</sup>

82. Iraq is in the early stages of transition from a state-controlled and centrally planned economy toward a market based system. This transition will take time as the country is still in the process of rebuilding its institutions of state and governance as well as infrastructure, as well as building capacity in regulatory institutions to supervise market-oriented private and financial sectors. The difficult security situation still impedes state-building and imposes complex costs and constraints that are uncommon in other countries. The day-to-day practical challenges within this landscape seriously impede progress in improving governance systems and taking decisive actions in necessary policy areas.
83. Although the financial sector is underdeveloped, the general financial outlook for Iraq is good as banks are relatively prosperous. Steps are being taken to reform state-owned entities and much work has been done to improve legal frameworks for financial supervision and improve regulatory capacity. However, a large portion of the financial and private sector is dominated by state-owned entities, and further development of the financial sector depends on progress in reform of state ownership and control of banks and insurance companies.
84. The Iraqi financial system has a relatively well-developed payments system, and SME and microfinance activities have begun relatively recently. Although the regulatory frameworks are still developing, some basic legal frameworks still have significant weaknesses, particularly in the

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<sup>24</sup> World Bank Financial Sector Review of the Republic of Iraq, (2011).

company law, corporate governance codes, financial disclosure laws, and the bankruptcy law. This hinders the evolution of the Iraqi economy into a market based economy.

85. Hard data and statistics needed to conduct financial sector diagnostics are difficult to obtain and the credibility of available data is not always apparent. Many records have also been lost or destroyed, and are simply not available. Concepts of assessment and mitigation of various risks (financial, prudential, market, operational or AML/CFT) are still relatively new. Improved legal and regulatory frameworks need to integrate modern techniques and tools into institutional systems, and training is needed to upgrade skills in risk assessment, mitigation and regulatory enforcement.
86. International accounting standards are not used by banks or other financial institutions in Iraq and the availability of qualified accountants and auditors is limited. The current Iraqi accounting standards include some principles which were updated in the 1990s, but still include many obsolete principles which are not relevant in the current economic environment.

#### Structure of Financial Sector, 2011

87. The Financial Sector is dominated by banks, and according to official figures the total assets of the banking sector amount to 70.1 trillion Iraqi Dinar (IQD), approximately 73% of GDP. Market capitalization of the stock market is only 3.5 trillion dinar, and although credit extension by banks amounts to only about 9.4 trillion Iraqi Dinar (IQD), it far exceeds the stock market as the principal source of outside funding for companies. There are no private bonds issued and the size of the insurance market is very small.
88. There are 46 banks operating in Iraq including 7 state-owned banks. The state banks account for most of the assets and credits with the 2 largest, Rafidain Bank and Rasheed Bank undergoing reform efforts. The remaining private banks are relatively small, 7 of which include foreign participation and 9 operate according to Islamic principles. Although banking practices are modernizing, only limited banking services are available. Credits are primarily short term and the financial strength of several banks is questionable.
89. Money transmitters and exchange houses are also considered financial institutions. There are 34 licensed money transmitters and 320 licensed exchange houses subject to CBI supervision. There is no available statistical data regarding the volume of financial transactions carried out by these entities, or estimated total assets. Exchange Houses appeared in the 1980s and engage in the sale and purchase of foreign currency inside Iraq. Recently CBI has issued new minimum capital requirements of IQD 150 million (USD \$131,000). Most of these are located in Baghdad, with a few in other provinces.
90. The capital market is based on the Iraq Stock Exchange (ISX), was established under Act No. 74 of 2004. The Iraq Securities Commission (ISC) has recently issued a license for a 2nd independent exchange soon to be established in Erbil, under the Kurdistan Regional Government (KRG). Trading is fully electronic and integrated into a clearing settlement and custodian facility. Market intermediaries carry out the sale and purchase of securities by investors and for their own account. Currently, 48 are licensed by the ISC and are regulated by the ISX.
91. The size of the insurance market is small, and underdeveloped with very little private sector participation. As a result, it's size and is difficult to accurately assess due to the lack of reliable data. The total aggregate amount of gross written premium for all insurance companies are believed by some market participants to be about USD \$60 to 80 million for the non-state owned insurance companies. Reinsurance is not widely used and is believed to amount to 15-25% of gross premium



written. The insurance market is made up of 29 insurance companies, dominated by 3 which are state-owned insurance companies and 18 are private.

92. In addition to the above, the financial sector includes the following entities whose aggregate size is believed to be small, but statistics are not available:

- Postal Savings Fund accepts public deposits and re-invests in various fields. It has 640 branches throughout the provinces.
- Financial Investment Companies direct savings into Iraqi financial securities, including shares, bonds, treasury bills and fixed deposits. They are organized by the Financial Investment Company System No. 5 of 1998. Nine such companies are listed on the ISX with average market capitalization of USD \$1.5 million.
- Companies providing small and medium loans are among the newer institutions operating in the market with capital estimated to be about 1 billion IQD for limited companies and 2 billion IQD for joint stock companies. They are organized by Instruction No. 3 of 2010, issued by the CBI and published in the Official Gazette of Iraq No. 4164 of Sept. 20, 2010. One main company of this kind exists, the Iraqi Company for Short-term Loans, and there are other smaller institutions, including the Zakat Fund (Alms Fund) and Minors Care Fund.

| Financial Institutions                                                                                                                                                                                                          |     | Estimated assets                                                                     |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|--------------------------------------------------------------------------------------|
| Total # of banks <ul style="list-style-type: none"> <li>• State-owned = 7</li> <li>• Commercial banks = 36 <ul style="list-style-type: none"> <li>– 9 Islamic banks</li> <li>– 7 w/foreign participation</li> </ul> </li> </ul> | 46  | IQD 70.1 trillion (est. 73% GDP)<br>IQD 60 trillion<br>IQD 10 trillion<br>N/A<br>N/A |
| Money Remittance companies                                                                                                                                                                                                      | 34  | N/A                                                                                  |
| Money Exchanges (Baghdad)                                                                                                                                                                                                       | 217 | N/A                                                                                  |
| Money Exchanges outside Baghdad (excluding KRG)                                                                                                                                                                                 | 103 | N/A                                                                                  |

*Source: World Bank Financial Sector Review of Iraq, 2011.*

| Non-Bank Financial Institutions                                                                                       |    | Estimated assets                                           |
|-----------------------------------------------------------------------------------------------------------------------|----|------------------------------------------------------------|
| Total insurance companies <ul style="list-style-type: none"> <li>• State-owned = 3</li> <li>• Private = 26</li> </ul> | 29 | IQD 360-480 million<br>IQD300-400 million<br>60-80 million |
| Companies listed in ISC (2011)                                                                                        | 85 | IQD 1.5 billion                                            |
| Securities brokers/dealers                                                                                            | 47 | Est. daily trading volume                                  |

*Source: World Bank Financial Sector Review of Iraq, 2011.*

#### Banking sector

93. Seven state banks dominate the banking system, the largest 3 of which are Rafidain Bank, Trade Bank of Iraq (TBI) and Rasheed Bank. Private banks are small and many have been recently established. Seven of the 36 private banks have foreign participation and eight operate according to

Islamic principles. The two largest state banks (Rafidain Bank and Rasheed Bank) are inefficient and suffer from the legacy of past losses. A strategy to reform these state-owned banks and bring them under CBI supervision was adopted by a 2006 Memorandum of Understanding (MOU) between CBI and the Ministry of Finance, but implementation has been significantly delayed.

94. Private banks operate on an uneven playing field, as state banks benefit from restrictions imposed on the operations of private banks. Neither state-owned entities nor banks are allowed to place deposits with private banks. State-owned enterprises may not obtain loans from private banks, nor can payments to the government (i.e., taxes and other payments) be made by checks drawn on a private bank.
95. Although banks are generally profitable, there is concern among many that they are weaker than balance sheets indicate, due to poor accounting and auditing standards. Banking supervision lacks effectiveness in many areas; however, the banking system does not appear at present to give rise to any significant macro-prudential risks. Islamic banks need to be brought under the purview of CBI regulations and supervision through adoption of an Islamic banking law and associated regulations. Effective efforts have yet to be made at the policy level to prevent abuse of the financial system through corruption, money laundering and the potential financial of terrorism.
96. The Trade Bank of Iraq is a state-owned bank, and was established in 2004 to handle trade financing which Rafidain Bank and Rasheed Bank could no longer undertake due to legal issues stemming from the previous regime. As the Trade Bank of Iraq's business and role has expanded, it has become a universal commercial bank and now has branches. Four smaller state-owned banks continue to operate which are set up to handle specific sectors like agriculture, real estate, and heavy industry. Total assets of these banks is approximately 3.1 trillion IQD (approximately USD \$2,707,423).

#### Securities sector

97. The capital market in Iraq is concentrated on the Iraq Stock Exchange (ISX), which is small and under-developed, but has good potential to provide a needed source of permanent and longer-term capital via the issuance of equity and corporate bonds to institutional and retail investors, domestic and foreign. It operates based on the Securities Law, enacted in 2004. A new draft securities law has been under consideration since 2008. The securities sector will likely play an important role in a privatization program that would transfer a proportion of the shares of state owned companies into the hands of Iraqi citizens, and institutional and foreign portfolio investors. However, plans to begin privatization are only in the early stages.
98. Capital market development is in early stages and efforts are underway to strengthen the necessary legal frameworks and infrastructure foundations of a market to raise confidence of issuers and investors that laws will be enforced to protect investor rights. A new draft law has been under discussion since 2008 to improve the legal frameworks to enable the Iraq Securities Commission (ISC) to draft and enforce its regulations, as well as improve corporate governance in joint stock companies and to strengthen shareholder rights. The current regulatory structure under which the ISC operates is the current Company Law of 1997 which was amended in 2004.

#### Insurance sector

99. The size of the insurance sector cannot be assessed due to the lack of data. It is believed that the total aggregate annual amount of gross written premium for all insurance companies is around US \$60 to US \$80 million for privately owned insurance companies and four or five times that amount for state

owned insurance companies. Reinsurance is not often used and it is believed to be equal to about 15-25% of the gross premium written.

100. There are a total of 29 insurance companies, 3 of which are state-owned. All are Iraqi companies, except one which is a branch of an Iranian insurance company. Among private insurance companies, half of these are affiliated with banks, and others are very small. Five insurance companies are listed on the Stock Exchange. The 3 state-owned insurance companies dominate the insurance market, 2 general insurance companies and 1 re-insurance company, all of which report to the Ministry of Finance. Most government contracts for insurance must be procured through a public tender where all licensed insurance companies may participate, but the state-owned insurance companies are generally awarded the government contracts.
101. Less than 5% of all insurance offered is life insurance, and only 5 companies offer life insurance contracts. These 5 companies were licensed before the current Insurance law took effect. The insurance sector remains small because there is no compulsory insurance, such as mandatory car insurance, or insurance to cover workplace accidents.
102. The insurance sector is regulated by the Insurance Business Regulation Act of 2005 which establishes an insurance supervisor, provides for licensing, includes capital requirements, regulates intermediaries and provides procedures for market exit when a company does not meet the requirements of the law. However, many of these elements fall short of several essential elements listed in the ICP (Insurance Core Principles and Methodology) issued by the International Association of Insurance Supervisors (IAIS).
103. Due to the small size of the insurance sector and limited range of products offered, this sector does not appear yet to be at high risk for money laundering. However, these risks will continue to escalate as the sector grows and the level of general, prudential and AML/CFT supervision needs to increase in order to control these risks effectively.

#### Pension Sector

104. A pension sector in Iraq is undergoing transition from its former structure with separate public and private sector pension funds. A new pension law was enacted in January 2006 that combined the two existing pension systems, and was amended in 2007 as the Unified Pension Law.
105. The Unified Pension Law does not comply with the Principles of Private Pension Supervision that have been developed by the International Organization of Pension Supervisors (IOPS), which is recognized as international best practice standards. These standards assume that pension funds are supervised by a regulator, but the Unified Pension Law does not require supervision of the pension funds.
106. The Unified Pension law is lacking in other important areas such as providing a legal framework for the pension funds which requires that pension assets are held by an independent depository and that the depository conducts regular net asset valuations of the accounts. No statistics were received on the number, size or value of pension funds, so it is difficult to assess the money laundering or terrorist financing risks.

#### Overview over the DNFBPs Sector

107. The AML Law applies to certain Designated Non Financial Businesses and Professions (DNFBPs), namely dealers in precious metals, stones, and jewels. As gambling is criminalized pursuant to the

Penal Code of 1971, casinos do not exist. Real estate agents, lawyers, notaries, other independent legal professionals, and trust and company service providers are not subject to AML obligations, and are regulated by the Iraqi Companies Law (CL) No.21 (issued on August 18, 1997, as amended by the Coalition Provisional Authority Order No. 64 on February 29, 2004), to register with the Registrar of Companies at the Ministry of Trade.

| <b>DNFBP</b>                                  | <b>Legislation</b>          | <b>Supervisory Body</b>           |
|-----------------------------------------------|-----------------------------|-----------------------------------|
| Casinos                                       | Prohibited under Penal Code | None                              |
| Dealers in precious metal and precious stones | AML/CFT law                 | None                              |
| Lawyers                                       | Not subject to AML/CFT law  | Bar Association                   |
| Accountants                                   | Not subject to AML/CFT law  | Union of Accountants and Auditors |
| Real Estate                                   | Not subject to AML/CFT law  | None                              |
| Trust & company service providers             | Not subject to AML/CFT law  | None                              |

#### Real estate agents

108. The real estate sector in Iraq is growing with the increasing demand for accommodation is causing a rapid rise in real estate values. Real estate companies should be incorporated and registered under the Companies Law of 1977 Law. However, according to the authorities, there is no obligation on the part of those persons to register properties for rental purposes, so neither information nor statistics are available.

#### Dealers in precious metals and stones

109. Dealers in precious metals and stones are required to register with the Company Registry, but no statistics were available on the number of businesses operating in this sector. Dealers in precious metals, stones, and jewels have not been made aware of their AML/CFT obligations. Laundering the proceeds of crime through precious metals and stones is considered a high risk in a cash-based society, and this sector is often targeted through robberies by terrorists and other illicit actors.

#### Lawyers, Notaries and Accountants

110. Information on the role lawyers, notaries, accountants and other similar independent professionals play in the management of financial services was not available. Under the Modified Practicing Law Code Number 173 (1965), Iraqi lawyers are not technically obliged to be members of the Iraqi Bar Association, but in practice, obtaining an obligatory lawyer's license is not feasible without Bar membership. Members of the Kurdistan Bar Association are allowed to be members of the Iraqi Bar Association and vice versa. It is estimated that the number of lawyers in Iraq is approximately 38,000. Lawyers, notaries and accountants are not currently subject to AML/CFT obligations.
111. The Iraqi Union of Accountant and Auditors and the Chartered Iraqi Accountants Association appear to be the two main professional associations for these professions. According to Article 14 of the Investment Law, investors must keep proper records audited by a certified accountant. The National Investment Commission's website notes that the certified accountant must be obtained by the Chartered Iraqi Accountants Association.

## Trusts and Company Service Providers

112. Iraqi legislation does not provide for the creation of trusts or other similar legal arrangements.

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

#### Legal persons

113. Except for some specific activities, the Iraqi Companies Law allows 100% foreign ownership of companies without any restrictions to nationalities, individuals or companies. The shareholder may be a natural person, a juristic one, Iraqi or other. Furthermore, as some companies may be owned by only one person, a foreign company or natural person may own solely 100% of an Iraqi company.

114. There are three types of companies that may be established in Iraq, which are State Companies, Mixed Companies and Private Companies. All of these companies must be registered with the Registrar of Companies (Ministry of Trade).

115. State companies are government owned entities, and governed by the State Companies Law No. 22 of 1997. The Iraqi Companies Law (CL) No.21 issued on August 18, 1997, as amended by the Coalition Provisional Authority Order No. 64 on February 29, 2004, governs Mixed Companies and Private Companies.

116. Companies of mixed (public-private) ownership can be formed by agreement between one or more persons from the state sector and one or more persons from private sector. The state sector's share in the capital of mixed-ownership companies must not initially be less than 25 percent. When the state's ownership share falls below 25%, the company shall be treated as a private company.

117. There are 2 types of Companies, both can be either privately owned or mixed (public and private) ownership:

- The joint-stock company may be formed by not less than five persons who participate by owning shares through public subscription and are responsible for the company's debts as per the ratio of the nominal value of their share ownership.
- The limited liability company (LLC) is formed by no more than 25 natural or legal persons who subscribe to its shares and are responsible for the company's debts as per the ratio of the nominal value of their share ownership.

118. There are 3 types of Companies that can only be private:

- The joint liability company: shall be formed by not less than two and not more than 25 persons, each owning a quota of its capital. They shall jointly assume personal and unlimited responsibility for all of its obligations.
- The sole owner enterprise: is a company formed by one person, who owns the one quota in it and assumes personal and unlimited responsibility for all of its obligations.
- The simple company: shall consist of several partners, who are not less than two and not more than five and who have contributed shares to the capital. In such a company one or more may contribute services with the others offering funds. A simple company is similar to a partnership

where the partners carry unlimited liability to the extent of their shares in the company. A simple company does not need to be registered with the Registrar of Companies Department. A notarized establishment contract signed by all the partners will suffice; however, a copy of the establishment contract should be placed with the Registrar of Companies.

#### Legal arrangements

119. Iraqi legislation, as is the case in most Middle Eastern countries, does not provide for the creation of trusts or other similar legal arrangements. At the time of the assessment, there was no information available that would indicate that the financial sector holds funds under foreign trusts and/or provides other trust services.

#### Non-profit legal entities

120. NGOs are regulated by Law No. 12 of 2010, supervised and administered by the NGO Department within the Council of Ministers, which administers the NGO registration system. There are 670 currently registered NGOs in Iraq. NGOs are not subject to Iraq's AML/CFT regime.

### *1.5 Overview of strategy to prevent money laundering and terrorist financing*

121. Iraq has had an AML Law since 2004, and a TF Law applicable to the Iraqi Governorates, since 2005, and a separate law applicable to the Kurdish Governorates, since 2006. However, individual organizations have been assigned with responsibilities under those laws and there has not been any overarching policy or objectives to ensure effective implementation, nor is there or has there been any high-level (multi-agency) committee(s) with responsibility for implementation or coordination. Based on the Iraqi Constitution and relevant laws, the Iraqi AML law should be applicable in the KRG region, but due to its current status of autonomy, the view among senior officials within the KRG is that the Iraqi AML law does not apply within the Kurdish Governorates. Thus, there has been no clear or apparent strategy or policy to clarify, implement and coordinate implementation of applicable AML/CFT laws and regulations over the entire territory of Iraq.
122. The AML Law contains requirements and procedures on which the AML/CFT system is based. The Law also characterizes AML issues as under the purview of the CBI, which fails to take into account the multi-agency dimension needed to have a successful AML/CFT regime.
123. None of the individual key governmental agencies or departments involved in the AML/CFT system, have an AML/CFT policy or strategy.

#### *The institutional framework for combating money laundering and terrorist financing*

124. The key government Ministries, regulatory and others involved in combating ML or FT include:
- **Financial Intelligence Unit:** The Money Laundering Reporting Office (MLRO) is the FIU of Iraq, which is an administrative unit of the CBI and was established in 2007. In addition to FIU functions, the FIU staffs are responsible for carrying out other CBI tasks.
  - **Central Bank of Iraq (CBI)** supervises, regulates, licenses and monitors compliance of banks and financial institutions pursuant to the Central Bank law and Banking law. Pursuant to the AML/CFT law, the CBI is responsible for AML/CFT supervision and compliance monitoring of financial institutions and all other AML/CFT reporting entities the AML law defines as 'financial institutions.' The MLRO which is a unit within the CBI has supervisory, regulatory or

enforcement authority with respect to compliance monitoring or enforcement of AML/CFT obligations.

- ***Council of Ministers Secretariat:*** The Secretariat supports the Council of Ministers, or Cabinet which is the Executive Branch of the Iraqi Government. It coordinates policy issues including AML/CFT related policy issues. The Secretariat reports directly to the Prime Minister's Office.
- ***Non Governmental Organizations (NGO) Department:*** The NGO Department is a unit within the Council of Ministers and is the responsible institution for registration, supervision and monitoring of the NGO sector.
- ***Counter Terrorism Service (CTS):*** This unit implements national counter-terrorism strategy and monitors terrorist activity, directly reporting to the Council of Ministers.
- ***National Security Agency (NSA):*** The newly formed NSA has ML/TF functions, and reports directly to the Prime Minister's Office. It focuses on intelligence gathering related to economic crimes (including ML and TF), and provides intelligence to executive level officials.
- ***Commission of Integrity:*** the COI is an independent commission within the government of Iraq tasked with preventing and investigating corruption at all levels of the government nationwide. It is the coordinating organization for the other two integrity institutions, The Board of Supreme Audit and the Inspectors General. The COI works closely with Inspectors General of each Ministry and with the Board of Supreme Audit (BSA) to coordinate anti-corruption efforts, and reports to the Prime Minister's office.
- ***Board of Supreme Audit:*** BSA is the supreme audit institution in Iraq which reports to the Council of Ministers. It undertakes financial and performance audits with the aim of identifying fraud, waste, and abuse, and promoting anti-corruption and integrity. It may conduct inspections of state-owned financial institutions as well as privately owned financial institutions, including monitoring compliance with AML/CFT obligations upon request of the Council of Ministers. The BSA has no power to impose any sanctions, as it only reports findings to the Council of Ministers, but can but can recommend remedial actions. The BSA's AML/CFT audit functions are wholly separate from the MLRO (FIU).
- ***Supreme Judicial Council:*** is the highest judicial authority. It supervises affairs of federal judiciary as well as overseeing and regulating professional and ethical standards of prosecutors and judges.
- ***Ministry of Justice (MOJ):*** The MOJ is the central authority for international cooperation and mutual legal assistance, and administrative coordination of judicial authorities.
- ***Shura Council:*** Advisory Council to the Government and Courts administratively connected to the Ministry of Justice. It is responsible for codification of laws supports, supports and coordinates law drafting process, advises the Government on drafting and interpreting laws and international treaties/agreements, and interprets legislative provisions for ministries/agencies and resolves disputes between ministries and agencies.
- ***National Investment Commission (NIC):*** The NIC was established in 2007 to serve as promoter, facilitator, monitor and policy advisor for investment in Iraq. It facilitates trade and investment with the aim of attracting private capital to meet the most critical needs, and plays an

advisory role in streamlining legal and regulatory requirements facing investors, and helping investors navigate bureaucratic channels.

- **Ministry of Foreign Affairs (MFA):** The MFA is Iraq’s primary foreign policy body and central coordinator for diplomatic relations. It serves as the diplomatic gateway for international cooperation and treaty arrangements, and receives and distributes U.N. Security Council Resolutions and related documents.
- **Ministry of the Interior (MOI):** Ministry responsible for implementation of policy decisions related to the police and other investigative authorities. It is also responsible for management and implementation of police and investigative operations.
- **Tax Commission:** Located in the Ministry of Finance, the Tax Commission implements national tax strategy and system.
- **Customs Authority:** Located in the Ministry of Finance, the Customs authority implements national customs strategy at ports and borders.
- **Insurance Diwan:** Located in the Ministry of Finance, the Insurance Supervisor (Insurance Diwan) was established in 2008, pursuant to the Insurance Business Regulation Act of 2005 and is responsible for oversight and regulation of an open, safe and transparent financial market to support the insurance industry.
- **Securities Commission:** The Securities Commission is the designated supervisory body for the securities sector, pursuant to Securities Law (Coalition Provisional Authority Number 74, Interim Law on the Securities Market). It is responsible for supervision and oversight of Stock Exchanges and market participants in the securities sector.

### ***Approach concerning risk***

125. The Evaluation Team did not obtain any information or documentation on any policies or strategies to identify or analyze ML or TF risks or threats, nor to implement a risk-based approach to mitigate them. However, the AML law provides the Central Bank authority to limit or expand the scope of application of AML/CFT obligations (Art. 6).<sup>25</sup> Officials informed the evaluation team that no regulations pursuant to risk-based approaches have been issued to date.
126. This AML/CFT Assessment is a first-round evaluation for Iraq, since Iraq became a member of the FATF-Style Regional Body (FSRB) in 2005.

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25 The last sentence of Article 2(6) of the AML law states: “*The CBI may, by regulation, determine that the definition of financial institution applies only to entities above a specified size and designate other persons who shall also be considered financial institutions for purposes of this Act.*”



## **2. LEGAL SYSTEM AND RELATED INSTITUTIONAL MEASURES**

### **2.1 Criminalization of ML (R.1 & 2)**

#### **2.1.1 Description and Analysis**

##### **Recommendation 1**

##### **Legal Framework**

127. Due to the complexity of political events in Iraq over the past decade, the legal system has some unique peculiarities not commonly found elsewhere, which are important in analyzing the Iraqi AML/CFT legal framework. These include: (1) the role of the Coalition Provisional Authority<sup>26</sup> (CPA) and enforceability of the Orders; and (2) relations between regional and national legislation.

##### **Enforceability of the CPA Orders:**

128. Pursuant to the CPA Regulation No.1 issued by the CPA Administrator on May 16, 2003, the CPA is vested with all executive, legislative and judicial authority necessary to achieve its objectives, to be exercised under relevant UNSCRs including Resolution 1483 (2003), and the laws and usages of war. Unless suspended or replaced by the CPA or superseded by legislation issued by democratic institutions of Iraq, laws in force in Iraq as of April 16, 2003 shall continue to apply in Iraq insofar as the laws do not prevent the CPA from exercising its rights and fulfilling its obligations, or conflict with the present or any other.

129. Orders issued by the CPA are binding instructions and will remain in force until repealed by the Administrator or superseded by legislation issued by democratic institutions of Iraq. Regulations and orders issued by the Administrator take precedence over all other laws and publications to the extent such other laws and publications are inconsistent. The Orders shall be promulgated in the relevant languages and in case of divergence, the English text shall prevail.

##### **Relation between regional and national legislation:**

130. Pursuant to Article 121 of the Iraqi Constitution of 2004, “in case of a contradiction between regional and national legislation in respect to a matter outside the exclusive authorities of the federal government, the regional power shall have the right to amend the application of the national legislation within that region.” What is not clear is whether national legislation is directly enforceable in Kurdistan, or whether approval by the Kurdistan Parliament is required.

131. In response to a question from the Kurdistan Council of Ministers, the Kurdistan’s Region Advisory Council, established by the Kurdistan Parliament pursuant to its Law No. 14 of 2008<sup>27</sup>, gave a non-binding legal opinion on October 11, 2011 answering the above mentioned question. Based on this opinion:

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26 The Coalition Provisional Authority was established as a transitional government following the 2003 invasion of Iraq. On the basis of the United Nations Security Council Resolution 1483 (2003), and the laws of war, the CPA vested itself with executive, legislative, and judicial authority over the Iraqi government from the period of the CPA's inception on April 21, 2003, until its dissolution on June 28, 2004.

27 The functions of this Council are reviewing administrative disputes, unifying legislation, drafting legislation as well as unifying of the legal terms and expressions in the Kurdistan Region.

- Laws, decisions, regulations and instructions issued by the Federal Authority prior to the withdrawal of the governmental directorates from Kurdistan Region in 23/10/1991 are directly enforceable in this Region.
  - Laws, decisions, regulations and instructions issued by the Federal Authority between the date of the withdrawal of the governmental directorates from the Kurdistan Region in 23/10/1991 and the end of the previous regime in 9/4/2003, are not enforceable in this Region unless approved by the Kurdistan Parliament.
  - Laws, decisions, regulations and instructions issued by the Federal Authority after the end of the previous regime in 9/4/2003, and dealing with a subject not regulated previously in Kurdistan, are directly enforceable in this Region.
132. Despite this nonbinding legal opinion, several Kurdish judicial officials stated to the evaluation team that for laws to be enforceable in the KRG region, they must be approved by the Kurdistan Parliament.
133. Iraq has criminalized money laundering (ML) by virtue of the AML Law, issued by the Coalition Provisional Authority Order No. 93 and entered into force on June 3, 2004, but with a deferred implementation date of September 30, 2004 or such later date as may be specified in the regulations issued by the CBI.<sup>28</sup> No further CBI Regulations have specified any other implementation date.
134. The Iraq AML Law hasn't been approved by the Kurdistan Parliament and the current status of KRG autonomy preclude the law from being enforced in Kurdistan, although it has been issued after 2003, and there's no regional (KRG) legislation that addresses ML. Kurdistan judicial authorities confirmed they have not dealt with any money laundering cases to date. Under these circumstances, no AML law currently exists in KRG.
135. Iraq is party to the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna Convention 1988) pursuant to Law No. 23 of 1997 (date of accession: 22/7/1998) and to the UN Convention against Transnational Organized Crime (Palermo Convention 2000) pursuant to Law No. 20 of 2007 (date of accession: 17/3/2008).

#### *Criminalization of ML (c. 1.1)*

136. ML is criminalized under Article 3 of the AML Law.<sup>29</sup> Although the offence covers multiple acts, some of them not mentioned in the Vienna and Palermo Conventions, it does not capture all the

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<sup>28</sup> Prior to the AML Law, Iraq had the Revolution Command Council decision No. 10 of 17 February 1997 (on Money Laundering); Decisions of the Revolution Command Council had the force of law pursuant to article 42 of the 1970 Constitution of the Republic of Iraq (The Constitution under the former Iraqi Regime).

<sup>29</sup> Article 3 of the AML Law is translated as follows: *Whoever conducts or attempts to conduct a financial transaction that involves the proceeds of some form of unlawful activity knowing that the property involved is the proceeds of some form of unlawful activity, or whoever transports, transmits, or transfers a monetary instrument or funds that represent the proceeds of some form of unlawful activity knowing that the monetary instrument or funds that represent the proceeds of some form of unlawful activity:*

(a) *With the intent to promote the carrying on of unlawful activity, to benefit from unlawful activity, or to protect from prosecution those who have engaged in unlawful activity; and*

(b) *Knowing that the transaction is designed in whole or in part-*

(i) *To conceal or disguise the nature, location, source, ownership, or control of the proceeds of the unlawful activity; or*

(ii) *To avoid a transaction or other reporting requirement, shall be sentenced to a fine of not more than 40 million Iraqi dinar, or twice the value of the property involved in the transaction, whichever is greater, or imprisonment for not more than 4 years, or both.*

physical elements of the ML offenses as defined in these two Conventions. Conversion or transfer of proceeds is covered in Article 3(2)(a), however concealment or disguise is only partially covered in Article 3(2)(b)(i), since it's only criminalized if it was done by a "financial transaction"<sup>30</sup> or if the material act was to "transport, transmit, or transfer a monetary instrument or funds."<sup>31</sup> Acquisition, possession or use is not covered in the AML Law but subject to the basic concepts of the Iraqi legal system, these acts constitute a standalone offense of "concealment of goods acquired as a result of an offense" in Articles 46032 & 46133 of the Penal Code (PC).

137. Article 6 (paragraph 3) criminalizes as ML offence any transaction by an Iraqi or foreign person within Iraq that evades or avoids, has the purpose of evading or avoiding, or attempts to violate any of the prohibitions related to the blocking and confiscation of funds or other financial assets or economic resources that have been either removed from Iraq, or acquired, by "Ba'ath Party persons" that are within or hereafter come within Iraq.
138. Knowledge is covered in all elements of article 3 of the AML Law however the mens rea in that article is narrower than that required by the Vienna and Palermo Convention. (See c. 2.1)

*Property / definition of proceeds (c. 1.2)*

139. The offence of ML covers *monetary instrument or funds that represent the proceeds of some form of unlawful activity*. Monetary instrument, as defined in Article 2, means *both Iraqi and foreign currency, bank notes, checks, promissory notes or other evidence of indebtedness, loans, travelers' checks, wire transfers, all negotiable instruments in such form that title passes upon delivery, all incomplete instruments signed but with the payee's name omitted, and securities or stock in bearer form or otherwise in such form that title passes upon delivery and any other items that the CBI may deem appropriate*. The term "funds" is not defined in the Law; neither is "proceeds" of unlawful activities. However, Article 6, as it relates to property forfeiture, covers *any property, real or personal, including but not limited to funds, involved in the offense, or any property traceable to the property, or any property gained as a result of the offense*. Thus, the ML offence extends to any type of property, regardless of its value, that directly or indirectly represents the proceeds of crime.

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30 The Law does not define the term "financial transaction".

31 The MLRO has issued Interpretative Note (IN) to the AML Law (Interpretative Note No. 1 dated 26/6/2006 addressed to banks and remittance companies. This IN covers the *disguising and concealing the movement of proceeds* in general. This IN can't be taken into consideration in assessing ML criminalization since neither the CBI nor the MLRO are competent authorities to modify the ML criminalization and this falls out of the scope of Article 24 of the AML Law which requires the CBI to issue regulations for the implementation of this Law.

32 Article 460 of the Penal Code is translated as follows: *Without prejudice to any greater penalty prescribed by law, any person who knowingly obtains, conceals or makes use of any goods acquired as a result of a felony or disposes of such goods in any way is punishable by a term of imprisonment not exceeding 7 years. The penalty will be detention if the offense, as a result of which such goods are acquired, is a misdemeanor but it will not exceed the maximum limit prescribed for that misdemeanor as long as the person who obtained, concealed or made use or disposed of such goods was not a party to the commission of the offense.*

33 Article 461 of the Penal Code is translated as follows: *Any person who obtains any goods acquired as a result of a felony or misdemeanor in circumstances which lead him to believe the source of such goods to be unlawful is punishable by a period of detention not exceeding 1 year plus a fine not exceeding 100 dinars or by one of those penalties.*

*Predicate offences (c. 1.2.1)*

140. Under the AML Law, conviction for a predicate offence is not a prerequisite to proving that monetary instrument or funds are the proceeds of crime. The authorities indicated that if the assets are proved to be the outcome of an offence, the perpetrator will be penalized for committing a ML offence even if the person is not convicted of committing the original offence.

Predicate offenses (c. 1.3) (c. 1.4)

141. When criminalizing ML, Iraq has opted for an all offences approach. The predicate offence for ML, as defined in Article 3 of the AML Law, covers “unlawful activity”.

142. The following table shows all predicate offences that are listed as “designated predicate offences” by the FATF (Glossary to the FATF 40 Recommendations), and shows if and how these are designated as predicate offence under Iraqi law. As can be seen, Iraq has covered all designated predicate offences as listed by the FATF. Due to the all crimes approach, more predicate offences are covered than this table shows.

**Predicate offences in Iraq**

| <b>Designated categories of offences</b>                       | <b>Reference in Iraqi Law</b>                                               | <b>Remarks</b>                                                                                                                                  |
|----------------------------------------------------------------|-----------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------|
| Participation in an organized criminal group and racketeering  | Art. 55 – 57 of the PC (criminal conspiracy).                               | Participation in an armed terrorist gang is criminalized pursuant to Art. 2.3 of the ATL.                                                       |
| Terrorism, including TF                                        | Anti-Terrorism Law No. 13 of 2005                                           | Not applicable in Kurdistan.                                                                                                                    |
|                                                                | Art. 4 of the AML Law.                                                      |                                                                                                                                                 |
|                                                                | Anti-terrorism law in Kurdistan region (Law No. 3 of 2006).                 |                                                                                                                                                 |
| Trafficking in human beings and migrant smuggling              | Art. 5-9 of the Law on Trafficking in Human Beings No. 28 of 2012.          | Art. 37 of the Constitution prohibits trafficking in human beings. Art. 13 of PC gives Iraq jurisdiction over trafficking in human beings acts. |
|                                                                | Art. 10.1 (d) of the Passports Law No. 32 of 1999 covers migrant smuggling. |                                                                                                                                                 |
| Sexual exploitation, including sexual exploitation of children | Art. 3 of the Prostitution Law No. 8 of 1988                                | Art. 37 of the Constitution prohibits forced labor, slavery, slave trade, trafficking in women or children, and sex trade.                      |
|                                                                | Art. 399 of PC: Incitement of a juvenile to fornication or prostitution.    | Art. 23 of the Constitution prohibits economic exploitation of children in all of its forms.                                                    |

| <b>Designated categories of offences</b>                          | <b>Reference in Iraqi Law</b>                                                                    | <b>Remarks</b>                                                                                                                                                                                                                                    |
|-------------------------------------------------------------------|--------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Illicit trafficking in narcotic drugs and psychotropic substances | Art. 14 of the Drugs Law No. 68 of 1965.                                                         |                                                                                                                                                                                                                                                   |
| Illicit arms trafficking                                          | Art. 27-28 of the Arms Law No. 13 of 1992.                                                       |                                                                                                                                                                                                                                                   |
| Illicit trafficking in stolen and other goods                     | Art. 460 of PC.                                                                                  | This article can cover the illicit trafficking in stolen goods.                                                                                                                                                                                   |
|                                                                   | Art. 9.1.7 of the Regulation of Trade Law No. 20 of 1970.                                        | This article can cover the illicit trafficking in other goods.                                                                                                                                                                                    |
| Corruption and bribery                                            | Art. 307 – 321 of PC.                                                                            | Corruption definition is mostly consistent with UNCAC definition. However, it does not cover the bribery of foreign public officials and officials of public international organizations (Article 16-1 of UNCAC).                                 |
| Fraud                                                             | Art. 456 - 459, 464, 466 - 468 of PC.                                                            |                                                                                                                                                                                                                                                   |
| Counterfeiting currency                                           | Art. 280 - 281 of PC.<br>Art. 50 - 55 of the Central Bank Law issued by CPA Order No. 56 of 2004 |                                                                                                                                                                                                                                                   |
| Counterfeiting and piracy of products                             | Art. 44 of the Patent and Industrial Designs Law No. 65 of 1970.                                 |                                                                                                                                                                                                                                                   |
| Environmental crime                                               | Environment protection and improvement Law No. 27 of 2009.                                       | The PC covers few offences that can be categorized as environmental crime (i.e. art. 482 - 483).<br>Art. 33 of the Constitution states that Iraq shall undertake the protection and preservation of the environment and its biological diversity. |
| Murder, grievous bodily injury                                    | Art. 410, 412 - 415, 418 - 419 of PC.                                                            |                                                                                                                                                                                                                                                   |
| Kidnapping, illegal restraint and hostage-taking                  | Art. 421 – 425 of PC.                                                                            |                                                                                                                                                                                                                                                   |
| Robbery or theft                                                  | Art. 264 of PC: Theft of public objects.                                                         |                                                                                                                                                                                                                                                   |
|                                                                   | Art. 432 - 452 of PC.                                                                            |                                                                                                                                                                                                                                                   |

| Designated categories of offences       | Reference in Iraqi Law                                                                | Remarks |
|-----------------------------------------|---------------------------------------------------------------------------------------|---------|
| Smuggling                               | Art. 191 – 196 of the Customs Law No. 23 of 1984.                                     |         |
|                                         | Art.41 of the Law for the Antiquities and Heritage No. 55 of 2002.                    |         |
|                                         | Law on anti-smuggling of oil and oil derivatives No. 41 of 2008.                      |         |
| Extortion                               | Art. 430 of PC.                                                                       |         |
| Forgery                                 | Art. 286 – 297 of PC.                                                                 |         |
| Piracy                                  | Art. 354 of PC.                                                                       |         |
| Insider trading and market manipulation | Art. 437 of PC covers Insider trading.                                                |         |
|                                         | Art. 9.1.11 of the Regulation of Trade Law No. 20 of 1970 covers market manipulation. |         |

143. The MLRO has issued letter No. 26 dated 29/11/2007 addressed to banks, expanding the ML underlying crimes definition to cover different crimes including property right offences & tax evasion. This letter can't be taken into consideration in assessing ML criminalization since neither the CBI nor the MLRO are competent authorities to modify the ML criminalization and this falls out of the scope of Article 24 of the AML Law which requires the CBI to issue regulations for the implementation of this Law.

#### *Foreign predicate offences (c. 1.5)*

144. The AML Law does not require that the predicate offense be committed domestically and the authorities confirmed that predicate offenses include acts committed in another state.

#### *Self laundering (c. 1.6)*

145. Although Article 3 of the AML Law does not exclude it, self laundering seems not to be criminalized under Iraqi legislation since Article 6 related to property forfeiting only covers violations that were committed intending to, or knowing that the likely result would be to, aid **another person** in the commission of a crime, or aid **another person** in the evasion of prosecution for a crime already committed. At the same time, excluding self laundering from the ML offence does not seem to be required by fundamental principles of Iraqi domestic law.

#### *Ancillary offences (c. 1.7)*

146. With respect to attempt, if the physical element of the ML offence was to *transport, transmit, or transfer a monetary instrument or funds*, the PC's general rules apply. In application of articles 23 and 26 of the PC, the ML offence in Iraqi legislation is categorized as a misdemeanor<sup>34</sup>. Pursuant to

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<sup>34</sup> Pursuant article 23 of the PC, the type of the offense is determined by the type of its prescribed penalty. The Arabic version of Article 3 of the AML Law provides that the ML penalty is *detention* and not *imprisonment*.

Article 31 of the PC, attempted misdemeanors are punishable by a period of detention or fine not exceeding half the maximum penalty prescribed for the offense. However, if the physical element of the ML offence was to *conduct a financial transaction*, Article 3 of the AML Law, which clearly criminalizes attempt in this case, applies since the AML Law is the *lex specialis* and *lex posterior* for ML cases. In that case, the penalty is the same as the ML offence itself.

147. With respect to the other ancillary offences to ML, the PC's general rules (*Parties to a crime, Chapter III - Section 5*) equally apply. The PC provides for several forms of participation that are applicable to all crimes, including ML. Association with or conspiracy to commit, aiding and abetting, facilitating, and counseling the commission of an offence are all covered by Articles 47–50 of the PC. The penalty for these ancillary offences, pursuant to article 50 of the PC, is the penalty prescribed for the offense itself (in this case, the ML offence) unless otherwise stipulated by law.

#### *Additional elements (c. 1.8)*

148. Article 10 of the PC requires that as a condition to prosecute an Iraqi citizen for an offense committed abroad, the act is recognized as a felony or misdemeanor under both Iraqi law and the laws of the country where the act was committed.
149. Although this general principle does not provide a clear answer to the additional element, it is an indicator that in the absence of dual criminality, Iraqi legislation seems not to be applicable to ML offences where the proceeds of crime are derived from conduct that occurred in another country, which is not an offence in that other country but which would have constituted a predicate offence had it occurred domestically.

#### **Recommendation 2**

##### *Natural persons that knowingly engage in ML activities (c. 2.1)*

150. According to article 33 of the PC, Criminal intent is the existence in the mind of the offender of an intention to commit the criminal act with a view to realizing the consequence of the offense that has occurred or any other criminal consequence.
151. In the case of ML under the AML Law, the mens rea requirements are the same for all modus operandi of the ML offense. ML pursuant to Article 3 of the AML Law requires knowledge that the proceeds involved are those of some form of unlawful activity; knowledge that the transaction is designed in whole or in part to conceal or disguise the nature, location, source, ownership, or control of the proceeds of the unlawful activity; and a special motive which is the intent to promote the carrying on of unlawful activity, to benefit from unlawful activity, or to protect from prosecution those who have engaged in unlawful activity.
152. Requiring a special motive for all modus operandi of the ML offense makes the mens rea in the AML Law narrower than that required by the Vienna and Palermo Convention and thus, not completely in line with the FATF Recommendations.
153. It should be noted that the mens rea in article 6 related to forfeiting property seems to also include *dolus eventualis*. In fact, this article provides that the court shall order forfeiture when a person is convicted of an offense in violation of Articles 3, 4, 5, Article 19.4, or Article 20.5 of this Act, if the violation was committed intending to, or knowing that the likely result would be to, aid another person in the commission of a crime, or aid another person in the evasion of prosecution for a crime already committed.

*Inference from objective factual circumstances (c. 2.2)*

154. As with all other offences in Iraq, the law permits the intentional element of the offence of ML to be inferred from objective factual circumstances. Pursuant article 213 of the CPL, the court's verdict in a case is based on the extent to which it is satisfied by the evidence presented during any stage of the inquiry or the hearing. Evidence includes confession, witness statements, written records of an interrogation, other official records and statements, reports of experts and technicians and other indicators and legally established evidence.

*Liability of legal persons (c. 2.3)*

155. Iraqi legislation adopts the principle of criminal liability of legal persons. In fact, Article 80 of the PC states that "Corporate bodies other than the government and its official and semi-official agencies are criminally liable for offenses committed by their employees, directors or agents working for them or on their behalf. Such bodies may only be sentenced to a fine, confiscation or such precautionary measures as are prescribed by law for that offense. However, if the law prescribes a specific penalty for that offense other than a fine, then it maybe substituted for a fine but that does not prevent the offender himself from being punished by the penalties prescribed by law for that offense".
156. Article 123 of the PC also states that "*the court may order the suspension of a body corporate for a period of not less than 3 months and not exceeding 3 years if a felony or misdemeanor is committed by one of its representatives or by an agent working on its behalf or at its expense and he is penalized as a result by a deprivation of freedom for a period of 6 months or more. If the felony or misdemeanor is committed on more than one occasion, the court may order dissolution of the body corporate.*"
157. Moreover, the AML Law states in its article 2.7 that "person" means a natural person or a juridical person.

*Parallel criminal, civil or administrative proceedings (2.4)*

158. Making legal persons subject to criminal liability for ML does not preclude the possibility of parallel criminal or administrative proceedings, when such form of liability is available. This view is shared by the authorities and is supported by examples. For instance, Article 62.4 of the Central Bank Law 2004/56 states that the imposition by the CBI of administrative penalties shall not bar any civil or criminal accountability under the provisions of any law. In fact, the CBI has imposed in 2011 a financial administrative penalty on 1 bank, 1 remittance company and 1 money exchange company (IQD 10 million each) for transferring the proceeds of an embezzlement operation, and the case was referred to the Criminal Court based on the AML Law where it's still pending.

*Sanctions for ML (c. 2.5)*

159. ML in Iraq is punishable by a fine of not more than 40 million Iraqi dinar (around 36,000 USD), or twice the value of the property involved in the transaction, whichever is greater, or imprisonment for not more than 4 years, or both. With respect to attempt, if the physical element of the ML offence was to *conduct a financial transaction*, the penalty would be the same as the ML offence itself. If the physical element of the ML offence was to *transport, transmit, or transfer a monetary instrument or funds*, the attempt would be punishable by a period of detention or fine not exceeding half the maximum penalty prescribed for the offense (See c. 1.7). The penalty for other ancillary offences, pursuant article 50 of the PC, is the penalty prescribed for the offense itself.



160. Although the fines for ML imposed on natural and legal persons can reach twice the value of the property involved, the imprisonment sanctions described in the AML Law for natural persons appears not to be dissuasive enough and proportionate, especially when compared with provisions for other proceeds-generating crimes in Iraq (up to 7 years for fraudulent bankruptcy; up to 10 years imprisonment for corruption; up to life imprisonment for embezzlement). Moreover, there's a lack of imposition of these penalties.

**Statistics (Recommendation 1 and 2)**

161. The authorities provided two sets of statistics. The first table provides an overview of the number of cases for some offences in Iraq excluding Kurdistan Region (it was stated that they have handled 8 ML cases, however the review of the Court orders revealed that all the 8 cases were prosecuted based on Art. 281 of the PC on counterfeiting banknotes and not on the AML Law). The second table shows the number and types of some offences handled by the General Directorate for Kurdistan Region Police.

**General Judicial Council statistics for some offences (2011)**

| Offences                       | Handled Cases | Sentenced Cases | Pending Cases |
|--------------------------------|---------------|-----------------|---------------|
| Terrorism (including TF)       | 1700          | 1613            | 87            |
| Illegal traffic of Narcotics   | 1175          | 1145            | 30            |
| Smuggling                      | 705           | 604             | 101           |
| Illegal traffic of antiquities | 133           | 71              | 62            |
| ML                             | 0             | 0               | 0             |

**General Directorate for Kurdistan Region Police  
Statistics for some offences (2010 – 2012)**

| Offences                 | 2010 | 2011 | 1/1 - 1/5 2012 | Grand Total |
|--------------------------|------|------|----------------|-------------|
| Car Theft                | 109  | 91   | 46             | 246         |
| Important Theft          | 1300 | 1219 | 660            | 3179        |
| Embezzlement             | 32   | 40   | 45             | 117         |
| Bribery                  | 45   | 17   | 32             | 94          |
| Forgery                  | 275  | 684  | 224            | 1183        |
| Gambling                 | 41   | 44   | 16             | 101         |
| Breach of Trust          | 471  | 648  | 159            | 1278        |
| Fraud                    | 2413 | 2531 | 766            | 5710        |
| Handling of Stolen Goods | 216  | 103  | 39             | 358         |

162. The COI annual report of 2010 states that since its establishment in 2004, the Commission has received 33,240 reports, and presented to the examining magistrate 28,204 procedure claims. The

number of cases referred to the competent court on corruption cases were 4,137 claims. The number of the sentenced persons is 1,658, between them 16 in the rank of minister.

163. Judicial and law enforcement authorities met in Kurdistan stated that there were no ML cases in the Region and no related exchange of information.

**Effectiveness**

164. In addition to the major shortcomings in the criminalization of the ML offence and its inapplicability in practice in the Kurdistan Region, there is no doubt about the ineffectiveness of the AML legal framework in Iraq. The lack of any investigations or convictions for ML despite the large number of criminal investigations for predicate offenses that generate proceeds further indicates the lack of effectiveness.

**2.1.2 Recommendations and Comments**

*Recommendations 1 & 2*

- Ensure that “the concealment or disguise of crime proceeds” is covered either by the ML offence or by more general offenses such as “concealment of goods or assets acquired as a result of an offense”
- Extend the material element of the ML offence by cancelling the special motive requirement.
- Criminalize self laundering.
- Ensure the criminalization of ML, in line with the international standards, in all Iraqi Regions.
- Strengthen the ML sanctions against natural and legal persons in order to be effective, proportionate and dissuasive.
- Greatly enhance the number of ML cases handled by law enforcement authorities and the courts to insure the effectiveness of the ML criminalization.

**2.1.3 Compliance with Recommendations 1 & 2**

|            | <b>Rating</b> | <b>Summary of factors underlying rating</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
|------------|---------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>R.1</b> | <b>NC</b>     | <ul style="list-style-type: none"> <li>• ML offence does not cover specifically “the concealment or disguise” in all cases.</li> <li>• By requiring a special motive, the material element of the ML offence is narrower than the one required under the international standards.</li> <li>• Self laundering is not criminalized.</li> <li>• Lack of an enforceable AML Law in the Kurdistan Region.</li> <li>• Lack of investigations and no convictions for ML despite the important number of criminal investigations for predicate offenses that generate proceeds (Lack of effectiveness).</li> </ul> |

|     | Rating | Summary of factors underlying rating                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
|-----|--------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| R.2 | NC     | <ul style="list-style-type: none"> <li>• By requiring a special motive, the material element of the ML offence is narrower than the one required.</li> <li>• ML sanctions for natural and legal persons are not effective, proportionate and dissuasive.</li> <li>• Lack of an enforceable AML Law in Kurdistan Region.</li> <li>• Lack of investigations or convictions for ML despite the number of criminal investigations for predicate offenses that generate proceeds (Lack of effectiveness).</li> </ul> |

## 2.2 Criminalization of TF (SR.II)

### 2.2.1 Description and Analysis

#### Special Recommendation II

##### The TF offence

165. The Iraqi legal framework for TF is based on the AML Law, the Anti-Terrorism Law No. 13 of November 7, 2005 (ATL), and the PC. As for the Kurdistan, the ATL is not applicable since the KRG has issued the Anti-terrorism Law in Kurdistan Region (Law No. 3 of 2006).
166. The Iraqi Constitution of 2005 states in its Article 7.2 that the State shall undertake to combat terrorism in all its forms, and shall work to protect its territories from being a base, pathway, or field for terrorist activities. Moreover, Article 9.1 (e) states that the Iraqi Government shall respect and implement Iraq's international obligations regarding the non-proliferation, non-development, non-production, and non-use of nuclear, chemical, and biological weapons, and shall prohibit associated equipment, materiel, technologies, and delivery systems for use in the development, manufacture, production, and use of such weapons.
167. Iraqi Parliament has ratified the UN Convention for the Suppression of the Financing of Terrorism (New York Convention 1999) by virtue of Law No. 3 of January 31, 2012. However, it's not clear why this law hasn't been gazette and hence hasn't taken effect yet<sup>35</sup>.

##### Characteristics of the TF offences (c. II.1.a)

#### In the national legislation:

168. Article 4.2<sup>36</sup> of the AML Law provides the elements needed to criminalize TF. This article does not cover the definition of Article 2.1 (a) of the UN TFC, namely the financing of an act which constitutes an offence within the scope of and as defined in one of the treaties listed in the annex of

35 Pursuant to Article 129 of the Constitution, laws shall be published in the Official Gazette and shall take effect on the date of their publication, unless stipulated otherwise.

36 Article 4.2 of the AML Law was translated as follows: *Terrorist Financing: Whoever provides, or invites another person to provide, property, support, or financial support (not in the Arabic version), or financial or other related services intending that it be used, or knowing that it will likely be used, in whole or in part, to carry out*

a) *An act or omission that provides a benefit to a terrorist group, or*

b) *Any other act or omission intended to cause death or serious bodily harm to a civilian or any other person not taking an active part in the hostilities in a situation of armed conflict, if the purpose of the act or omission is to intimidate the public or to compel the government (in the Arabic version, "a government") or an international organization to do or refrain from an act, shall be fined not more than 20 million Iraqi dinar, or imprisoned for not more than 2 years or both.*

that Convention. It should be noted that, for compliance with this Special Recommendation, it is not necessary to sign, ratify and implement these Conventions, but it is necessary to criminalize the relevant conduct. Moreover, this definition does not cover the financing of an *individual terrorist*. Hence, the offense of TF is not entirely consistent with SRII.<sup>37</sup>

169. Although Article 4.2 does not explicitly capture the act of collecting funds, this act can be captured by the term support used in the TF definition.
170. The financing of terrorist acts is also criminalized by virtue of article 4 of the ATL<sup>38</sup>. However, acts that constitute an offence within the scope of and as defined in only two of the nine treaties listed in the annex of the UN TFC are criminalized as acts of terrorism (the International Convention against the Taking of Hostages, of 17 December 1979; the International Convention for the Suppression of Terrorist Bombings, of 15 December 1997; and partially in the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, of 14 December 1973).
171. Acts that are not covered are those targeted by the Convention for the Suppression of Unlawful Seizure of Aircraft, done at The Hague on 16 December 1970; Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 23 September 1971; Convention on the Physical Protection of Nuclear Material, adopted at Vienna on 3 March 1980; Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 24 February 1988; Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on 10 March 1988; Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, done at Rome on 10 March 1988.
172. The definition of TF in the AML law, read in conjunction with the TF definition in the ATL remains not entirely consistent with SRII in the sense that it does not fully cover the financing of an individual terrorist regardless of whether that financing is for criminal activities, legal activities or general support. The provision/collection of funds for an individual terrorist would not amount to a criminal offense unless it can be established that the perpetrator was consciously aware that the funds will be used wholly or in part in financing of a terrorist act. Moreover, it does not cover the financing of an act which constitutes an offence within the scope of and as defined in 7 of the 9 treaties listed in the annex of the UN TFC.
173. The material element of the TF offense as defined by Article 4.2 of the AML Law (*knowing*) adequately covers the material elements set out in Article 2, paragraphs 1 of the UN TFC.

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37 The MLRO has issued Interpretative Note to the AML Law (Interpretative Note No. 1 dated 26/6/2006 addressed to banks and remittance companies. This IN covers the financing of an individual and the financing of an organization, if this financing is related to the commitment of a terrorist act. This IN can't be taken into consideration in assessing TF criminalization since neither the CBI nor the MLRO are competent authorities to modify the TF criminalization and this falls out of the scope of Article 24 of the AML Law which requires the CBI to issue regulations for the implementation of this Law.

38 Article 4 of the TCL Law was translated as follows: *Anyone who committed, as a main perpetrator or a participant, any of the terrorist acts stated in the second & third articles of this law, shall be sentenced to death. A person who incites, plans, finances, or assists terrorists to commit the crimes stated in this law shall face the same penalty as the main perpetrator.*

### **In Kurdistan Region:**

174. Pursuant to Article 3.5 of the KRG-ATL, the collection or transfer of money in ways that directly or indirectly, within or outside the territory, with a view to use or the knowledge of use in the financing of any terrorist crime is considered a terrorist crime and punishable by life imprisonment.
175. The generic definition of act of terrorism as provided in Article 1 of KRG-ATL is not consistent with the definition of Article 2.1 (b) of the UN TFC<sup>39</sup>. Moreover, this article does not cover the definition of Article 2.1 (a) of the UN TFC, namely the financing of an act which constitutes an offence within the scope of and as defined in one of the treaties listed in the annex of that Convention.
176. In fact, acts that constitute an offence within the scope of and as defined in only one of the nine treaties listed in the annex of the UN TFC are criminalized as acts of terrorism (the Convention for the Suppression of Unlawful Seizure of Aircraft, done at The Hague on 16 December 1970).
177. Acts that are partially covered are those targeted in the International Convention against the Taking of Hostages, of 17 December 1979 (does not cover all third parties mentioned in Article 1 of the Convention); the International Convention for the Suppression of Terrorist Bombings, of 15 December 1997 (it places a condition that the act leads to the death of a human being or more); and the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, of 14 December 1973 (does not cover attacks against the official premises, private accommodations or means of transport of Internationally Protected Persons).
178. Acts that are not covered are those targeted by the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 23 September 1971; Convention on the Physical Protection of Nuclear Material, adopted at Vienna on 3 March 1980; Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 24 February 1988; Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on 10 March 1988; Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, done at Rome on 10 March 1988.
179. As for the requirements of SRII, the financing of a terrorist organization is covered by the fact that it's considered a terrorist crime setting up, organizing or managing an organization, association or institute or group or take leadership or command in order to commit terrorist crimes and belonging to it and its membership. However, the KRG-ATL TF definition does not cover the financing of an individual terrorist. Hence, the offense of TF is not entirely consistent with SRII.
180. The material element of the TF offense as defined by Article 3.5 of the KRG-ATL (with knowledge) adequately covers the material elements set out in Article 2, paragraphs 1 of the UN TFC.

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39 Article 1 of the KRG-ATL was translated as follows: *Act of terrorism is the systematic use of violence or threats or inciting or glorifying the perpetrator to resort to it in furtherance of draft individual or collective criminal targeted at individuals or group of individuals, groups or randomly intended to inflict terror and fear and panic and chaos among the people of a breach of public order or to endanger the security and safety of the community and the province or the lives, freedom or sanctities or security risk or cause damage to the environment or one of natural resources, facilities, or public or private property in furtherance of purpose due to political or ideological or religious or ethnic basis.*

*Definition of funds (c. II.1.b and c)*

**In the national legislation:**

181. Article 4 of the AML Law covers property, support and financial or other related services. “Property” for the purposes of this Article includes but is not limited to currency, monetary instruments, and financial securities. Pursuant to Article 2.16, “monetary instrument” means both Iraqi and foreign currency, bank notes, checks, promissory notes or other evidence of indebtedness, loans, traveler's checks, wire transfers, all negotiable instruments in such form that title passes upon delivery, all incomplete instruments signed but with the payee's name omitted, and securities or stock in bearer form or otherwise in such form that title passes upon delivery and any other items that the CBI may deem appropriate.
182. Although these definitions combined do not exactly mirror the definition of funds in Article 1 of the UN TFC and do not explicitly target funds whether from a legitimate or illegitimate source, the language indicates that no limitation applies and is broad enough to be in line with the standard on this point. This view was shared by the authorities.
183. From the language of Article 4 read in conjunction with Article 2.16, it follows that the mere act of financing a terrorist group constitutes a criminal offense and that it is not required that the support provided to that group was actually used to carry out or attempt a specific terrorist act, or that the support is linked to a specific terrorist act. This view was also shared by the authorities.

**In the Kurdistan Region:**

184. The KRG-ATL does not provide any definition of funds. However, it does not require that the funds were actually used to carry out or attempt a terrorist act, or be linked to a specific terrorist act.

*Attempt and Ancillary offences (c.II.1d and e)*

**In the national legislation:**

185. In application of articles 23, 25 and 26 of the PC, TF offence in the AML Law is categorized as misdemeanor<sup>40</sup> and the TF offence in the ATL Law is categorized as a felony (death penalty). Pursuant to article 31 of the PC, attempted misdemeanors are punishable by a period of detention or fine not exceeding half the maximum penalty prescribed for the offense. Attempted felonies are punishable by life imprisonment if the prescribed penalty for the offense is death.
186. The PC broadly criminalizes ancillary offences. Thus, and with respect to other ancillary offences to TF, the PC's general rules (*Parties to a crime, Chapter III - Section 5*) equally apply. The PC provides for several forms of participation that are applicable to all crimes, including TF. Association with or conspiracy to commit, aiding and abetting, facilitating, and counseling the commission of an offence are all covered by Articles 47 – 50 of the PC. Agreement to commit TF is covered by Articles 55 – 58 of the PC (criminal conspiracy).
187. Pursuant to Article 50 of the PC the penalty for these ancillary offences (except for the criminal conspiracy), pursuant to article 50 of the PC, is the penalty prescribed for the offense itself (in this case, the TF offence) unless otherwise stipulated by law.

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40 Pursuant article 23 of the PC, the type of the offense is determined by the type of its prescribed penalty. The Arabic version of Article 4 of the AML Law provides that the TF penalty is *detention* and not *imprisonment*.

### **In Kurdistan Region:**

188. TF attempt is punishable by temporary imprisonment<sup>41</sup> in Kurdistan (Art. 5 of the KRG-ATL). Moreover, article 10 of the same law states that all those who contributed as a principal or an accomplice or instigator in the commission of terrorist crimes in this law shall be punished with the penalty prescribed. On other hand, Article 17 clearly states that the provisions of the PC and the CPL apply, unless otherwise is stipulated in this Law.

#### *TF as a predicate offence for ML (c.II.2)*

189. The offence of TF is a predicate offence covered by the “all offences” approach used for the ML offence in the AML Law.

#### *Jurisdiction over TF offences (c.II.3)*

190. The AML Law and the KRG-ATL do not require that the person alleged to have committed the TF offense(s) is in the same country or a different country than the one in which the terrorist(s)/terrorist organization(s) is located or the terrorist act(s) occurred/will occur. This view was shared by the authorities.

#### *Inference from objective factual circumstances (applying c. 2.2 in R.2. c.II.4)*

191. As with all other offences in Iraq, the law permits the intentional element of the offence of TF to be inferred from objective factual circumstances. Pursuant to article 213 of the CPL, the court’s verdict in a case is based on the extent to which it is satisfied by the evidence presented during any stage of the inquiry or the hearing. Evidence includes confession, witness statements, written records of an interrogation, other official records and statements, reports of experts and technicians and other indicators and legally established evidences.

#### *Criminal liability for legal persons (applying c. 2.3 & 2.4 in R.2 c.II.4)*

192. Iraqi legislation adopts the principle of criminal liability of legal persons. In fact, article 80 of the PC states that “*Corporate bodies other than the government and its official and semiofficial agencies are criminally liable for offenses committed by their employees, directors or agents working for them or on their behalf. Such bodies may only be sentenced to a fine, confiscation or such precautionary measures as are prescribed by law for that offense. However, if the law prescribes a specific penalty for that offense other than a fine, then it maybe substituted for a fine but that does not prevent the offender himself from being punished by the penalties prescribed by law for that offense*”.

193. Article 123 of the PC also states that *the court may order the suspension of a body corporate for a period of not less than 3 months and not exceeding 3 years if a felony or misdemeanor is committed by one of its representatives or by an agent working on its behalf or at its expense and he is penalized as a result by a deprivation of freedom for a period of 6 months or more. If the felony or misdemeanor is committed on more than one occasion, the court may order the body corporate to be wound up.*

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41 Imprisonment for a term not exceeding 15 years (Art. 31 of the PC).

194. Moreover, the AML Law states in its article 2.7 that “person” means a natural person or a juridical person.
195. Although the KRG-ATL does not address directly the criminal liability for legal persons, and in this regards, the PC provisions are applicable, Article 11 of the Law provides for the confiscation of the transferable and non transferable properties of the organizations or parties, associations, bodies, groups or individuals that are **convicted** of terrorist offenses by the court.

#### *Sanctions for TF (applying c. 2.5 in R.2 c.II.4)*

196. TF offence in the AML Law is punishable by a fine not more than 20 million Iraqi dinar (USD \$17,167), or imprisonment for not more than 2 years or both. TF offence in the ATL Law is punishable by a death penalty. Pursuant article 31 of the PC, attempted TF offences in the first case are punishable by a period of detention or fine not exceeding half the maximum penalty prescribed for the offense (10 million Iraqi dinar, or imprisonment for not more than 1 year or both), attempted TF offences in the second case are punishable by life imprisonment.
197. The penalty for other ancillary offences, pursuant article 50 of the PC, is the penalty prescribed for the offense itself.
198. Sanctions of the AML Law are far from being dissuasive and proportionate, especially when compared with the death penalty stipulated in Article 4 of the ATL and the life imprisonment penalty stipulated in Article 3 of the KRG-ATL, which can only be applicable in few terrorist financing cases.

#### *Statistics*

199. Iraqi authorities were unable to provide the assessment team with any statistics regarding investigations, prosecutions or convictions relating to TF.
200. Judicial authorities in Kurdistan stated that there were no TF cases in the Region as a standalone offence but it may exist within a terrorist case.

#### *Effectiveness*

201. In addition to the major shortcoming in the criminalization of the TF offence and the confusion that may result from the existence of different laws that deal with the TF offence, there is no doubt about the ineffectiveness of the CFT legal framework in Iraq. The lack of statistics on investigations and convictions for TF or even related court orders, despite the high number and risk of terrorist activities in Iraq, are indicators of lack of effectiveness.
202. Although Article 4 of the AML Law covers clearly the TF offence (despite the major shortcomings), in response to the MER Questionnaire, officials stated that Article 4 covers the money laundering offence committed for the purpose of financing terrorism. Such lack of understanding of the existing laws contributes in the lack of their implementation.

#### *2.2.2 Recommendations and Comments*

- Broaden the definition of TF to cover the financing of an individual terrorist.
- Broaden the definition of TF to cover all the acts which constitute an offence within the scope of and as defined in the treaties listed in the annex of the UN TFC.



- Ensure the criminalization of TF, in line with the international standards, in all Iraqi Regions.
- Ensure that the definition of TF related funds is in line with the international standards in all Iraqi Regions.
- Strengthen all TF sanctions on natural and legal persons in order to be effective, proportionate and dissuasive.
- Greatly enhance the number of TF cases handled by law enforcement authorities and the courts to insure the effectiveness of the TF criminalization.

### 2.2.3 Compliance with Special Recommendation II

|       | Rating | Summary of factors underlying rating                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
|-------|--------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| SR.II | NC     | <ul style="list-style-type: none"> <li>• TF definition does not cover the financing of an individual terrorist.</li> <li>• TF definition does not cover all the acts which constitute an offence within the scope of and as defined in the treaties listed in the annex of the UN TFC.</li> <li>• The KRG-ATL generic definition of act of terrorism is not consistent with the definition of Article 2.1 (b) of the UN TFC.</li> <li>• There is no definition for TF related funds in Kurdistan Region.</li> <li>• TF sanctions on natural and legal persons are not effective, proportionate and dissuasive in most of TF offences.</li> <li>• Lack of investigations and convictions for TF compared to the high number and risk of terrorist activities in Iraq.</li> </ul> |

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

### 2.3.1 Description and Analysis

#### Recommendation 3

203. The freezing, seizing and confiscation of proceeds of crime in Iraq are governed by four key pieces of legislation: the PC, the Criminal Procedure Law (CPL), the AML Law and the ATL. The PC and CPL applies to all offences and in all cases, however, in AML/CFT cases, the AML Law and ATL take priority (*lex specialis derogat legi generali*).
204. As for Kurdistan, the ATL is not applicable since the KRG has issued the Anti-terrorism Law in the Kurdistan Region (Law No. 3 of 2006). Moreover, the AML Law is also not applicable in this Region.

#### Property subject to confiscation (c.3.1 & c.3.1.1)

##### Proceeds and instrumentalities

205. In addition to the general confiscation provisions of the PC that may be applied in ML/TF cases,<sup>42</sup> the AML Law provides for specific mandatory confiscation provisions. Article 6.2 of the AML Law

<sup>42</sup> Article 101 of the PC (Supplemental Penalties) was translated as follows: *In circumstances other than those in which the law requires a confiscation order, the court may, on the conviction of a person for a felony or misdemeanor, order the confiscation of particular items that were acquired as a result of the offense and that were subsequently seized or that were intended to be used in the commission of the offense. This is without prejudice to the rights of others who have acted in good faith. The court must, in all circumstances, order the confiscation of particular items that are used to create funds for the commission of an offense.*

Article 117 of the PC (Substantive precautionary measures) was translated as follows:

provides, in case of conviction, that the Court shall order the person to be sentenced to forfeit to the Government of Iraq any property, real or personal, including but not limited to funds, involved in the offense, or any property traceable to the property, or any property gained as a result of the offense, without prejudicing the rights of bona fide third parties. These provisions are applicable to ML and to TF offences.

206. Other specific provisions can be found in the ATL (Article 6.2), which orders the confiscation of all funds, seized items, and accessories used in the criminal act or in preparation for its execution. All these provisions are broad enough to cover property that is derived directly or indirectly from proceeds of crime in addition to instrumentalities used in or intended for use in the commission of any ML, FT or other predicate offences.
207. However, the language used in the AML Law (*the Court shall order the person to be sentenced*), seems only to cover property owned by the convict whether it is held by him or by a third party, but it does not cover property owned by a third party. The exception to that rule is the confiscation of goods of which the manufacture, possession, acquisition, use, sale or advertisement for sale is considered an offense in itself (Article 117 of the PC). However, this loophole can be covered by the broader scope of Article 101 of the PC.
208. As for Kurdistan Region, and in addition to the general confiscation provisions of the PC that may be applied in ML/TF cases, Article 11 of the KRG-ATL provides for the confiscation of the transferable and non transferable properties of the organizations or parties, associations, bodies, groups or individuals that are convicted of terrorist offenses by the court.

#### *Equivalent / corresponding value confiscation*

209. None of the above mentioned articles provide for the confiscation of property of corresponding value.

#### *Provisional measures (c. 3.2)*

210. Provisions for seizure are found in the CPL which contains a dedicated chapter on the “Seizure of defendant’s assets” (Art. 183 - 186). However, these provisions are only applicable to TF offences in the ATL Law and in the KRG-ATL Law since, as previously mentioned, they are categorized as a felony. ML and TF offences in the AML Law in addition to most of the predicate offences are categorized as misdemeanors and fall outside of the scope of the CPL seizure provisions.
211. In fact, pursuant to Article 183 of the CPL, the investigative judge and trial judge may seize the assets, whether movable or immovable, of the person accused of committing a felony. The seizure will include all funds that were earned via these assets or which have been received as compensation for them. Items which may not otherwise be seized in accordance with the law may be seized if it is proven that they were obtained as a consequence of an offence.
212. Unlike confiscation provisions, seizure provisions do not cover instrumentalities used in or instrumentalities intended for use in the commission of any ML, TF or other predicate offences.

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*An order for the confiscation of goods of which the manufacture, possession, acquisition, use, sale or advertisement for sale is considered an offense in itself must be issued even though they do not belong to the accused or the accused has not been convicted. If these goods have not actually been seized at the time of the trial but have been sufficiently identified, the court should order their confiscation when they are seized.*

213. Moreover, these provisions do not cover property of corresponding value or property owned by third parties<sup>43</sup>.
214. Apart from the seizure provisions of the CPL, Article 18 of the AML Law provides that when a financial institution is verifying the source of funds, and the purpose and intended nature of a transaction or business relationship, because there is reason to suspect that assets are the proceeds of a crime, that they may be intended for the financing of crime or TF, or that a criminal organization has power of disposal over them, or when a financial institution has filed an STR to the FIU, it shall immediately freeze the relevant assets until it receives any necessary verification and/or any necessary guidance from the FIU.
215. The MLRO stated that none of the banks have frozen funds on the basis of that article. Moreover, the office confirmed that it doesn't have the legal authority to ask banks to freeze funds. Theoretically, it is only when banks freeze funds based on Article 18 of the AML Law, that the MLRO can request from these banks to continue freezing the bank account or to unfreeze it.

***Ex parte application for provisional measures (c. 3.3)***

216. The CPL does not prevent seizure from being made *ex-parte* or without prior notice. But as mentioned previously, property subject to seizure must be owned by the accused.

***Powers to trace property (c.3.4)***

217. The CPL provides investigating officers including police officers under the supervision of the Public Prosecutor, in addition to investigative judges and investigators acting under the supervision of investigative judges, with a wide range of powers for the investigation of offences (Art. 39 - 136). Upon the completion of the investigation, the case is brought before the competent criminal court.
218. Under the AML Law, the ATL, the KRG-ATL and the PC, confiscation constitutes an incidental consequence of a MF/TF offence or a criminal act. As a result the entire range of investigative techniques of the CPL is available for investigating the matter to the extent that it also applies to the preconditions of these incidental consequences. Thus, Iraqi competent authorities have a comprehensive repertoire of investigative techniques at their disposal for identifying and tracing property that is, or may become subject to confiscation or is suspected of being the proceeds of crime. (See R28 for an overview of investigative techniques used in Iraq. The strengths and weaknesses identified apply to these criteria).

***Bona fide third parties (c. 3.5)***

219. The rights of *bona fide* third parties are protected from any seizure or confiscation measures. In fact, confiscation provisions under the PC and the AML Law are applicable *without prejudicing the rights of bona fide third parties*.
220. As for seizure provisions, Article 185 (B) of the CPL provides that the accused whose assets have been seized, the person who holds the seized assets, and the person who claims rights over the seized assets, may challenge the decision of seizure with the judicial authority which issued it, within 8 days from the date of notification of the seizure order or from the date on which they became aware of it.

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<sup>43</sup> Property owned by a third party could be subject to seizure only in case of an offence related to the external or internal security of the state or an offence against the rights or property of the state (Art. 184 (C) of the CPL).

221. Moreover, Article 186 (D) of the CPL provides that if a verdict of not guilty or diminished responsibility is reached, or if an order is issued to release the defendant or throw out the complaint, once this decision is final the seizure is cancelled and the assets restored to the owner even if this is not stipulated in the court’s ruling.

**Authority to void actions and contracts (c.3.6)**

222. Pursuant to Article 141, in conjunction with Article 137 of the Iraqi Civil Code No. 40 of 1951, the Court has the power to void a contract when its purpose is unlawful.

**Additional elements**

223. Membership of a criminal organization is criminalized *per se* pursuant to Article 55 of the PC (criminal conspiracy). Hence, confiscation of property belonging to criminal organizations can be pronounced *malum in se* (evil in itself) based on the general confiscation provisions of the PC. Moreover, Article 2.9.c of the AML Law considers a “suspicious transaction” a transaction that involves funds or assets over which a criminal organization has power of disposal.

224. The language of the confiscation provisions requires the conviction of the offender as a condition for the confiscation of profits. Hence, the Iraqi legal system does not recognize the concept of non-conviction based confiscation (also known as civil confiscation). The exception to that rule is the confiscation of goods of which the manufacture, possession, acquisition, use, sale or advertisement for sale is considered an offense in itself (Article 117 of the PC).

225. The concept of reversing the burden of proof (*onus reversal*) does not yet exist in Iraqi criminal law. This concept would allow the Court to confiscate properties unless the parties concerned establish they have acquired them from a legitimate source, is not known. In all cases, the Court needs to prove the unlawful origin of the property.

**Statistics**

226. The authorities provided the evaluation team with 11 CBI Circulars, taken pursuant to Court decisions, regarding fund freezing. These Circulars were addressed to banks and remittance companies, requiring the freezing of movable and non movable funds. Practically, banks and remittance companies can only freeze bank accounts or transfer related funds. Some of these Circulars were issued after 2 months from the Court decision. Additional CBI Circulars prevent banks and remittance companies from making any fund transfers, but this Circular does not require the freezing of accounts.

| CBI Circular date | Court Decision date | Related Offence      | Number of persons | Frozen funds              |
|-------------------|---------------------|----------------------|-------------------|---------------------------|
| 3-Dec-2007        |                     | Ba’ath Party persons | 1                 | Bank accounts             |
| 23-Jun-2008       | 26-May-2008         | Ba’ath Party persons | 15                | Bank accounts             |
| 20-Apr-2010       | 17-Feb-2010         | Corruption           | 8                 | Bank accounts             |
| 20-Apr-2010       | 14-Apr-2010         | Embezzlement         | 50                | Preventing fund transfers |
| 9-May-2010        | 8-Apr-2010          | Murder               | 1                 | Bank accounts             |
| 9-May-2010        | 7-Apr-2010          | Terrorism            | 1                 | Bank accounts             |

| <b>CBI Circular date</b> | <b>Court Decision date</b> | <b>Related Offence</b> | <b>Number of persons</b> | <b>Frozen funds</b> |
|--------------------------|----------------------------|------------------------|--------------------------|---------------------|
| 9-May-2010               | 13-Apr-2010                | Terrorism              | 10                       | Bank accounts       |
| 16-May-2010              | 28-Mar-2010                | Corruption             | 1                        | Bank accounts       |
| 24-May-2010              | 27-Apr-2010                | Corruption             | 1                        | Bank accounts       |
| 24-May-2010              | 29-Apr-2010                | Corruption             | 1                        | Bank accounts       |
| 7-Jun-2010               | 27-Apr-2010                | Corruption             | 1                        | Bank accounts       |
| 19-Jul-2010              | 27-Jun-2010                | Corruption             | 1                        | Bank accounts       |

227. Authorities were unable to provide the evaluation team with statistics related to freezing and confiscation in terms of crimes and type and amounts or properties seized or confiscated. So far, there were no convictions for ML that were obtained and thus no related confiscation in Iraq. As for TF, as a standalone offence, it's not sure that there were related cases and related confiscation in Iraq.

### ***Effectiveness***

228. The lack of provisional measures that could be applicable to ML offences, to all TF offences and predicate offences, added to the major shortcomings in the criminalization of ML and TF offences raise a serious issue about the effectiveness of the legal framework for the provisional measures and confiscation in Iraq. The fact that the authorities were unable to provide related statistics is another indicator of this lack of effectiveness.

### ***2.3.2 Recommendations and Comments***

- Rectify the shortcomings identified in R1, R2 and SR11.
- Provide for the confiscation of property of corresponding value.
- Enact provisional measures that are applicable to ML offences, to the TF offences and the predicate offences that do not qualify as felonies. Such measures should cover instrumentalities, property of corresponding value and property owned by third parties.
- Enhance the use of the confiscation and provisional measures framework to achieve effectiveness in this area.

### 2.3.3 Compliance with Recommendations 3

|     | Rating | Summary of factors underlying rating                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
|-----|--------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| R.3 | NC     | <ul style="list-style-type: none"> <li>• Shortcomings relating to R1, R2 and SRII have a negative impact on this Rec.</li> <li>• No legal provisions allowing the confiscation of property of corresponding value.</li> <li>• No provisional measures applicable to ML offences, to most of TF offences and predicate offences.</li> <li>• No provisional measures that cover instrumentalities, property of corresponding value and property owned by third parties.</li> <li>• Lack of use of the confiscation and provisional measures framework to achieve effectiveness in this area.</li> <li>• Lack of effectiveness in ML, TF and predicate offences regarding confiscation and provisional measures.</li> </ul> |

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

### 2.4.1 Description and Analysis

#### **Special Recommendation III**

229. Before analyzing the related Iraqi (legal) framework, it should be noted that the implementation of United Nations Security Council Resolution (UNSCR) 1267(1999) and successor resolutions and UNSCR 1373(2001) requires member states to take preventative measures that cannot be solely reliant upon criminalization of TF (SRII) in national laws. This means that countries should adopt special procedures or other administrative mechanisms dealing with their obligations under the UNSCRs, and that existing criminal laws could only be used as complementary tools.
230. Iraq has no formal mechanism in place to implement UNSCR 1267 and no mechanism at all to implement UNSCR 1373.
231. The use of the criminalization provisions of TF (see Section 2.2 of this Report) and the framework for regular mutual legal assistance (see Section 6.2 – 6.4 of this Report) are insufficient to be considered for the implementation of UNSCR 1373 as required by FATF SRIII. This means that SRIII for UNSCR 1373 is considered not to be complied with. Where possible, this shortcoming is not repeated in each of the subsections below.

#### **Laws and procedures to freeze pursuant to UNSCR 1267 (c. III.1)**

232. Pursuant to Article 7.1.f of the AML Law, the CBI shall compile and provide to financial institutions a list of individuals and institutions whose transactions should be reported to the relevant body of the Government of Iraq upon discovery, including but not be limited to the Taliban and Al-Qaida consolidated list established by the 1267 Committee.
233. In practice, the MLRO receives updated lists regarding UNSCR 1267 from the General Secretariat of the Council of Ministers, and disseminates some of these updates, but not all, to only banks or banks and remittance companies. Those lists are not communicated to other financial institutions and DNFBPs. The evaluation team has been provided with a number of the MLRO letters related to the UNSC Sanctions Committee 1267 decisions. Most of these letters relate to Iraqi (physical & legal) nationals. The first letter was sent in August 2007. The Ministry of Foreign Affairs (MOFA)

confirmed that it only forwards amendments related to Iraqi persons to the General Secretariat of the Council of Ministers in order to be disseminated to competent authorities. It should be noted that most of the competent authorities met by the Evaluation team (i.e. the Anti-Terrorism Agency) have never received any letter regarding UNSCR 1267. The case is the same for the authorities in Kurdistan, namely the Law enforcement and CBI branches in Erbil and in Sulaymania.

234. Although most of the MLRO related letters contain a link to the relevant UN website, they are far from being clear about what banks and remittance companies should do. In fact, different literature is used in each letter and different procedures are required. Some letters require reviewing the 1267 website and taking the necessary measures, without specifying what are these measures, other letters require reviewing the 1267 website and reporting any match to the MLRO. Only 2 letters require clearly to freeze the listed names, other letters requires the updating of the 1267 list each month and freezing or unfreezing funds *after being notified by the MLRO* (and not immediately). One letter requires from banks and remittance companies any information or comments to be sent to the MOFA.
235. In conclusion, MLRO letters don't require the licensed institutions to enforce immediate precautions measures without delay and without prior notice to the designated persons involved. Moreover, some of these letters were addressed after over a month and sometimes 45 days from the 1267 Committee's decision date. In accordance with SRIII, freezing should take place without delay, ideally within a matter of hours of a designation by either the Al-Qaida Sanctions Committee or the Taliban Sanctions Committee. The Iraqi procedure is not in line with this requirement.

| MLRO Letter date | Addressed to           | Purpose                                                            | MOFA Letter date | 1267 decision date |
|------------------|------------------------|--------------------------------------------------------------------|------------------|--------------------|
| 16-Aug-2007      | Banks                  | General update                                                     | 31-Jul-2007      |                    |
| 7-Sep-2008       | Banks                  | Review 1267 website upon performing any transaction                |                  |                    |
| 27-Oct-2008      | Banks                  | Delist                                                             | 9-Oct-2008       |                    |
| 1-Dec-2008       | Banks                  | List                                                               | 5-Nov-2008       |                    |
| 31-Dec-2008      | Banks                  | Delist                                                             | 16-Dec-2008      |                    |
| 21-Jan-2009      | Banks                  | Amendments                                                         | 11-Jan-2009      | 23-Dec-2008        |
| 25-Feb-2009      | Banks                  | Amendments                                                         | 15-Feb-2009      | 30-Jan-2009        |
| 5-Mar-2009       | Banks                  | List                                                               | 24-Feb-2009      | 4-Feb-2009         |
| 25-Mar-2009      | Banks                  | Amendments                                                         | 18-Mar-2009      | 23-Feb-2009        |
| 26-Mar-2009      | Banks                  | Amendments                                                         | 22-Mar-2009      | 5-Mar-2009         |
| 13-May-2009      | Banks                  | Update                                                             | 29-Apr-2009      | 30-Mar-2009        |
| 9-Jun-2009       | Banks                  | List 4 NPO                                                         |                  |                    |
| 29-Oct-2009      | Banks                  | Delist                                                             | 18-Oct-2009      | 23-Sep-2009        |
| 25-Nov-2009      | Banks                  | Delist                                                             | 8-Nov-2009       | 22-Oct-2009        |
| 13-Dec-2009      | Remittance Co.         | List                                                               |                  |                    |
| 9-Feb-2010       | Banks & Remittance Co. | Review 1267 website upon performing any transaction and report any |                  |                    |

| <b>MLRO Letter date</b> | <b>Addressed to</b>    | <b>Purpose</b>                                          | <b>MOFA Letter date</b> | <b>1267 decision date</b> |
|-------------------------|------------------------|---------------------------------------------------------|-------------------------|---------------------------|
|                         |                        | match                                                   |                         |                           |
| 5-Apr-2010              | Banks & Remittance Co. | List & delist                                           | 25-Mar-2010             | 11-Mar-2010               |
| 20-Apr-2010             | Banks & Remittance Co. | List one Iraqi                                          | 8-Apr-2010              |                           |
| 26-May-2010             | Banks & Remittance Co. | Requiring info about one listed Iraqi                   | 9-May-2010              |                           |
| 24-Aug-2010             | Banks                  | List & delist                                           | 5-Aug-2010              | 26-Jul-2010               |
| 29-Aug-2010             | Banks                  | General update                                          | 19-Aug-2010             |                           |
| 3-Nov-2010              | Banks & Remittance Co. | Delist                                                  | 11-Oct-2010             | 15-Sep-2010               |
| 29-Dec-2010             | Banks                  | Procedure: inform the MLRO in case of a positive match  |                         |                           |
| 5-Jan-2011              | Banks & Remittance Co. | List & take appropriate measures                        | 21-Dec-2010             | 7-Dec-2010                |
| 10-Feb-2011             | Banks & Remittance Co. | Delist & unfreeze                                       | 26-Jan-2011             |                           |
| 7-Mar-2011              | Banks & Remittance Co. | List & send any info or comments to be sent to the MOFA | 24-Feb-2011             | 9-Feb-2011                |
| 14-Apr-2011             | Banks & Remittance Co. | List & Freeze & inform                                  | 6-Apr-2011              |                           |
| 9-Jun-2011              | Banks & Remittance Co. | List & Freeze & inform                                  | 25-May-2011             |                           |
| 16-Aug-2011             | Banks & Remittance Co. | Splitting Al Qaida & Taliban lists                      | 27-Jul-2011             |                           |

236. The evaluation team has been provided with a number of the MLRO letters related to other UNSCRs, namely: 3 letters related to UNSCR 1737 (2006) (Iran-WMD); 1 Letter related to UNSCR 1718 (2006) (North Korea-WMD); 1 Letter related to UNSCR 1672 (2006) (Sudan); and 2 letters related to UNSCR 1970 (2011) (Libya).
237. It should also be noted that, as previously mentioned, neither the CBI nor the MLRO have a legal ground to impose freezing measure.
238. The Iraqi system is insufficient to meet the majority of the requirements of SRIII regarding UNSCR 1267. No accounts were frozen, or no transactions were adjusted of persons and entities listed by UN under UNSCR 1267, according to the authorities, due to the absence of any accounts or financial activities of designated persons in Iraq.



***Laws and procedures to freeze pursuant to UNSCR 1373 (c. III.2)***

239. Pursuant to decision No.105 of the General Secretariat of the Council of Ministers dated 5/10/2010, a Committee has been established to follow up the implementation of UNSCR 1373 and report to the General Secretariat.
240. This Committee is headed by a council at the General Secretariat and has as members: 2 representatives from the Ministry of Interior (MOI), 1 representative from the National Security Advisory, 1 representative from the Ministry of Finances, 1 representative from the Ministry of Justice, 1 representative from the Anti-Terrorism Agency, and 1 representative from the Ministry of Foreign Affairs. In 9/1/2011, the General Secretariat of the Council of Ministers issued a decision adding to that Committee the Assistant Director General of the MLRO (by its name) as a representative of the CBI.
241. Iraqi Authorities stated that this committee meets on a monthly basis; however they were unable to provide the evaluation team with minutes of meetings or sample of decisions. Moreover, the team was not provided with a law or procedures to implement UNSCR 1373.
242. Competent law enforcement authorities (i.e. the Anti-Terrorism Agency) have their own classified database on terrorists and terrorist organizations; however, Iraq doesn't have a national list on terrorists.
243. Iraq has neither designated any terrorist or terrorist organization, nor frozen assets in accordance with UNSCR 1373.

***Laws and procedures to examine and give effect to other jurisdictions freezing mechanisms (c. III.3)***

244. Iraq has no laws and procedures in place to examine and give effect to other jurisdictions freezing mechanism outside the regular mutual legal assistance framework (see Sections 6.2 – 6.4 of this Report), which is insufficient to implement or comply with UNSCR 1373 as required by SRIII.

***Scope of property / funds to be frozen (c. III.4)***

245. For UNSCR 1267 only, as indicated above, the few MLRO freezing decisions were only addressed to banks and remittance companies. These decisions did not cover all FIs and DNFBNs. In addition, lists are not distributed to all entities that are responsible for asset registries (such as land and vehicle registries and companies register to determine whether a named individual or organization holds property in Iraq). Therefore, the freezing measures as they are practically applicable in the Iraqi framework are not in line with the definition of *fund or other assets* as envisaged by the interpretative note of SRIII.

***Systems for communication (c. III.5)***

246. See above for a description of the systems for communicating 1267 list updates. Only few updates regarding Iraqi nationals were circulated to only banks and remittance companies and not without delay.
247. With respect to UNSCR 1373, no information is being communicated to the financial sector.

***Domestic guidance (c. III.6)***

248. With respect to UNSCR 1267, the CBI letters sent to banks and remittance companies operating in Iraq don't provide sufficient guidance concerning their obligations. Regarding other persons or entities that may be holding targeted funds or other assets that should be subject to freezing pursuant to UNSCR 1267, no freezing mechanism is in place. Consequently, no guidance was provided to those persons or entities.
249. With respect to UNSCR 1373, no freezing mechanism is in place. Consequently, no guidance has been ever provided to any person or entity.

***Procedures for delisting of frozen entities (c. III.7)***

250. There are no procedures for considering de-listing requests and for unfreezing the funds or other assets of de-listed person or entities, although authorities provided the evaluation team with several CBI letters regarding the delisting of persons and entities from the UNSC 1267 Committee's. Some of these letters specifically require banks to unfreeze related bank accounts.
251. Nevertheless, it is unclear: *i*) how a delisted entity would have to proceed to file a de-listing or unfreezing request, *ii*) what the procedure within the government would be to deal with this kind of request, and *iii*) what competent authority could take a decision on such a request.

***Procedures for unfreezing frozen funds (c. III.8)***

252. There are no specific procedures for unfreezing, in a timely manner, the funds or other assets of persons or entities inadvertently affected by a freezing mechanism upon verification that the person or entity is not a designated person. However, the usual protections to the rights of *bona fide* third parties under the CPL are applicable (see also Section 2.3 of this Report for the protection of *bona fide* third parties).

***Procedures for obtaining access to frozen funds (c. III.9)***

253. There are no procedures for authorizing access to funds or other assets that were frozen pursuant to UNSCR 1267 and that have been determined to be necessary for basic expenses, the payment of certain types of fees, expenses and service charges or for extraordinary expenses.

***Review by a court (c. III.10)***

254. Freezing of funds based on UNSCR 1267 follows the UNSC 1988 and 1989 Committees decisions; it is not dependent on the existence of a criminal ML or TF investigation and cannot be reviewed by a national court.
255. With respect to UNSCR 1373, no freezing mechanism is in place. Consequently, no procedures have been put in place through which a person or entity whose funds or other assets have been frozen can challenge that measure with a view to having it reviewed by a court.

***Freezing, Seizing and Confiscation in other circumstances and the protection of bona fide third parties (c. III.11) (c. III.12)***

256. See Section 2.3 of this report for an overview of regular freezing, seizing and confiscation of terrorist-related funds. The strengths and weaknesses identified in that section have an effect on the assessment of the compliance of SRIII.

***Monitor compliance (c. III.13)***

257. Iraq did not implement a legal mechanism to freeze assets in accordance with UNSCR 1373 and, consequently, did not establish measures to monitor the compliance with the related obligations under SR III.

258. Although Article 7 of the AML Law requires the CBI to supervise compliance of financial institutions with their AML/CFT obligations, nor the Banking Supervision authority nor the MLRO are monitoring the effective implementation of UNSCR 1267 obligations. With the exception of banks and remittance companies, 1267 list updates are not communicated to FIs and DNFBPs consequently; there are no measures to monitor the compliance with the related obligations under SR III.

***Additional elements (c. III.14 and c. III.15)***

259. No information was provided with respect to the implementation of the Best Practice Paper on SRIII and the procedures for access to funds frozen pursuant to UNSCR 1373. However, it should be noted that, as no system is in place for the implementation of UNSCR 1373 in Iraq, one would not need a system to grant access to those funds.

***Statistics***

260. To date, no funds were frozen in Iraq under UNSCR 1267, its successor resolutions, or UNSCR 1373.

***2.4.2 Recommendations and Comments***

- Have effective laws and procedures in place to fully implement SRIII regarding UNSCR 1267.
- Have effective laws and procedures in place to implement SRIII regarding UNSCR 1373.
- Have effective laws and procedures in place to examine and give effect to actions initiated under the freezing mechanisms of other jurisdictions.
- Amend the shortcomings in the criminalization of TF.
- Have effective systems in place to immediately (without delay) communicate freezing actions.
- Provide guidance to FIs and other persons or entities that may be holding targeted funds or other assets concerning their obligations in taking action under freezing mechanisms.
- Have effective and publicly-known procedures for considering de-listing requests and for unfreezing the funds or other assets of de-listed persons or entities in a timely manner consistent with international obligations.
- Have effective and publicly-known procedures for unfreezing, in a timely manner, the funds or other assets of persons or entities inadvertently affected by a freezing.
- Have appropriate measures for authorizing access to funds or other assets that were frozen (in line with S/Res/1452 (2002) as amended by S/Res/1735 (2006)).

- Establish appropriate procedures through which a person or entity whose funds or other assets have been frozen can challenge that measure with a view to having it reviewed by a court.
- Address the shortcomings identified in relation to R3 and R17.

### 2.4.3 Compliance with Special Recommendation III

|        | Rating | Summary of factors underlying rating                                                                                                                                                                     |
|--------|--------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| SR.III | NC     | <ul style="list-style-type: none"> <li>• No laws or procedures in place to implement UNSCR 1267 and successor resolutions.</li> <li>• No laws or procedures in place to implement UNSCR 1373.</li> </ul> |

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

### 2.5.1 Description and Analysis

#### Recommendation 26

##### Background

261. The AML Law of 2004 requires from the CBI to establish the Iraqi FIU, called the Money Laundering Reporting Office (MLRO), which shall be administratively subordinate to the CBI but shall retain operational independence. The FIU was established, on paper, as an administrative unit of the CBI pursuant to CBI Administrative Order No. 1811 dated October 25, 2005. The FIU was effectively established pursuant to CBI Administrative Order No. 1308 dated April 19, 2007. However, the tasks, duties, rights and powers of the FIU are not specific and comprehensive enough.
262. Despite the fact that Article 110 of the Constitution states that the federal government shall have exclusive authority to establish and administer a central bank, the CBI, as in the case of several other “national authorities”, doesn’t have practical jurisdiction over Kurdistan region. In fact, there is a Central Bank in Erbil and another one in Sulaymania, which are legally a branches of the CBI, yet operationally independent from it. Although these “branches” are bound by the CBI regulations, the evaluation team was informed during a meeting with their representatives, that have separate budgets allocated by the Ministry of Finance in Kurdistan.
263. Since the MLRO is administratively subordinate to the CBI, it doesn’t have practical jurisdiction over Kurdistan region. The Central Bank in Sulaymania and the one in Erbil have both recently established AML units (pursuant to request of the CBI), although these units are not yet operational. Both units report to the General Managers of their respective “branch” of the central bank and not to the Director General of the MLRO. The employees of these units, which were recently trained on AML issues, are not solely dedicated to the unit. The functions of these AML units are not clear yet. The CBI provides these regional units with regulatory AML materials issued by the MLRO, and both regional units confirmed that they are bound by the CBI regulations including those issued by the MLRO. However, there have been no previous exchanges of information between the regional units and the MLRO.
264. Moreover, the branches of the CBI in Basra and in Mousel, have also established their own FIUs. Each one of these FIUs is comprised of a manager and 2 employees. These FIUs report to the General Managers of their respective “branch” and are not administratively subordinated to the MLRO. They both can receive STRs, and conduct analysis. They exchange information directly with national competent authorities; however any exchange of information with foreign authority should

pass through the MLRO. The Deputy General of the MLRO stated that there is coordination and exchange of information with these two FIUs but all correspondence should pass through their respective branch manager and the final decision is always taken by the MLRO.

#### ***Establishment of FIU as National Centre (c.26.1)***

265. The legal description of the FIU and its functions does not meet international standards in several respects. In fact, Article 12 provides that the MLRO shall collect, process, analyze, and disseminate information on financial transactions subject to financial monitoring and reporting.<sup>44</sup> As the Law does not designate the MLRO as is the sole “national centre for receiving STRs,” reporting entities may submit STRs to other agencies, as mentioned previously (i.e. the Economic Crimes General Directorate at the Ministry of Interior).
266. Moreover, Article 35 of the Bank law of 19/9/2003 stipulates that if a bank or any of its administrators, officers or employees learns that the execution of any banking transaction or the receipt or payment of any sum of money pertains or may pertain to any crime or illegal act, the bank shall immediately notify the appropriate official or judicial authority. This is further evidence that the FIU is not the sole institution for receiving, processing and analyzing STRs. In fact, financial institutions are required to inform the CBI on a monthly basis about suspicious transaction reports submitted, if any, and any need for additional action regarding this matter. Such requirement would not be necessary if the FIU were the sole recipient of STRs.
267. As for the analyzing function, Article 12.3 of the AML law provides that the MLRO shall verify information reported to it. There are no details in the AML Law concerning the aims of the verification or analysis process regarding STRs. The MLRO confirmed that in 2011, it had received only 1 STR from a reporting entity in the private sector (which was a bank), and was not able to confirm the existence of any written procedures related to processing of STRs. Thus, the evaluation team could not verify the existence of any system for verification or analysis of STRs by the MLRO.
268. Further, officials confirmed to the evaluation team that in 2011, a few reports were sent to the MLRO by other authorities, namely: 2 from the COI, 2 from the AML unit in Basra, 2 from the AML unit in Moussol, 1 from the National Intelligence Agency, 1 from the MOF and 1 from the Ministry of Trade. It’s not clear what steps were taken pursuant to these reports.
269. Although Article 12 of the AML Law is clear about the jurisdiction of the MLRO over ML and TF issues, a judge from the State Shura Consultation Counsel provided a formal written legal opinion concluding that the MLRO is not legally competent to deal with TF issues.

#### ***Guidance regarding the manner of reporting (c.26.2)***

270. In accordance with Article 12.5 of the AML Law, the MLRO shall respond to any inquiry by a financial institution that has sent an STR, within one week of the inquiry, by providing guidance to that institution as to how it should proceed. Guidance may include: informing the competent prosecutor's office, performing further research on the issues causing the financial institution's concern, filing a formal report of a suspicious transaction with the MLRO (there is no such distinction in any law between formal STR and an informal one), or taking no action other than completing the transaction as requested by the customer. The guidance shall be binding upon the financial institution and all other affected parties.

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<sup>44</sup> The Arabic version provides that the MLRO shall collect information on financial transactions subject to financial monitoring and report financial statements, process, analyze and disseminate this information.

271. The FIU has issued Circular No. 75 of 12/10/2009 stressing on banks and remittance companies to report immediately ML/TF cases. Moreover, the FIU has issued Circular 16 of 26/5/2010 about STRs. This Circular reiterates Article 19 of the AML regarding the obligation and the manner of reporting and contains an STR form and a list of documents that reporting entity should send to the FIU after 10 days of sending the STR, namely: report of the bank account for 6 months, a copy of opening account records, the documents supporting the suspicion, data related to the suspicious transaction. This Circular is only addressed to financial intermediary companies, banks, remittance companies, investment companies and money exchange companies. It does not address all financial institutions (i.e. insurance companies) and DNFBPs. Moreover, and although this Circular is addressed to entities other than banks, its Arabic heading is *STR regarding banking transactions*.

#### ***Access to information (c.26.3)***

272. Article 12 of the AML Law provides that the MLRO shall verify information reported to it and has the power to take the necessary steps to execute its duties according to this Law. However, pursuant to Article 13 of the AML law, the CBI and the MLRO may request from Iraqi governmental ministries, authorities and agencies any information and documents the CBI believes may be useful or necessary to carry out the CBI's and MLRO's responsibilities under this Act. Hence, legally the MLRO does have access to the financial, administrative and law enforcement information upon the approval of the CBI.

273. In practice, the MLRO doesn't have direct access to any database that could be held by other authority. Although, some law authorities confirmed that they have received requests of information from the MLRO and that they have replied to those requests, all confirmed that there are no clear and specific procedures regarding this exchange of information and that each request is dealt with on a case by case basis. Information from the authorities is usually requested by official letter. Other competent authorities stated that coordination and exchange of information with the CBI, including the MLRO, do not exist. Other officials stated that the MLRO has very limited access to information from the CBI itself.

#### ***Requests for additional information from reporting entities (c.26.4)***

274. Pursuant to Article 8 of the AML Law, the CBI is authorized to require financial institutions it supervises and the institutions' auditing bodies to provide to the CBI all information and documents needed for the performance of the CBI's duties. Moreover, Article 22.5 of the AML Law provides that records required under this law shall be maintained in such a manner that subpoenas for such records by governmental authorities may be fulfilled within a reasonable period of time, not to exceed ten business days.

275. As a unit of the CBI, the MLRO has the power to request information directly from reporting entities; other competent authorities need a judicial decision (especially for banks).

276. There was no available information about the extent to which this right has been exercised. The assessment team understands that the MLRO must have specific information and cannot send a broad STR request asking an institution whether a person has an account or is otherwise known.

### ***Dissemination of reports (c.26.5)***

277. One of the MLRO functions pursuant to Article 12 of the AML Law is to cooperate and interact with and exchange information with Iraqi state authorities, competent bodies of other countries and international organizations on ML, financing of crime, and TF. In addition, the same Article provides that if the MLRO reasonably suspects that a transaction, conducted or attempted, involves funds derived from illegal activities, ML, funds to be used in the financing of crime, funds that a criminal organization has a right of disposal over, TF, or that the transaction is otherwise in furtherance of an illegal purpose, it shall immediately notify the competent prosecuting and investigative authority.
278. Pursuant to Article 13 of the AML Law, the CBI and the MLRO may, at the CBI's discretion, provide information and documents to Iraqi governmental ministries, authorities, and agencies concerning matters governed by this Law. Moreover, Article 18.2 of the AML Law requires from the financial institution that has reason to know that a proposed transaction or series of transactions is/are suspicious transactions to immediately report to and seek guidance and direction from the MLRO. Guidance provided by the MLRO as to how that institution should proceed, may include: *informing the competent prosecutor's office*. It should be the role of the FIU to analyze and disseminate disclosures of STR, rather than ask reporting entities to disseminate information to or inform directly the competent prosecutor's office.
279. The MLRO stated that it disseminates the financial analysis of the reports to the relevant law enforcement authority, which was confirmed by some of the competent authorities. However, the evaluation team received no statistics or analysis procedures that would indicate what "financial analysis" or value added the FIU disseminates to law enforcement authorities. In fact, the evaluation team received no information that could confirm that any report was ever referred or disseminated by the FIU to the judicial authorities.

### ***Operational independence (c.26.6)***

280. The AML law requires the CBI to establish the MLRO which shall be administratively subordinate to the CBI but shall retain operational independence. The MLRO shall be staffed and funded separately from the CBI, but shall be administratively subordinate to the Governor of the CBI.
281. The CBI has established the MLRO by an Administrative Order in 2005 as an administrative unit of the bank. All MLRO staff including its General Manager, are employees of the CBI and can be removed or mutated from their functions by a decision from the Governor.<sup>45</sup> Some of these employees are responsible for other functions within the CBI. At one time, the MLRO reported to the Banking Supervision department of the CBI. Pursuant to the CBI Administrative Order No. 3208 dated 11/12/2011, the MLRO now reports directly to one of the Governor Advisors and is required to send all its correspondence through this office in order for the Governor to take necessary decisions. This confirms that the FIU is not operationally independent. The fact that the Administrative Order links some departments directly to the Governor (i.e. the IT department), while other departments are linked directly to the Vice Governor (i.e. Statistics and Research Department),

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45 The current General Manager, Mr. Khaled Shiltagh, was appointed by CBI Administrative Order No. 1078 dated May 4, 2011 as a supervisor of the MLRO. This Administrative Order mutated the former MLRO supervisor to be the Assistant GM of the financial transactions unit of the CBI. CBI Administrative Orders No. 385 of 25/1/2007 and No. 941 of 25/3/2007 mutated 23 employees from 3 cancelled CBI units to the MLRO, including 4 senior managers, 2 managers and 6 assistant managers. Some of these employees are currently retired, others were mutated again.

demonstrates that in addition to not being independent, the work of the FIU is not viewed as a priority.

282. The lack of operational independence can further be supported by the fact that one of the MLRO sections does not perform any related AML/CFT functions. Pursuant to an Administrative Order No. 1044 issued on April 2, 2007, by the Human Resources department of the CBI, the task of certifying power of attorneys was removed from the legal department and given to the MLRO.
283. As an administrative unit of the CBI, and contrary to what is stated in the AML law and in CBI Administrative Order No. 1308 of 2007, the MLRO has no separate budget.
284. Moreover, as mentioned previously, pursuant to Article 13 of the AML law, exchange of information with national competent authorities is subjugated to the CBI discretion. The General Manager of the MLRO stated that the office can exchange information with competent authorities and foreign counterparts directly, without the need of a prior approval from the CBI Governor, in such cases, the Governor is only notified.

#### ***Protection of information (c.26.7)***

285. Pursuant to its establishment, the MLRO was physically situated in the CBI building. However, after the terrorist attack that targeted the CBI on June 13, 2010, in which many files and data were lost, the FIU was moved to one of the 3 floors rented by the CBI in a building owned by a commercial bank. Although the current building in which the MLRO is located is guarded by police officers, no surveillance cameras were installed at the entrance or inside the MLRO. Doors and office partitions of the MLRO are made from transparent glass. All the data is on one computer that is not password protected, and there is no main computer server. All data is backed up on a 4GB unencrypted USB. There is no clean desk policy. These factors indicate that the security measures in the MLRO are not sufficient enough to securely protect information held by it.
286. Article 12 of the AML Law prohibits officers or employees of the CBI who learn of a suspicious transaction that has been reported to disclose to any person involved in the transaction that the transaction has been reported, other than as necessary to fulfill the official duties of the officer or employee. This article applies equally to MLRO staff since they are all CBI employees.

#### ***Public reports (c.26.8)***

287. The MLRO has not publicly issued reports which include statistics, typologies and trends as well as information regarding its activities.
288. Iraqi authorities stated that the MLRO delivers a monthly report to the senior management of the CBI listing the activities of the Office throughout the month as well as statistics and the general trends of the Office. The MLRO also delivers a quarterly report to the General Directorate of Statistics and Research that include all activities of the Office and available statistics to be provided for specialized bodies in the Republic of Iraq in line with the context of work at the CBI. None of these were provided to the evaluation team and these do not constitute a report as provided for in the FATF Recommendation.

#### ***Egmont Group (c.26.9 & c.26.10)***

289. The authorities stated that after the CBI Governor approval, the MLRO sent on November 2011, an official request to the Special Investigation Commission (the Lebanese FIU) to be one of the



sponsors for joining the Egmont Group. Coordination on that matter is expected to take place after the adoption of this MER.

290. The MLRO is tasked to exchange ML/TF information with competent bodies of other countries (AML Law, Article 12). As such, this Article creates the possibility for the FIU to exchange information based on the *Egmont Group principles for information exchange between FIUs*. Iraqi authorities stated that they take necessary measures to observe the Egmont Group principles upon joining the said Group.
291. At the time of the onsite evaluation mission, no MOU was signed between the MLRO and other FIUs. Iraqi authorities stated that the exchange of information is currently being done only with MENAFATF members and on the basis of the MENAFATF chart. The MLRO stated that in 2011 it has received 10 requests of information from the Jordanian FIU, 3 from the Lebanese FIU and 2 from the Syrian FIU; to all it has responded positively.

### ***Resources, internal organization, professional standards and training (Recommendation 30)***

292. The FIU has no fixed number of staff assigned to it. Based on the organizational structure of the FIU, the current number of staff is 37 (the number provided during the onsite visit was 27), all are CBI employees. The GM is assisted by an AGM and heads 5 sections: Administrative and financial (9 employees); Audit and investigation (13 employees); Database (5 employees); Studies and researches (5 employees); and international cooperation and communications (3 employees).
293. Almost 30% of the employees have no university degree, some of those have a managerial rank. Most of the rest have a BA in management or economics, only 2 employees have a Bachelors Degree in law.
294. The use of IT is extremely limited (i.e. only four working computers for both the Audit and investigation section and the international cooperation and communications section).
295. As previously mentioned, the MLRO has no autonomous budget. The salary scale of the employees is based on the civil service scale.
296. The Administrative and Financial sections of the MLRO, which consists of 9 employees, do not perform any related AML/CFT function. These sections are responsible of carrying out an ancillary task of the CBI, which is certifying power of attorneys. From the overview provided, it clearly appears that the FIU staff has not received sufficient AML/CFT related training that would be sufficient to provide the staff with the skills necessary for financial analysis and financial investigation. In addition to in-house training, the FIU should also ensure that staff also receives external training to ensure a broad insight and exposure to ways of financial analysis.
297. The assessment team concurs with the view of most Iraqi authorities met during the onsite visit, that the MLRO lacks of qualified and experienced personnel, and lacks of financial and technical resources.

### ***Effectiveness of the FIU***

298. Competent authorities confirmed that the MLRO's role is very limited. Some authorities stated that the added value of the MLRO is that this office can request financial information from its foreign counterparts. Authorities have also confirmed that there are no clear and specific procedures to coordinate efforts between competent authorities.

299. The FIU is far from being centralized and independent and has almost no powers and little access to information to perform its tasks. Iraq needs to give more attention to analysis of STRs and training of staff; and should increase efforts in enhancing the resources, functioning and capacity of the MLRO. These factors impede effectiveness of the MLRO.
300. The fact that only 1 STR has been sent to the MLRO and that it doesn't have any TF cases (although Authorities stated that Hawala transactions through licensed money exchange institution in addition to oil smuggling are used to finance terrorism) demonstrates that the MLRO is not yet functioning effectively. This can be caused by the lack of guidance provided by the MLRO to ensure that reporting institutions have sufficient in-depth knowledge of what constitutes a suspicious transaction. The MLRO should provide more insight and guidance to reporting institutions into what is suspicious by providing information to the reporting institutions on ML/TF typologies and trends in Iraq.

### 2.5.2 *Recommendations and Comments*

- Review the legal framework in order to establish a Financial Intelligence Unit that serves as a national centre for receiving, analyzing, and disseminating disclosures of STR and other relevant information concerning suspected ML/TF activities.
- Review the legal framework and ensure that the MLRO/FIU has sufficient operational independence and autonomy and that it's free from undue influence or interference.
- Ensure that this MLRO/FIU is adequately structured, funded, staffed, and provided with sufficient technical and other resources to fully and effectively perform its functions.
- Staff of the MLRO/FIU should be appropriately skilled and provided with adequate and relevant AML/CFT training.
- The MLRO/FIU should be empowered to have access, directly or indirectly, on a timely basis to the financial, administrative and law enforcement information that it requires to properly undertake its functions, including the analysis of STR, without needing the prior authorization from the CBI or from any other authority.
- The MLRO/FIU should:
  - make more frequent use of its authority to obtain from reporting parties additional information needed to properly undertake its functions in a more efficient way;
  - take the appropriate measures to ensure that information held by the MLRO is securely protected;
  - provide remaining financial institutions (i.e. Insurance Companies) and all DNFBPS with guidance regarding the manner of reporting, including the specification of reporting forms, and the procedures that should be followed when reporting; and
  - Publicly release periodic reports which include statistics, typologies and trends in Iraq, as well as information regarding its activities.

### 2.5.3 Compliance with Recommendation 26

|      | Rating | Summary of factors relevant to s.2.5 underlying overall rating                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
|------|--------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| R.26 | NC     | <ul style="list-style-type: none"> <li>• The MLRO/FIU is not a national centre for receiving, analyzing, and disseminating disclosures of STR and other relevant information concerning suspected ML/TF activities.</li> <li>• The MLRO/FIU does not have sufficient operational independence and autonomy.</li> <li>• The MLRO/FIU is not adequately structured, funded, staffed, and provided with sufficient technical and other resources to fully and effectively perform its functions.</li> <li>• The MLRO/FIU staff is not appropriately skilled and provided with adequate and relevant AML/CFT training.</li> <li>• The MLRO/FIU does not have access, directly or indirectly, on a timely basis to the financial, administrative and law enforcement information that it requires to properly undertake its functions, including the analysis of STR, without the consent of the CBI.</li> <li>• The MLRO/FIU is not making use of its authority to obtain from reporting parties additional information needed to properly undertake its functions in a more frequent and efficient way.</li> <li>• Information held by the MLRO/FIU is not securely protected.</li> <li>• Some financial institutions (i.e. insurance companies) and all DNFbps have not been provided with guidance regarding the manner of reporting, including the specification of reporting forms, and the procedures that should be followed when reporting.</li> <li>• The MLRO/FIU does not publicly release periodic reports which include statistics, typologies and trends in Iraq, as well as information regarding its activities.</li> </ul> |

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

### 2.6.1 Description and Analysis

#### Legal Framework

301. The investigation and prosecution of crime throughout the whole of Iraq (including the Kurdish region) is covered in the Criminal Procedure Code 1971.
302. Article 39 designates ‘Investigating Officers’ as: (i) Police Officers, police station commanders and commissioners. (ii – v) Designates persons within other Government office or department as ‘Investigating Officers’ but their competence is limited to area of work assigned to that Government office or department.
303. Article 40(A) states: Each investigating officer acts within the bounds of his area of competence, under the supervision of the investigative judge and in accordance with the provisions of the law.
304. Article 43 permits the initial investigation of a crime, the crime scene and seizure of evidence by an investigating officer until the arrival of an Investigative Judge.

305. Article 46 states an investigating officer's task ends when the investigative judge arrives, except in regard to any matter for which they assign responsibility to him.
306. Articles 51 and 53 deal with the assignment of Investigating Judges to cases; Judges are assigned as 'Investigative Judges' by the Supreme Judicial Council and generally undertake their work within an assigned geographical/administrative area and investigate all crimes which in whole or a part occurred in that area. In certain 'high profile' crimes Investigative Judges are assigned (by the Supreme Judicial Council) to work within a particular crime specialism, notably in cases of Terrorism (which includes Terrorist Financing) and also corruption cases undertaken by COI, but not in other Money Laundering cases.
307. Articles 58 and 59 allow the Investigative Judge to question any witness where their evidence would benefit the investigation. Depending upon the circumstances the witness may either; orally or by written summons be ordered to appear before the Judge. In cases of non-compliance with the summons the Judge may issue an arrest warrant to bring the witness before the court for questioning.
308. Article 74 allows the Judge to issue a written order compelling the production of any document that would assist the investigation. Search may also be authorized where there is a worry that documents may not be produced or destroyed.
309. Article 75 and 76 allow the Judge to order a search of any premises where items involved in an offence under investigation are believed to be located.

***Recommendation 27 and 28 (law enforcement powers)***

***Designated law enforcement authorities (c.27.1)***

310. The MOI for the 15 Iraqi Governorates (which does not include the 3 Kurdish Governorates where no such unit exists) has, in relative terms, a small Economic Crimes Department within which there is a ML Bureau that has 5 staff. The MOI also has a Counter Terrorism Department, focusing principally on the predicate crimes of Terrorism, but within this section, in Baghdad there are 8 staff assigned to TF. The other 14 Governorates also have Counter Terrorism Teams each with 1 team member having TF responsibility. The 3 Kurdish Governorates have no designated TF team. The primary focus for these MOI members is the investigation of the underlying predicate crime and not money laundering or terrorist financing.
311. The Counter Terrorism Service (CTS), which reports to the Prime Minister's Office, has its own separate investigative and judicial officers some of whom deal with TF. However, the adequacy of this Service and its exact make-up dealing with a TF designation could not be 'tested' as officials were not allowed to discuss resourcing within this Service. The evaluation team was not provided with any statistics from the Service to 'evidence' work undertaken in the TF field. The emphasis of this work focuses on the predicate crime and not money laundering or terrorist financing.
312. Matters concerning public sector corruption and associated ML fall within the jurisdiction of the Commission on Integrity (COI). The COI is comparatively well resourced and has a wide responsibility in the combating corruption from education, prevention, the oversight of officials 'asset declaration' to the investigation of cases corruption and associated cases. However, like the work of other LEAs in Iraq, the COI's work focuses rather narrowly on the predicate crimes of corruption, rather than pursuing money laundering as a stand-alone crime.

313. Investigative Judges are directly assigned and involved in the work of the CTS and COI; this is not the case for LEAs working on other predicate crime cases. Notwithstanding the specialized or general appointment of an Investigative Judge, none of the Judges have any ML or TF specialization.
314. The newly formed National Security Agency (NSA) has ML and TF functionality, and comes under the auspices of the Prime Minister's Office. Its role is purely the gathering of intelligence across the spectrum of economic crime (including ML and TF) and providing intelligence to officials of the executive levels of government. The ML and TF functionality in NSA is as part of their general economic intelligence gathering process which has no exclusive ML or TF role.

***Ability to Postpone/Waive Arrest of Suspects or Seizure of Property (c. 27.2)***

315. Arrest and seizure by the Investigation Officer (police) is overseen and directed by the Investigative Judge; the Judge has discretion to use of all lawful procedures to investigate a case which includes: delaying or waiving arrest or delaying or waiving seizure of any property in order that they may gather further evidence to build a case.
316. While the judiciary and police were able to cite examples of where delaying arrests or seizures have been used successfully in some drug cases, it is not clear that these techniques are used in other types of cases involving financial crimes. Although provisions allowing authorities to delay arrest and/or seizure are available when investigating financial crimes, including ML and TF, such techniques are not used and do not appear to be the general practice in ML or TF investigations. The perception among the Judiciary and Police is that funds and people involved in financial crimes must be expediently arrested and seized to prevent that person and/or the funds from fleeing the jurisdiction. Poor domestic co-operation between Governorates and bureaucratic procedures both reduce the effectiveness of these provisions. Internationally, there were no concrete examples of such techniques being used.

***Additional elements***

***Ability to Use Special Investigative Techniques (c. 27.3)***

317. Controlled delivery of the proceeds of crime or funds intended for use in terrorism as well as undercover operations are all permissible (legal) techniques that could be deployed with authority of the Investigating Judge, however, such techniques have never been applied to ML and T/F.

***Use of Special Investigative Techniques for ML/FT (c. 27.4)***

318. Although such special techniques are permissible under the law, the principal difficulty is the lack of technical capacity within the investigative services and or the agencies or companies controlling such services.

***Specialized Investigation Groups & Conducting Multi-National Cooperative Investigations (c. 27.5)***

319. No such specialized groups or task forces that focus on ML/TF were identified to the evaluation team. The concept of multi-agency working or a tasks force is not one that is familiar to Iraqi authorities.

***Review of ML & FT Trends by Law Enforcement Authorities (c. 27.6)***

320. There are no cases on which any meaningful trends could be formulated.

***Powers of production, search and seizure c.28.1***

321. Although there is a clear legal basis to compel the produce and or search for documents (Articles 74–75 Criminal Procedure Code 1971), Judges and Investigating Officers indicated in practice this was not usually done. Where bank documents were required, assistance of the CBI was requested (either through the Banking Supervision Department or the MLRO), to obtain and analyze such documents. It is the view of the evaluation team that financial documents, outside general banking, are generally poorly understood by LEAs charged with investigation of ML and TF. Consequently, such documents are not generally sought, although sufficient legal provisions exist to compel production of financial documentation. No evidence was provided to the evaluation team that other forms of financial documents were ever sought.

***Powers to take witness statements c.28.2***

322. The Criminal Procedure Code 1971, Article 58 -59 clearly allows the taking of witness statements and is common place in general crime investigations. However this appears not to be done in financial investigations as the underlying documents are either not sought or where they are obtained it is through a secondary party, i.e., the CBI using Central Bank provisions.

***Statistics (Recommendation 32)***

323. No statistics were provided that break down crime generally or specifically for ML or TF investigations. As noted above – emphasis is placed on the investigation of predicate crime and not the ML/TF investigations, so, it is likely that such statistics for ML and TF do not exist.

***Adequacy of Resources (Recommendation 30)***

324. ‘Adequacy of resources’ is generally insufficient. The ‘history’ leading up to and including events in 2003 resulted in the breakdown of an established ‘rule of law’ and the LEA infrastructure that supported it. Consequently, LEA processes are somewhat in their infancy and have to be rebuilt all the way from organizational structures to jurisdictional competencies. LEAs also need to be better equipped and resourced, including improving building infrastructure and training (across the spectrum of policing) resources. This will require significant efforts, particularly when undertaken in difficult and sometimes unstable and unsafe, surroundings.

325. There are now various LEA organizations and departments charged with the investigation of ML and TF which have overlapping responsibilities and competencies in some cases. The evaluation team received little staffing data or statistics, however, all of these LEAs are poorly staffed and resourced when it comes to ML and TF investigations. With regard to MOI resources, for example, it has approximately 160,000 staff in total of which 75 persons are within the Economic Crime Section and of those only 5 have a money laundering responsibility. The MOI Counter Terrorism Team has within its Baghdad team 8 officers, plus a further 14 officers, one in each Counter Terrorism Team stationed within each of the 14 (non-Kurdish) Governorates.

326. Professional standards are hampered as agencies acknowledge that their technical skills in the investigation of financial crime, including ML and TF, are poor. Officials also identified as impediments the lack of technical resources, together with a low level of understanding of ML and

TF tools and techniques, and limited use of these. The Penal Code §327 has a general provision criminalizing unlawful disclosure by a public official or agent of information coming within their knowledge in the course of their duty. Other than this, LEA officers assigned to ML and TF cases stated that they are subject to the normal vetting procedures and staff supervision rules as imposed by their superiors within that ministry or agency. The evaluation team was not made aware of any formal written procedures covering vetting or day-to-day supervision.

327. There is no domestically established AML or CFT training program for Investigative Judges or Investigation Officers – the judiciary is often overlooked in operational training programs, which indicates a lack of recognition of importance of the role of the judiciary in their investigative functions. Training course to date (since 2003) have tended to be ad-hoc, one-off training, 1 or 2 week programs provided by a myriad of donor countries and organizations with little focus, by both donors and recipient agencies, on overlap, duplication and sustainability.

**2.6.2 Recommendations and Comments**

- Consider a national AML/CFT policy and strategy, in particular here, bringing together and setting priorities for the various LEA currently charged with investigation and prosecution of ML and FT.
- The policy should also identify and designating ‘lead agencies’ status to particular agencies and or departments across ML and TF cases taking into account certain cases will cross over different predicate crimes.
- LEAs must prioritize ML and TF investigation and intelligence gathering capability and see them as: (i) stand-alone crimes to be investigated in their own right, (ii) tools that aid the investigation of predicate crime and (iii) tools to assist the court in identification of illicit assets for confiscation and or forfeiture.
- Consider a national AML/CFT training policy that is domestically (Iraqi) owned and run. The current ad-hoc approach to training lacks sustainability.
- Consideration should be given to special training and thereby the appointment of specialist Investigating Judges to LEA units charged with in responsibility of M/L or T/F.
- Increasing both manpower and technical resources to units charged with the investigation and prosecution of ML and TF offences.

**2.6.3 Compliance with Recommendations 27 & 28**

|      | Rating | Summary of factors relevant to 2.6 underlying overall rating                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
|------|--------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| R.27 | PC     | <ul style="list-style-type: none"> <li>• Although the LEAs appear to have designated bodies for ML/TF cases, their priority is the investigation of the underlying predicate crime and not of money laundering or terrorist financing.</li> <li>• There is overlap and no clear demarcation as to designated responsibilities for: (1) MOI Economic Crime Unit on money laundering; (ii) the MOI Counter Terrorism Unit on terrorist financing; and (iii) the CTS for terrorist financing.</li> <li>• While the Counter Terrorism Service and the Commission on Integrity both have Investigating Judges assigned to them, these Judges lack specialized training in ML and TF and focus principally on the underlying predicate crimes.</li> <li>• ML and TF are not investigated as stand-alone offences.</li> <li>• Although the Judiciary has legal authority to postpone or waive arrests in appropriate cases, yet this rarely done in cases involving any form of funds.</li> </ul> |

|      | Rating | Summary of factors relevant to 2.6 underlying overall rating                                                                                                                                                                                                                        |
|------|--------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| R.28 | PC     | <ul style="list-style-type: none"> <li>Although the Judiciary has full legal powers to compel, search and seize all and any documents (including banking etc) and take witness statements, these powers are not a priority in ML and TF cases, and thus are rarely used.</li> </ul> |

## 2.7 Cross Border Declaration or Disclosure (SR.IX)

### 2.7.1 Description and Analysis

#### Legal Framework

CPA Order 93, 2004 (Anti-Money Laundering Act)

328. Article 21: Cross-Border Currency Reporting Requirement:

*The Central Bank of Iraq is authorized to require all persons to submit a report of currency and monetary instruments with the Money Laundering Reporting Office and/or the Iraq Customs Service when transporting currency or other monetary instruments greater than 15 million Iraqi dinar from a place within Iraq to a place outside Iraq, or from a place outside Iraq to a place within Iraq.*

*A report under this article shall be filed at the time and place the MLRO prescribes. The report shall contain the following information to the extent the MLRO prescribes:*

- *the legal capacity in which the person filing the report is acting;*
- *the origin, destination, and route of the currency and/or monetary instruments;*
- *the amount and kind of monetary instruments and/or currency transported;*
- *other additional information as required.*

329. To activate this Article, a committee from the MLRO and the General Commission for Taxes was formed to design a mechanism for physical cross-border transportation and to combat money laundering and terrorism financing activities. The Governor of the Central Bank approved the recommendation of the committee to adopt a declaration system. However, no measures appear to have been undertaken to implement this recommendation, as officials indicate that an amendment to the Customs Law No. 23 (1984) would be required.

330. The CBI has, however, issued two circulars regarding cross-border cash movements:

- Circular No.14, 2006 includes instructions on transferring foreign currency and IQDs out of Iraq. These instructions allowed adult Iraqis and foreigners to transfer out an amount of no more than \$10,000 and no more than IQD 200,000 (USD 175) in its possession when leaving Iraq and also to take no more than 100 grams of gold. Instructions for transferring out Iraqi Dinars apply for both Iraqis and foreigners residing in Iraq.
- Circular No. 9, 2007 allows Iraqis or foreigners to transfer to Iraq an amount of no more than \$10,000 or its equivalent in cash and IQD 200,000 (USD 175) in cash. Amounts higher than this must be transferred in or out of Iraq through the banking system via wire transfer or deposit using the services of banks working at border outlets and in the names of individuals concerned.

331. Prior to the liberalization of the Iraqi currency, Iraq had currency control regulations, the limits and procedures of which were set out in Circulars issued by CBI, and these were supported by underlying judicial process and a jurisdictional court. The currency liberalization saw the cessation



of those currency controls and together with that the closure of the judicial process and assigned court. The evaluation team was not made aware of any other provision within the Central Bank Law or the Customs Law that allows the Central Bank to delegate or assign responsibilities related to movements of cross-border currency or bearer negotiable instruments to the Customs Service or any other LEA.

332. The lack of procedures within these current Circulars and the closure of the designated court raised doubts about the legal basis under which these two Circulars are issued and implemented. The evaluation team was informed that in the few cases of currency smuggling that have reached the criminal courts, the court declined jurisdiction. These factors lead the evaluation team to conclude there is no legal basis for the implementation of these Circulars.

### ***Special Recommendation IX***

#### ***Mechanisms to Monitor Cross-border Physical Transportation of Currency (c.IX.1)***

333. These Circulars do not meet the requirements pursuant to SRIX as they only affect cash inbound and outbound above USD 10,000 and above, as well as gold up to a maximum weight of 100 grams that is outbound only. The evaluation team was not made aware that the Circular specified a minimum or maximum carat rating applicable to the weight nor at which rate the gold would be valued. The Circulars also lack any procedure for dealing with the cash or gold other than a requirement of the Customs Service to ensure that cash in excess of these requirements be paid into a bank account so the cross-border transfer can be executed by wire transfer.
334. Officials informed the evaluation team that the only places these Circulars are attempted to be enforced are at the two largest airports in Iraq where there are more staff and sufficient scanning equipment to help enforce them. They also identified that these controls were not in force within the 'VIP' area of the airports. Officials also cite the CBI Circulars lack any established procedures to conduct any follow-up action and where they have approached the bank at the airport they were unaware of the need for undertaking the wire transfer for the passenger. Officials were unable to identify procedures in relation to the out bound movement of gold over 100 grams but stated that gold they see is mostly personal jewelry and rarely is much above the 100 grams and then only by a few grams.

#### ***Request Information on Origin and Use of Currency (c.IX.2)***

335. There is no national policy or implementation for authorities to request information on the origin or use of currency.

#### ***Restraint of Currency (c.IX.3)***

336. Restraint procedures are not included in the CBI Circulars, as noted above where judicial processes have been attempted the court has declined jurisdiction.

#### ***Retention of Information of Currency and Identification Data by Authorities when appropriate (including in Supra-National Approach) (c.IX.4)***

337. There is no national policy or implementation on retention of information of currency and identification of data by authorities.

***Access to Information by FIU (including in Supra-National Approach) (c. IX.5)***

338. Officials were not able to cite any figures of statistics but said data was sent to the FIU.

***Domestic cooperation (c. IX.6)***

339. Examples were quoted of co-operation between Customs and the MoI, but the cases pursued by the MoI were declined by the court.

***International cooperation (c. IX.7)***

340. Officials were not able to provide examples, statistics or evidence of any such co-operation.

***Sanctions for Making False Declarations / Disclosures (applying c. 17.1-17.4 in R.17) (c. IX.8)***

341. As noted above the courts have declined jurisdiction on cross-border cash cases.

***Sanctions for Cross-border Physical Transportation of Currency for Purposes of ML or TF (applying c. 17.1-17.4 in R.17) (c. IX.9); and Confiscation of Currency Related to ML/FT (applying c. 3.1-3.6 in R.3) (c. IX.10)***

342. The courts decline jurisdiction in such cases, so no sanctions are imposed.

***Confiscation of Currency Pursuant to UN SCRs (applying c. III.1-III.10 in SR III) (c. IX.11)***

343. Officials were not aware of any such cases.

***Notification of Foreign Agency of Unusual Movement of Precious Metal and Stones (c. IX.12)***

344. Officials were not able to provide examples, statistics or evidence of any such co-operation.

***Statistics (R.32)***

345. Officials were not able to provide any statistics covering cross-border cash or monetary instrument reporting.

***Adequacy of Resources – Customs (R.30)***

346. Iraq has a large and porous land borders that with neighboring countries of: Kuwait, Saudi Arabia, Jordan, Syria, Turkey and Iran and a small open sea opening. The Customs Service has approximately eighteen controlled entry points, with a further three in the Kurdish region. Customs officers only operate at these controlled entry points. Human and technical resources are small at all entry points and none have particular AML/CFT or cash/monetary instrument detection skills. Customs Officers generally work a three shift system: one team on for 24 hours followed by 48 hours off while the next team starts its 24 tour and 48 hours off etc. The rest of the border falls under the jurisdiction of the MoI, Border Police.

***2.7.2 Recommendations and Comments***

- To implement cross-border controls regarding cash and monetary instruments (in accordance with SR IX) an underpinning law is necessary. This must clearly layout process, procedures,

juridical oversight and penalties for all the relevant authorities. Customs Service only covers the controlled entry points, powers and provisions should also be granted to other enforcement bodies.

- Training in cross-cross border currency and monetary instrument controls and investigative techniques is necessary for all controlled entry points (Customs) as it is with non-controlled borders (MOI; General Police and Border Police).
- Customs and other border agencies should review the adequacy and amount of technical equipment needed to support such cross-border controls on a needs basis that will equip (and train them in the use of) them accordingly.

### 2.7.3 Compliance with Special Recommendation IX

|       | Rating | Summary of factors relevant to s.2.7 underlying overall rating                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|-------|--------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| SR.IX | NC     | <ul style="list-style-type: none"> <li>• The legal basis for reporting cross-border movements of currency and monetary instruments is lacking.</li> <li>• CBI Circulars attempting to implement cross-border reporting lack necessary process, procedures and penalties.</li> <li>• Where, in limited cases, cross-border cases have been brought before the court the court has declined jurisdiction.</li> <li>• Procedures that are invoked in cases of cross-border movements do not cover monetary instruments.</li> <li>• Operational procedures have only been invoked at two major airports.</li> </ul> |

### 3. PREVENTIVE MEASURES —FINANCIAL INSTITUTIONS

#### *Customer Due Diligence and Record Keeping*

##### *3.1 Risk of ML or TF*

347. The Iraqi financial system is dominated by the banking sector which accounts for more than 75% of its financial assets. There are currently 46 banks – seven of which are state-owned. Private commercial banks are generally quite small, seven of them have foreign participation, and there are nine Islamic banks. The total assets of the banking sector (2010 figures) is 70 trillion IQD, and the assets of state-owned banks account for approximately 90% of this, with the two largest state-owned banks, Rafidain Bank and Rasheed Bank together holding total assets of 60.3 trillion IQD.
348. Little information about the extent or quality of supervision of Rafidain Bank and Rasheed Bank is available and none was made available to the Evaluation team during the on-site mission. However, a 2011 World Bank Financial Sector Review of Iraq states that the Ministry of Finance continues to determine the key policies and practices of the 2 largest state-owned banks and the CBI cannot effectively supervise these banks. This report goes on to say “[t]he fact that the CBI is unable to exercise effective supervision over Rafidain Bank and Rasheed Bank implies that by far the greater part of the banking system in terms of assets is not under effective CBI supervision.”<sup>46</sup>
349. Pursuant to the AML Law, AML/CFT obligations apply to financial institutions generally, including participants in the insurance and securities sectors. However, outside the banking sector there is a low level of awareness of AML/CFT obligations and no evidence was found that CBI supervises, regulates, or monitors compliance with any insurance or securities sector activities. Neither insurance nor securities legislation vest in either of these respective supervisory authorities power to monitor or enforce compliance with AML/CFT obligations.
350. The insurance sector is small and underdeveloped and the current Insurance Act does not grant sufficient powers to the insurance supervisor for effective supervision of the insurance sector generally, nor of compliance monitoring in the sector of AML/CFT obligations. In fact, the insurance supervisor does not possess authority to conduct on-site inspections.
351. The securities sector is also very small, underdeveloped and the legal framework for supervision and regulation is weak. As of February 2011, there were 85 companies listed on the Iraqi Stock Exchange (ISX), including privately owned joint stock companies and companies in which the state share ownership is equivalent to 25% or more. Total market capitalization of approximately 3.5 trillion IQD, accounts for about 3.5% of the Iraqi GDP. Although the ML/TF risk in the insurance and securities sectors may be small, they are likely to increase rapidly as the economy grows.
352. The AML Law does not yet require classifying customers or accounts as high risk, nor has any guidance been issued regarding ML/TF risks. Thus, no special or “enhanced” due diligence procedures are required to mitigate higher risk of certain clients, accounts, products or services or transactions connected to a specific country, nor has any advice or guidance been issued in relation to what might be considered as lower risk.
353. As a post-conflict country, Iraq is in the process of re-building, not only its infrastructure, but also its rule-of-law and other regulatory systems. In this environment, the level of criminal financial activity is likely to be rather high, and likely to change frequently and rapidly. Thus, building an effective

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46 World Bank Financial Sector Review of Iraq, 2011, pg. 29.

AML/CFT system will require frequent re-calibration of the actual risks to ensure the design of the system is effective in addressing what are likely to be constantly changing risks. In such environment it is critically important to conduct regular assessments of overall risks of financial crime in the country to ensure the most important risks are appropriately addressed and mitigated. Currently, there appears to be no concerted strategy to systematically identify measure and address overall ML or TF risks. Without such information that can serve as part of the architectural plan for building an effective AML/CFT system, there is a greater risk that serious ML/TF activities may slip under the radar.

### **The Regulatory Approach in Iraq**

354. In respect of general financial regulation, supervision and enforcement, legislation is written in an ambiguous manner which creates challenges in implementation and enforcement.<sup>47</sup> This degree of discretion vested in supervisory authorities, without apparent checks, balances or guidelines within which such discretion may be exercised presents risks that such discretion can be capricious, particularly regarding compliance monitoring and enforcement. Also, the amount of discretion delegated to financial institutions to apply risk-based approaches goes beyond that contemplated by the international AML/CFT standards. This can undermine effectiveness and credibility of the AML/CFT system.
355. Although supervisory laws provide for the imposition of various sanctions, including monetary penalties, these kinds of penalties are rarely ever used. In the financial sector, the most frequently utilized sanctions are warning letters, or, in the case of banks, preventing their participation in the very important currency auctions.

### **Law / Regulation / Other Enforceable Means**

356. The legacy of the past has left Iraq with a legal system, the foundations of which have been so damaged; the “rule of law” in today’s society often has little resemblance to what words appear in written form on any legal instrument. Although laws are theoretically enforceable, it is believed that Iraq has more than 29,000 laws, regulations and decrees, many with contradictory provisions that have not been repealed.<sup>48</sup> Although financial sector laws authorize supervisory authorities to issue regulations, it is difficult to distinguish enforceable provisions from those which are not enforceable.
357. International AML/CFT standards require that “other enforceable means” must be: guidelines, instructions or other documents or mechanisms that set out enforceable requirements with sanctions for non-compliance, and which are issued by a competent authority or a self-regulatory organization.

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47 AML Law:

- Article 2(6): “*The CBI may, by regulation, determine that the definition of financial institution applies only to entities above a specified size and designate other persons who shall also be considered financial institutions for purposes of this Act.*”
- Article 11: “*The CBI may require payment or reimbursement from a financial institution it supervises for the cost of the CBI’s supervisory activity under this Law (including the cost of legal, accounting, and auditing fees).*”
- Article 20: allows the CBI to exempt from CTR reporting obligations “*any other person so designated by the CBI in the CBI’s sole discretion.*”

48 A USAID project supported by the World Bank states as its objective “Fast track reform of Iraq’s enormous body of existing laws, to implement a systematic review of Iraq’s 29,000 laws, regulations and decrees, with a particular focus on removing impediments to the private sector, addressing overlap, conflicting roles and responsibilities of ministries.”

358. The CBI has clear legal authority to supervise and regulate the financial sector, which it does by issuing regulations. The CBI also issues “Circulars” which can be enforceable, but most AML-related Circulars are not written in mandatory or obligatory language, and are not used by the CBI as enforcement tools. In fact, no sanctions have been imposed for non-compliance with provisions of the AML-related CBI Circulars. These Circulars are written in a manner that is recommendatory or advisory in nature. For example:

|     | <b>Item &amp; date</b>             | <b>Title (topic)</b>              | <b>Description of contents</b>                                                                                                                                                                                                                                           |
|-----|------------------------------------|-----------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1.  | CBI Circular # 2<br>(24/1/2012)    | CDD/KYC                           | Stresses importance of compliance with AML Law #93 (2004) and implementation of CDD/KYC requirements & reporting obligations.                                                                                                                                            |
| 2.  | CBI Circular #19<br>(8/8/2011)     | CD: previous AML Circulars & docs | Providing financial brokerage firm, banks, remittance companies, money exchanges & investment companies with a CD of previously issued AML Circulars and reminding to report suspicious transactions.                                                                    |
| 3.  | CBI Circular #7<br>(8/3/2011)      | Questionnaire                     | Requesting banks to complete & return a questionnaire related to the AML/CFT challenges so CBI can better understand the risks and play a role in mitigating them.                                                                                                       |
| 4.  | CBI Circular #8<br>(29 Mar. 2011)  | AML/CFT obligations               | Requesting that banks & FIs comply with AML/CFT obligations.                                                                                                                                                                                                             |
| 5.  | CBI Circular #22<br>(29 July 2010) | MVTs AML obligations              | Requesting money transfer companies to implement AML obligations.                                                                                                                                                                                                        |
| 6.  | CBI Circular #30<br>(3/11/2010)    | AML Compliance Officer            | Requesting financial brokerage firms, banks, remittance companies, money changers, investment companies, & stock exchange companies to designate AML Compliance Officer; elaborates qualifications & functions, & requires FIs to notify the AMRO of the name of AML CO. |
| 7.  | 2 Circulars in 2009                | FATF 40 + 9 & Methodology         | Providing banks and remittance companies with copies of FATF 40 + 9 & Methodology and requests “to implement relevant recommendations.”                                                                                                                                  |
| 8.  | CBI Circular #74<br>(6/10/2009)    | Article on Fraud in Gulf region   | Providing banks & remittance companies with a journal article on financial fraud in the Gulf region.                                                                                                                                                                     |
| 9.  | CBI Circular #51<br>(10/2/2009)    | Internal Audit Units              | Reminding banks & remittance companies to ensure Internal Audit Units are independent, w/trained staff & have necessary human, financial & technical resources in order to test effectiveness of AML/CFT functions and controls.                                         |
| 10. | CBI Public. #39<br>(16 Sept 2008)  | CDD Reminder                      | Reminding FIs to comply with CDD requirements of foreign transactions.                                                                                                                                                                                                   |
| 11. | CBI Circular #28<br>(17/4/2008)    | Frequency of STR reports          | Requesting banks & remitters to send financial statements every 15 days, stamped by Compliance Unit & “confirming that no suspicious transactions were executed.”                                                                                                        |
| 12. | CBI Circular #22<br>(7/10/2007)    | Application of IOSCO Principles   | Requesting Iraq Stock Exchange to apply the 2002 IOSCO Objectives and Principles of Securities Regulation.                                                                                                                                                               |

|     | Item & date                              | Title (topic)          | Description of contents                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
|-----|------------------------------------------|------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 13. | CBI Circular #__<br>(31 July 2006)       | CDD/KYC                | Reminding FIs: <ul style="list-style-type: none"> <li>• Acct opening or txns &gt; 5 million IQD, obtain CDD identity details: name, place/dob, mother's name, work, address, email, phone, fax #.</li> <li>• "Individuals willing to transfer IQD 15 million should report to the bank: destination of txn, ccy, type/amt, means of transfer."</li> <li>• Banks to submit bi-monthly STR declaration reports to AMLO of CBI.</li> <li>• Report "dubious" txns within 1 week &amp; stop txn until AMLO allows execution.</li> <li>• If any doubt, banks "may verify identity . . . and may close acct of customer."</li> </ul> |
| 14. | CBI Circular<br>(not numbered & undated) | AML Compliance officer | Requesting FIs provide names of staff in AML compliance unit to CBI.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |

359. Many of the AML Circulars are written in a manner that lacks a mandatory or obligatory nature, and many are simply reminders, repeating information contained in previous Circulars. This, together with the lack of evidence of any sanctions imposed for non-compliance with provisions contained in the Circulars leads to a conclusion that the AML-related Circulars are not being used to enforce compliance with AML obligations.

360. Additionally, some financial institutions indicated that it is difficult for entities and persons to even obtain copies of laws, regulations, Circulars or other legal instruments. To address this problem, the CBI issued Circular No. 19 (8/8/2011) which provided financial brokerage firm, banks, remittance companies, money exchange companies, and investment companies with a CD containing all AML-related Circulars<sup>49</sup> issued by the MLRO to date. However, for future development of an effective rules-based financial system, and an effective AML/CFT system, greater clarity is needed to distinguish what legal instruments are mandatory, legally binding and enforceable from those which are merely advisory in nature and constitute guidelines or guidance. Effectiveness in implementation and compliance requires that instruments which contain mandatory provisions which, when not effectively implemented can be sanctioned, should be issued in one form, and those which are merely advisory in nature should be clearly identified as such.

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

#### 3.2.1 Description and Analysis

##### Legal Framework

361. The legal framework covering obligations related to Recommendation 5-8 are contained in the following laws and regulations:

##### The Central Bank Law of 2004/56 (CPA #56)

- Article 4 § 2 enumerates its functions, states that "*the CBI may take whatever action it deems necessary to: (i) counter money laundering and terrorist financing and (ii) regulate and*

<sup>49</sup> A multitude of laws and regulations, as well as CBI Circulars are not easily or publicly accessible which poses challenges for those endeavoring to comply with them.

*supervise lending companies, microfinance companies and any other non-bank financial institutions not otherwise regulated under Iraqi law.”*

- Article 4 §3 authorizes the CBI to issue regulations to carry out its functions, and pursuant to this authority, in 2011 the CBI has issued prudential regulations.

362. **The Banking Law (Sept. 19, 2003)**, Article 2 sets forth regulatory objectives to include “*helping to reduce financial crime, including fraud, money-laundering and terrorist financing.*” It further stipulates that “*the CBI shall discharge its functions in a way which is compatible with the regulatory objectives and which the CBI considers most appropriate for the purpose of meeting those objectives.*”

363. **The AML Law (2004) (§5)** defines “financial institution” to include:

- *Banks*
- *Managers of investment funds*
- *Insurance institutions which carry on direct life insurance or offer or distribute shares of investment funds*
- *Persons who trade in securities*
- *Money transmitters, direct and indirect, formal and informal, including persons who provide services related to payments, including but not limited to electronic transfers on behalf of 3rd parties, and persons who issue or manage means of payment, such as credit cards and travelers checks, or persons who undertake hawala transactions*
- *Foreign currency exchange houses, or any other entity that effects foreign exchange transactions on a regular basis above 15 million Iraqi dinar per week.*

364. Article 6 of the AML Law further states that the definition of financial institution also includes “*persons who, on a professional basis accept, keep on deposit, invest or transfer, or assist in the investment or transfer of financial assets belong to others, including:*

- *Undertake credit transactions (including consumer credit or mortgages, factoring, financing of commercial transactions or financial leasing);*
- *Trade on their own account or for others, in bank notes or cash, money market instruments, currency, precious metals, raw materials for use in production of other items, commodities or securities (bearer or other), and derivatives of any such tradable items;*
- *Offer or distribute shares in funds, in the capacity of the distributor of domestic or foreign investment funds, or in the capacity of representatives of foreign investment funds;*
- *Undertake asset management*
- *Make investments as investment adviser;*
- *Keep or manage securities; and*
- *Deal in precious metals, stones or jewels.”*

365. Based on the above, the AML Law encompasses all relevant financial activities that must be subject to AML obligations.

366. Articles 15-18 of the AML Law contains CDD/KYC provisions on verification of the identity of the customer (Art. 15), identification of beneficial owner (Art. 16), verification requirements when suspicions arise (Art. 17), and requirements for the purpose and nature of the business relationship (Art. 18).



367. Article 15 of the AML/CFT Law requires:

- verification of customer identity when opening an account for any amount or performing a transaction, or series of transactions whose value is great than or equal to 5,000,000 IQD (USD 4,366) for a non-account holder
- (for legal and natural persons) obtaining and recording the customer's legal name and other names used, address, telephone number, fax, number, email address, date and place of birth
- (for legal persons only) corporate charter or other establishing document, nationality, occupation, public position held and/or name of employer, an official person identification number or other unique identifier contained in an unexpired official document that bears a photograph of the individual customer, type of account and nature of the banking relationship and signature.

368. Article 15 states that the financial institution may determine the extent it uses these measures on risk sensitive bases depending on the type of customer, business relationship or transaction, but shall verify all information collected. For transactions of non-account holders, where the total value of the transaction (or series of related transactions) is less than 5 million IQD (USD 4,366), the financial institution need only collect and verify the customer's name and address.

369. **Art. 15, entitled "Verification of the Identity of the Customer"** requires:

- that financial institutions shall check the name of the customer against a list of designated individuals and entities compiled by CBI. If a positive match is made financial institutions must report the individual or entity to the CBI;
- that if a suspicious transaction is detected, the financial institution must collect information described in bullets above, even if the amount does not exceed the 5 million IQD (USD 4,366) threshold; and
- that financial institutions undertake customer identity requirements regarding accounts established prior to the effective date of the law *"unless the financial institution reasonably believes that it knows the true identity of the customer."*

370. **Article 16 of the AML Law, entitled Identification of the Beneficial Owner of Funds**, requires the customer to provide a written declaration of the owner of the funds if *"the customer is clearly not the owner or, in the opinion of the financial institution and at its discretion the ownership of the funds is subject to doubt; or a cash transaction is effected for a sum greater than 10 million IQD."* (USD 8,733). Article 16 further requires the financial institution to verify the identification information provided pursuant to this Article.

371. **Article 17 of the AML Law, entitled "Further Verification of Identity,"** requires that if a financial institution has any reason to doubt the identity of the customer or beneficial owner of the funds, the financial institution shall take steps to further verify the identity, in order that it has reasonable belief that it knows the true identity of the customer and/or beneficial owner of the funds. This provision requires financial institutions to have in place *"escalating protocols to resolve discrepancies and to decline or cease to do business with a customer when it cannot form a reasonable belief as to the customer's or beneficial owner's true identity, and shall report any suspicious transactions to the MLRO."*

372. **Article 17 of the AML Law** further requires insurance companies to verify the identity of a customer when it refunds a premium or transfers a benefit if the beneficiary was not the designated beneficiary when the insurance contract was signed.
373. **Article 18 of the AML Law**, entitled Further Verification of Purpose and Nature of Transactions, requires financial institutions, *“to immediately verify the source of funds and the purpose and intended nature of a transaction or business relationship when there is reason to suspect that assets are proceeds of crime, that they may be intended for the financing of terrorism or that a criminal organization has power of disposal over them.”* It requires financial institutions which *“have reason to know that a proposed transaction or series of transactions are suspicious, to report and seek guidance and direction from the MLRO.”*
374. **CBI Executive Regulation 1** (CDD/KYC Regulation, June 26, 2007) issued by the MLRO pursuant to Art. 24 of the AML Law, prohibits the opening of anonymous, fictitious or numbered accounts, and contains requirements related to customer identification of persons and entities, account opening, non-account holding customers, and verification of identity. However, it specifically stipulates it applies only to licensed banks and money transmitters. There are no CDD/KYC or other related regulations, Circulars or guidance that relate to other types of financial institutions, entities or other professional financial service providers.

## **RECOMMENDATION 5**

### **Customer identity**

375. Although the CDD requirements of the AML law are technically applicable to all financial institutions and activities (including insurance sector entities and market participants in the securities sector), the CDD Regulation (June 26, 2007) only applies to *“licensed banks and remittance companies.”* No other regulations, Circulars or guidance have been issued neither by the CBI nor other supervisory authorities that provide additional information or detail on how insurance or securities entities should apply, adapt or implement CDD requirements to their various businesses. Thus, implementation of CDD requirements has not effectively commenced in either the insurance or securities sectors, and there are no CDD-related provisions or requirements in any securities or insurance law or regulation.
376. Outside of the AML law, the only other legal provision related to AML obligations is found in Art. 35 of the **Insurance Business Regulation Act of 2005**, which requires insurance companies to *“commit to combat money laundering in the insurance business”* and implement internal policies to prevent or reveal money laundering operations and report it to the Diwan (i.e., insurance supervisor). This provision also authorizes the President of the Diwan to *“ask any person or party covered under the provisions of this law to abstain from processing any case associated with insurance activities if it was the result of any activity connected with money laundering, and can inform any official or judicial party about such case.”*

### **Prohibition of anonymous accounts (c 5.1)\***

377. The CDD Regulation prohibits the opening of anonymous, fictitious or numbered accounts, and requires that clients use their correct name. This provision is applicable only to banks and remittance companies and does not apply to any other financial institutions or other reporting entities.

***When CDD is required (c 5.2)\****

378. The AML law (Art. 15) requires verification of the identity of the customer when:

- opening an account for any customer or executing a transaction of value equal or greater than 5 million IQD (USD 4,300) for a non-account holder, however, for transactions of less than 5 million IQD, only a name and address are required for CDD purposes,
- if the transaction is suspicious, or
- a customer is clearly not the owner of the funds in the opinion of the financial institution, and at its discretion the ownership of the funds is in doubt and the transaction is for 10 million IQD (USD 8,600) or more.

379. Article 15(1) of the AML law goes on to state that “*financial institutions may determine the extent to which it uses*” CDD measures on a risk-sensitive basis. This qualifies the applicability of the CDD requirements to situations where the financial institution believes they are necessary, rather than making them mandatory in all the circumstances. As the CDD provision further does not distinguish wire transfers from other transactions, the provision allows financial institutions to decide on a risk-sensitive basis whether CDD requirements should be applicable to wire transfers. Further, the provision isn’t clear as to what ‘suspicions’ are, and whether such ‘suspicions’ refer to money laundering, terrorist financing, or both.

***Required CDD measures-identification and verification (c 5.3)\****

380. Article 15(1) of the AML law and the CDD regulation require financial institutions to obtain the following documentation for natural persons: name, address, phone number, fax number, email address, employer address, place of birth and personal identity card or national certificate or passport, as well as work permits for non-Iraqis. Both the AML law 15(2) and the CDD Regulation Art. 7, require that for transactions or new account openings where the amount is below IQD 5 million (USD 4,366) the financial institution needs only obtain the name and address of client.

381. Art. 15 of the AML law sets forth the CDD requirement for legal persons as: “*charter or other establishing document, nationality, occupation, public position held and/or name of employer, an official personal identification number or other unique identifier contained in an unexpired official document (e.g. passport, identification card, residence permit, or driving license) that bears a photograph of the customer, and signature.*” Article 1(b) of the CDD Regulation contains the additional requirement that identity documentation for legal entities should be certified by a competent authority like the Company Registry, the Commercial Agencies Office of the Ministry of Trade or the Chambers of Commerce and Industry, and that the client should provide the by-laws of the company.

382. Both Art. 15(1) of the AML Law and Art. 2 of the CDD regulation grant financial institutions rather wide discretion to determine the extent to which CDD identity documentation and verification requirements shall be implemented based on risk, as well as type of customer, business relationship or transaction. As there appears to be no regulations, guidelines or guidance issued by supervisory authorities to limit this discretion, the extent to which entities are actually complying (or not) is unclear. It is further unclear how supervisory officials can objectively assess compliance or effectiveness. The requirement further states that all CDD documentation collected should be verified. Such provision further impedes effectiveness as it encourages financial institutions to take a rather limited approach in implementing CDD requirements.

#### ***Legal persons' representatives and legal status (c 5.4)***

383. The requirement contained in Article 16 of the AML Law obligates financial institutions to obtain a written declaration of the owner of the funds, *“if the customer is clearly not the owner, or in the opinion of the financial institution and at its discretion, the ownership of funds is subject to doubt; or a cash transaction is effective for a sum greater than 10 million IQD”* (USD 8,733). The requirement to obtain ‘a written declaration of the owner of the funds’ does not specify what the required declaration should contain. International standards require that identity documentation must be obtained both from the agent/client and the person who owns or controls the assets, as well as documentation authorizing the agent to act on behalf of the principal.
384. There is also no clear requirement to obtain sufficient documentation to establish and understand the legal form of a client (i.e., legal person or trust arrangement, etc.), nor the powers or authorities governing the assets or persons under such institutional arrangements. Further, the language of Art. 16(1)(b) is not clear as to whether the threshold of IQD 10 million (USD 8,733) applies to all transactions generally, or only to those where the financial institution determines that the customer is representing another. Such ambiguity creates challenges for implementation and compliance monitoring and reduces effectiveness.

#### ***Identification of Beneficial Owners c.5.5\*, c.5.5.1\* & 5.5.2***

385. Article 17 of the AML Law obligates financial institutions to “undertake such verification as is necessary in order to form a reasonable belief that it knows the true identity of the customer and/or any beneficial owner of the funds.” It further requires financial institutions to have procedures in place “including escalation protocols” to resolve discrepancies and decline or cease to do business with a customer when it cannot form a reasonable belief that it knows the true identity of the customer and/or beneficial owner of the funds. There is, however, no requirement that financial institutions understand the ownership or control structure of the customer or determine who are the natural persons that ultimately own, control or exercise ultimate effective control over the legal person or arrangement or control the customer.
386. Article 17 of the AML Law requires financial institutions to have in place procedures, including *“escalation protocols to resolve discrepancies”* . . . *“when it cannot form a reasonable belief as to the customer’s or beneficial owner’s true identity.”* Because this provision requires institutions to either decline or cease to do business with and report suspicious transactions to the MLRO when it cannot form a reasonable belief as to customer identity, it is not clear what is meant by “escalation protocols.”

#### ***Information on Purpose and Nature of Business Relationship (c. 5.6)***

387. Article 18(1) of the AML Law requires financial institutions to obtain information on “the purpose and intended nature of a transaction or business relationship, when there is reason to suspect that assets are the proceeds of a crime, that they may be intended for the financing of crime or terrorist financing or that a criminal organization has power of disposal over them.” The requirement in the AML law to obtain information on the purpose and nature of the business relationship is necessary only after “there is reason to suspect that the assets are the proceeds of a crime.” This CDD requirement should be applicable to all account relationships and not only to incidents where a suspicion has arisen. The intent of this requirement in the international standards is to ensure financial institutions have some basic understanding of the client account to be able to determine whether a transaction is unusual or suspicious.

***Ongoing Due Diligence on Business Relationships (c. 5.7\*, 5.7.1 & 5.7.2)***

388. The CDD Regulation Art. 5 obligates account holders of financial institutions to submit new relevant information to update CDD documentation files. This provision is not sufficient in obligating financial institutions to conduct on-going due diligence because it puts the burden on clients to provide information when any changes occur, rather than on the financial institution to obtain such information. However, as clients of financial institutions may not keep track of what documentation or information they have provided to their financial institution, to be effective, the obligation to conduct ongoing due diligence must be an obligation of the financial institution, rather than the customer.

***Risk—Enhanced Due Diligence for Higher Risk Customers (c. 5.8)***

389. There is no requirement for financial institutions to classify accounts or customers into any defined risk categories, nor any obligation to perform enhanced due diligence measures on clients representing high risk factors.

***Risk—Application of Simplified/Reduced CDD Measures when appropriate (c. 5.9 to 5.12)***

390. Art. 15(2) of the AML Law allows for simplified CDD measures when a transaction is being executed by a non-account holder and the value of the transactions is (or a series of transactions are) less than IQD 5 million (USD \$4,300). International standards provide that minimum CDD requirements regarding client identity and beneficial ownership may only be reduced where information is publicly available, accessible from other reliable sources, or where checks or controls exist elsewhere in national systems. The provision in the AML Law exempting from CDD requirements transactions below the stated threshold is based on an assumption that ML/TF risks are lower in all such transactions. This assumption is not always valid particularly in the case of terrorist financing.

391. The CDD/KYC provisions of the AML Law (Arts. 15-18) and the CDD Regulation permit financial institutions to use discretion in applying CDD/KYC requirements, but no guidelines have been issued to clarify how such discretion should be applied or within what limits. Without further guidance or detail it is difficult to understand how financial institutions know their internal policies and procedures are sufficient or how supervisory authorities can effectively and objectively assess compliance.

***Timing of Verification of Identity—General Rule (c. 5.13)***

392. Article 17(1) of the AML Law states that a financial institution must resolve discrepancies with respect to a customer's identity and ownership of the account, and when this is not possible the institution should decline or cease to do business with the client. However, there is no further guidance or detail as to what exactly is required in respect of 'resolving discrepancies,' and there are no other provisions regarding timing of verification of identity.

***Timing of Verification of Identity—Treatment of Exceptional Circumstances (c.5.14 & 5.14.1)***

393. There exist no provisions which provide for the possibility of delay in verification of customer identity.

***Failure to Complete CDD before commencing the Business Relationship (c. 5.15)***

394. There are no provisions that guide financial institutions on how to deal with incidents where CDD/KYC procedures cannot be completed before activity on the account commences. Evaluators assume, therefore, that all CDD/KYC measures must be completed prior to engaging in any financial activities on behalf of the client.

***Failure to Complete CDD after commencing the Business Relationship (c. 5.16)***

395. There are no provisions that allow for completion of CDD measures after commencing a business relationship.

***Existing Customers—CDD Requirements (c. 5.17)***

396. Art. 15(5) of the AML Law requires financial institutions to apply CDD/KYC measures to accounts which existed prior to effectiveness of the AML Law, “*unless the financial institution reasonably believes that it knows the true identity of the customer.*” This provision allows application of a risk-based approach to accounts which existed prior to enactment of the AML Law.

***Existing Anonymous-account Customers – CDD Requirements (c. 5.18)***

397. Art. 15(1) of the AML Law requires financial institutions to undertake CDD measures on accounts opened prior to the enactment of the AML Law if the financial institution does not know the true identity of the customer.

***Politically exposed persons (PEPs) (Recommendation 6)***

398. There is no law, regulation or other requirement relating to politically exposed persons, or requirement to classify them as higher risk.

***PEPs—Requirement to Identify (c. 6.1)***

399. There is no law, regulation or other enforceable mechanism which requires financial institutions to put in place appropriate risk management systems to determine whether a potential customer, a customer or the beneficial owner is a politically exposed person.

***PEPs—senior management approval (c. 6.2 & 6.2.1)***

400. No laws, regulations or other enforceable means requires financial institutions to obtain senior management approval to open an account or continue an established business relationship when a client or beneficial owner has been identified as a foreign PEP.

***PEPs—Requirement to Determine Source of Wealth and Funds (c. 6.3)***

401. No laws, regulations or other enforceable means requires financial institutions to determine the source of wealth and funds of foreign PEPs.

***PEPs—Enhanced Ongoing Monitoring (c. 6.4)***

402. No laws, regulations or other enforceable means requires financial institutions to undertake enhanced due diligence or on-going monitoring of accounts of foreign PEPs.

***Domestic PEPs—Requirements (Additional Element c. 6.5)***

403. No laws, regulations or other enforceable means requires financial institutions to identify domestic PEPs, obtain management approval to open or maintain their accounts, or apply enhanced CDD/KYC measures.

***Domestic PEPs—Ratification of the Merida Convention (Additional Element c. 6.6)***

404. Iraq ratified the UN Convention Against Corruption (UNCAC) in March 2008. However, there are no provisions relating to treatment of PEP accounts as higher risk or use of enhanced due diligence procedures or transaction monitoring.

**Cross Border Correspondent Accounts and Similar Relationships (Recommendation 7)**

***Requirement to Obtain Information on Respondent Institution (c. 7.1)***

405. There are no laws, regulation or prudential requirements which require financial institutions to implement AML/CFT controls in regard to correspondent relationships, nor gather information about any respondent businesses to determine the reputation, quality of supervision or whether it has been subject to a money laundering or terrorist financing investigation or regulatory action.

***Assessment of AML/CFT Controls in Respondent Institution (c. 7.2)***

406. There are no requirements in law, regulation or other enforceable means requiring that financial institutions obtain a copy of any respondent institution's internal AML/CFT controls or assess them for effectiveness.

***Approval of Establishing Correspondent Relationships (c. 7.3)***

407. There are no requirements in law, regulation or other enforceable means requiring internal management approval prior to the establishment of new correspondent relationships.

***Documentation of AML/CFT Responsibilities for Each Institution (c. 7.4)***

408. There is no requirement in law, regulation or other enforceable means obligating financial institutions to document the respective AML/CFT responsibilities of each other with respect to their correspondent relationship.

***Payable-Through Accounts (c. 7.5)***

409. There are no payment systems which allow for transactions that operate as payable through accounts.

**New technologies and Non-Face-To-Face business relationships (Recommendation 8)**

***Misuse of New Technology for ML/FT (c. 8.1)***

410. There are no laws, regulations or other enforceable means to require financial institutions to have policies or procedures in place to mitigate risks of ML/TF through the misuse of new technologies.

### ***Risk of Non-Face to Face Business Relationships (c. 8.2 & 8.2.1)***

411. There are no laws, regulations or other enforceable means requiring financial institutions to have policies or procedures in place to address specific risks associated with non-face-to-face transactions or relationships. The private sector confirmed that the products and services available in Iraq do not include those which can be established on a non face-to-face basis.

### ***Effectiveness***

#### ***Recommendation 5***

412. The effectiveness of the CDD requirement in Art. 15 of the AML Law is undermined by the fact that the CDD requirement grants a very high degree of discretion to financial institutions to determine the extent to which the CDD obligations should be applied on a risk sensitive basis, even where the required CDD information is not available from public or other sources or where adequate safeguards, checks or controls exist in other national systems. This application of the risk-based approach inhibits the effectiveness of CDD requirements as it goes beyond what is allowed by international standards.

413. Effectiveness of Art. 15 CDD requirements of AML Law requires that identity documents collected in the CDD process shall all be verified. This provision is likely to encourage financial institutions to define rather narrowly the extent to which CDD procedures shall be applied. It is further not clear how such requirement can be monitored for compliance when complete discretion in determining the extent to which CDD measures are applied are left to financial institutions.

414. The lack of detail or guidance regarding AML Law Art. 17(1) which requires financial institutions to implement “*escalation protocols to resolve discrepancies*” where financial institutions cannot form a basis for knowing the true owner or the beneficial owner of funds renders this requirement ineffective.

### ***3.2.2 Recommendations and Comments***

#### ***Customer due diligence including enhanced and reduced measures (Recommendation 5)***

- c. 5.1\* Anonymous accounts: The CDD Regulation which prohibits the opening of anonymous, fictitious or numbered accounts should expressly prohibit the maintenance of such accounts which may have existed prior to the regulation, and should apply to all financial institutions, rather than only to banks and remittance companies.
- c. 5.2\*/5.3\* When CDD required and source documents: The provisions specifying when CDD measures are required, and extent to when collection of CDD documentation is mandatory needs clarification, as provisions give vague and unrestricted discretion to financial institutions in implementing these requirements.
- c. 5.4/5.5\* Acting on behalf of others and beneficial ownership: This provision should be drafted in a way that puts the burden on the financial institution to seek sufficient information from clients to determine whether the client is acting on behalf of another, or a beneficial owner of the funds. Financial institutions should be clearly obligated to obtain all identity details on both the principal and agent when a person is representing another, as well as verify the legal form of client. The transaction threshold below which this information need not be collected should be eliminated. Financial institutions should be required to understand the legal form of legal



entities, their ownership and control structure(s), as well as obtain identity details of the natural persons who ultimately own, control or exercise ultimate effective control over the legal person/arrangement, the assets in the account and/or the customer. The requirement to implement “*escalation protocols to resolve discrepancies*” should be clarified by further details as to what exactly is expected of financial institutions in this regard.

- c. 5.6 Purpose and nature of relationship: The CDD requirement that financial institutions obtain information on the purpose and nature of the business relationship should be applicable to all account relationships, before a suspicion is detected, rather than after.
- c. 5.7\* On-going due diligence: Enforceable legal provisions must obligate financial institutions to conduct on-going due diligence and actively obtain from clients information about changes in their business profile, purpose and/or nature of account relationship, or regular sources of funds.
- c. 5.8 Risk: Financial institutions should be obligated to identify classes and categories of clients that represent higher risk factors so that enhanced due diligence measures and monitoring procedures can be applied in cases of higher risk accounts. Appropriate supervisory authorities and other officials with AML/CFT responsibilities should obligate financial institutions and other AML/CFT reporting entities and professionals to classify as higher risk, certain categories of clients and accounts and identify enhanced due diligence measures to mitigate ML/TF risks.
- c. 5.9 - 5.12 Lower risks, simplified CDD: Specific guidance on application of discretion in implementation of simplified due diligence procedures should be issued by a supervisory authority along with clear limits within which the discretion is permitted. Further, when such discretion is permitted, the measures should indicate which minimum CDD standards must be met in all cases so obligations on financial institutions are clearer and supervisory authorities can objectively assess compliance.
- c. 5.17 Existing customers: Supervisory authorities need to provide clearer guidance related to a risk-based approach in respect of application of CDD/KYC requirements to pre-existing clients. Unfettered discretion will inhibit compliance as well as objective compliance monitoring.
- c. 5.18: A clear and mandatory obligation should require reporting entities to eliminate anonymous, fictitious, or numbered accounts that may have been established prior to enactment of the AML/CFT law.
- PEPs (R.6): A clear and mandatory obligation for financial institutions should require classification of accounts of PEPS as high risk, and apply enhanced due diligence measures.
- There should be a clear and mandatory obligation for financial institutions to obtain management approval to open or continue account relationships with PEPs, and assess the source or wealth of funds.
- Correspondent banking (R.7): There should be clear obligations for financial institutions to ensure that correspondent institutions with which they have relations perform due diligence procedures to ensure such institutions implement adequate AML/CFT procedures.
- New Technologies/Non-Face-To-Face Business (R. 8): There should be obligations requiring financial institutions to pay special attention to money laundering or terrorist financing threats that may arise from new or developing technologies that may favor anonymity or risks

associated with non-face-to-face transactions.

### 3.2.3 Compliance with Recommendations 5 to 8

|            | Rating    | Summary of factors underlying rating                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
|------------|-----------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>R.5</b> | <b>NC</b> | <ul style="list-style-type: none"> <li>• The prohibition of anonymous, factitious, or numbered accounts does not prohibit maintaining such existing accounts, and is not applicable to institutions other than banks or remittance companies. (c.5.1)</li> <li>• Provisions on when to apply minimum standards CDD/KYC measures provide unfettered discretion to financial institutions in implementation, thus, effectiveness in assessing and enforcing compliance is not clear. (c.5.2)</li> <li>• The threshold exemption below which transactions are exempted from certain CDD requirements goes beyond standards that allow application of a risk-based approach. (c.5.2, 5.3)</li> <li>• There is no requirement to conduct CDD procedures on both the agent and principle when a person is representing another, or verify the authority by which a customer is acting on behalf of another. (c.5.4)</li> <li>• Insufficient CDD requirements obligating reporting entities to establish who is the beneficial owner of accounts and the natural persons that own or control legal entities, and to identify the legal form of legal entities (trust or other arrangements). (c.5.5)</li> <li>• The requirement to obtain information on the nature and purpose of the business relationship only applies after suspicious activity is detected. (c.5.6)</li> <li>• There is no effective obligation for reporting entities to conduct on-going due diligence.(5.7)</li> <li>• There exists no requirement to classify higher risk customers and apply enhanced due diligence measures, and no regulatory guidance to assist in the implementation of CDD/KYC risk decisions of financial institutions.(5.8)</li> <li>• CDD requirements permit financial institutions to apply reduced CDD measures without justification or evidence that the ML/TF risks are actually lower. (5.9)</li> <li>• There is no requirement to ensure reduced CDD measures are limited to customers resident in countries that effectively implement international AML/CFT standards. (c.5.11)</li> <li>• Authorities have issued no guidelines to address the extent to which financial institutions may determine the application of CDD measures on a risk-sensitive basis. (c.5.12)</li> <li>• The degree of ambiguity in CDD obligations generally, and the degree to which legal provisions permit discretion of financial institutions to decide the circumstances and timing of when CDD measures apply, undermines effectiveness of implementation by institutions as well as the ability of supervisory officials to assess compliance with CDD requirements. (c.5.3, 5.6, 5.9, 5.10, 5.12, 5.13, 5.14, 5.15, 5.16, 5.17, 5.18)</li> </ul> |
| <b>R.6</b> | <b>NC</b> | <ul style="list-style-type: none"> <li>• There is no requirement in law, regulation or other enforceable means to identify foreign PEPs or obtain senior management approval to establish or approve PEP accounts.</li> <li>• No laws, regulations or other enforceable means require the monitoring of accounts or inquiring about the source and wealth of PEPs.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |

|     | Rating | Summary of factors underlying rating                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
|-----|--------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| R.7 | NC     | <p>There are no laws, regulation or other enforceable means which require financial institutions to:</p> <ul style="list-style-type: none"> <li>• implement risk control measures for correspondent relationships, nor gather information on respondent relationships</li> <li>• obtain a copy of any respondent institution’s internal AML/CFT controls or assess them for effectiveness; and</li> <li>• document respective AML/CFT responsibilities of correspondent relations.</li> </ul> |
| R.8 | NC     | <ul style="list-style-type: none"> <li>• There are no laws, regulations or other enforceable means to require financial institutions to have policies or procedures in place to mitigate risks of ML/TF through misuse of technologies.</li> </ul>                                                                                                                                                                                                                                            |

### 3.3 *Third Parties and Introduced Business (R.9)*

#### 3.3.1 *Description and Analysis*

##### **Legal Framework:**

415. There are no specific provisions which allow reporting entities to rely on CDD/KYC obligations to be fulfilled by 3<sup>rd</sup> parties or introduced businesses.

Criteria 9.1-9.5

416. Banks indicated that they rely on CDD/KYC procedures which require completing CDD measures on all customers directly.

#### 3.3.2 *Recommendations and Comments*

- Iraq should make a policy decision on whether or not to allow financial institutions or others to rely on CDD/KYC procedures undertaken by intermediaries or 3<sup>rd</sup> parties. If such reliance is prohibited, such decision might be clearly spelled out through enforceable means so obligations regarding CDD/KYC are clear to all who must implement them as well as supervisory officials.
- If it is decided to allow a degree of reliance on CDD/KYC conducted by intermediaries or 3<sup>rd</sup> parties, obligations should specify exactly to what degree such reliance is permitted, as well as the obligation to implement effective systems for obtaining access to all relevant CDD/KYC documentation and information upon request and in a timely manner.

#### 3.3.3 *Compliance with Recommendation 9*

|     | Rating | Summary of factors underlying rating |
|-----|--------|--------------------------------------|
| R.9 | N/A    |                                      |

### 3.4 Financial Institution Secrecy or Confidentiality (R.4)

#### 3.4.1. Description and Analysis

##### **Legal Framework:**

417. Financial confidentiality provisions can be found in Article 22 of the *Central Bank Law*; Articles 49-52, and Article 35 (1) and (2), of the *Banking Law*; and Articles 12, 13, and 14 of the *AML Law*.

##### *The Central Bank Law*

418. Article 22 section 1(a) of the *Central Bank Law* permits the Governor, Deputy Governor, other member of the Board, or employee, agent, or correspondent of the CBI to disclose or disseminate nonpublic information which was obtained in the performance of official duties as necessary for the fulfillment of duties or responsibilities pursuant to the Central Bank Law, the Banking Law, or any other relevant legislation. The exchange of such information may include confidential information, provided that the CBI has satisfied itself that reasonable steps have been taken to ensure the confidentiality of any such information submitted.

##### *The Banking Law*

419. Article 35 (1) states that if a bank or any of its administrators, officers, or employees learns that the execution of any banking transaction or the receipt or payment of any sum or money pertains or may pertain to any crime or illegal act, the bank shall immediately notify the appropriate official or judicial authority to this effect. The bank shall inform the CBI on a monthly basis about suspicious transaction reports submitted, if any, and concerning any need for additional action regarding this matter. Article 35 (2) provides for a bank's disclosure of an information in good faith under this article shall not be considered a breach of banking confidentiality. In addition, neither the CBI nor the bank shall bear any liability as a result thereof.
420. Articles 49-52 provide for financial confidentiality provisions for financial institutions and their staff with respect to financial information. Article 49 prevents disclosure of any confidential client financial information to anyone, except with written approval of the client or pursuant to a court order or decision. Art. 50 prevents financial institutions and their employees, including auditors and persons appointed by the CBI, from disclosing confidential financial information to a 3<sup>rd</sup> party or enabling examination of such information "*except as permitted by this law.*"
421. Article 51 sets forth specific exceptions in which the Art. 49 and 50 provisions do not apply. Art. 51(a) provides an exception to the confidentiality provisions with respect to auditors appointed by the bank or the CBI; subsection (b) provides an exception with respect to information and documents requested by the CBI in connection with its duties under the Banking Law, and subsection (c) exempts actions taken in good faith in the course of performance of duties or responsibilities imposed by the Banking Law or in the implementation of measures countering money laundering and terrorist financing pursuant to regulations of the CBI.

##### *The AML Law*

422. Article 12(4) provides the MLRO with the authority to immediately notify competent prosecuting and investigative authorities if it reasonably suspects that a transaction, conducted or attempted, involves:

- funds derived from illegal activities;
  - money laundering;
  - funds to be used in the financing of crime;
  - funds under the control of a criminal organization;
  - terrorist financing; or
  - a transaction is otherwise in furtherance of an illegal purpose.
423. Article 13 of the AML Law states that at the CBI's discretion, either the CBI or MLRO may provide information and documents to Iraqi governmental authorities concerning ML/TF related matters and request information that may be useful or necessary to carry out the CBI and MLRO functions. Prosecuting authorities are obligated to notify the MLRO of all relevant pending procedures, judgments, and dismissed cases, and the MLRO is obligated to inform the CBI of this information. However, there appear to be no procedures, guidelines or regulations as to what form or frequency prosecuting authorities should follow in making such reports. Lastly, Article 14 permits the CBI and MLRO to request information from foreign authorities related to ML or TF.
424. Article 14 states that the CBI and the MLRO may request foreign authorities responsible for supervision of financial institutions or markets, foreign FIUs, or criminal or judicial prosecution authorities to provide them with information and documents required for the performance of their duties. The CBI and the MLRO may share with such foreign authorities as are prepared to provide reciprocal services to the CBI and the MLRO information and documents, including non-public information and documents, within their discretion, related to or gathered pursuant to the AML/CFT law, for the purpose of preventing ML/FT.

*The Commission on Integrity Law*

425. Article 11 of Chapter 3 grants the Commission the authority to investigate any corruption case under the supervision of a specialized investigative judge. The COI's investigative jurisdiction in corruption cases supersedes the authority of other investigative entities, including Military and Iraqi Security Forces Investigative Agencies. These entities and agencies are obligated to provide all documents, data, and records pertinent to the case to the COI whenever the COI chooses to complete the investigation. Article 15 determines that all public government departments and establishments will cooperate with the COI's investigative duties and are obligated to provide the COI with requested documents, records, and information pertinent to a case it wants to probe or investigate.

*Criminal Procedure Code of 1971*

426. Article 2.6 of Book Two of the Code grants authority to investigating magistrates, whether for misdemeanors or felonies, to compel relevant documents related to a case.

**Inhibition of Implementation of FATF Recommendations (c. 4.1):**

427. The AML Law allows the MLRO, at the CBI's discretion, to share information with other Iraqi authorities which relates to ML/FT. The COI Law and the Criminal Procedures Code of 1971 permits access by competent authorities to financial and customer data as it relates to corruption, money laundering and terrorist financing cases. Therefore, there are no apparent financial secrecy-related legal impediments preventing authorities from accessing financial documents or information needed to perform their functions. Financial secrecy laws do not inhibit competent authorities from sharing information domestically or internationally, nor do they prevent financial institutions from sharing information between financial institutions for purposes of R. 7, 9 or SR VII.

|     | Rating | Summary of factors underlying rating |
|-----|--------|--------------------------------------|
| R.4 | C      |                                      |

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

#### 3.5.1 Description and Analysis

##### **Legal Framework**

428. Record keeping requirements and wire transfer obligations for financial institutions are found in Articles 15, 19, and 22 of the AML/CFT Law, Article 38 of the Banking Law, Article 14 of the Investment Law, and Articles 36, 37, and 85 of Insurance Business Regulation Act, and Section 5(6), 5 (4), and 12 (12) of the Securities Law.
429. Article 15 of the AML/CFT Law states that when financial institutions open an account for a customer or, perform transactions, or a series of transactions equal to or greater than 5,000,000 IQD (USD 4, 300) they must obtain and record the identifying information specified in Section 3.1 of this report, and retain STRs for five years after reporting it to the MLRO. Financial institutions are required to maintain records for five years after the closing of an account or termination of a customer relationship, including all of the inquiries and verification exercises made to the MLRO.
430. Article 22 of the AML Law states that records should be maintained for five years on all transactions above 500,000 IQD (466 USD), but it is unclear which records this provision applies to since there is already a threshold transaction reporting obligation in Article 15. The law states that wire transfers shall include the name and address information of the originator and beneficiary. Originator and beneficiary name and address information shall remain with the wire from origination of the wire transfer until disbursement of the proceeds to the beneficiary. Records of wire transfers shall be made and retained for five years by all financial institutions involved in the wire transfer.
431. The Banking Law requires banks to maintain records for seven years in written form, on each of the following items:
- customer identification records;
  - application and contractual documents pertaining to transactions, such as credits; guarantees and collateral agreements;
  - signed written record of the bank’s decision to approve the transaction;
  - financial records concerning counterparties, including borrowers and guarantors;
  - other documentary evidence on which the bank relied in approving the transaction
  - account agreements with customers; and
  - Other documents the CBI may specify by regulation.
432. The CBI law allows financial institutions to retain books, records, statements, documents, correspondence, cables, notices, and other documents relating to its financial activities in reduced form (microfilm, electronic data storage or other current technological devices) providing that adequate data recovery systems and procedures are in place. Such reduced copies shall have the probative effect of the originals.

433. The Investment law stipulates only that proper records must be kept and audited by a certified accountant in Iraq in accordance with the Law, and to keep records of the project's duty-free imported materials in accordance with the provisions of this Law and specifying the depreciation periods of these materials.
434. The Insurance Business Act requires insurers to maintain financial books, records, and budgetary information, so an independent certified accountant can audit these documents. The Insurance Diwan has the authority to perform audits on any records, transactions, documents, budgetary information. The law permits insurers to keep data in electronic form or other formats for the period specified in the law<sup>50</sup>, instead of the original records, registers, surveys, documents, correspondence, cables, notifications and other papers that are related to the insurers business. The data in electronic format shall hold the same legal status as the original as evidence, unless proven otherwise.
435. Additionally, it is permitted to use computers and other modern technical equipment in organizing the operations of the insurance business and in storing information. Any information held on such equipment shall be considered similar to that held in hard copy format. However, the law follows this provision by stating that the insurer shall be required to hold information in hard copy format. Furthermore, all ministries, government departments and state companies and institutions that benefit from insurance business must provide any data or information about insurance arrangements obtained, or to be obtained, that is requested by the Diwan, during the period specified by the Diwan.
436. The Securities law provides for the Securities Commission to check and inspect a Broker's registers, records, books, and business, and require members to furnish documents or witnesses under their control for the investigation and adjudication of disciplinary or arbitration matters. The Law also authorizes the Securities Commission to require the ISX, the Depository, and Broker or other person authorized to maintain records and many such reports on their financial condition and business related to securities transactions. Lastly, notwithstanding any provisions of the Banking Law, the Securities Commission can inspect brokers who are banks including their securities operations and related personnel and records. There are no set timeframes in which any of the aforementioned records should be maintained.

## **Record keeping (Recommendation 10)**

### ***Record-Keeping and Reconstruction of Transaction Records (c. 10.1 & 10.1.1)***

437. Article 22 (2) of the AML Law requires financial institutions to maintain transaction records for five years only for transactions above 500,000 IQD (USD 437). Further, Article 38 of the Banking Law requires banks to maintain transaction records for seven years.

### ***Maintaining records of identification data (c.10.2)***

438. Article 22(1) of the AML Law requires financial institutions to maintain records required under the law, which would include CDD/KYC documents, for five years after the closing of an account or termination of a customer relationship.

### ***Responsiveness to competent authorities (c.10.3)***

439. Article 22 of the AML Law states that records should be maintained in such a manner that knowledgeable third parties are able to assess transactions and business relationships and the

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50 The specified period of time is not stated in the Insurance Business Regulation Act of 2005.

institutions compliance with the provision of the law, and that subpoenas for these records by competent authorities may be fulfilled within a reasonable period of time, not to exceed ten business days.

### **Wire transfers (Special Recommendation VII)**

440. Art. 22(3) of the AML Law requires that the name and address of originator and beneficiary must remain with the wire transfer from origination until disbursement. This provision does not require that the originator's account number or other unique reference number also be included in all wire transfers. Each financial institution involved in a wire transfer obligated to maintain records of the wire transfer for five years, regardless of the value of the transfer.

#### ***Full originator information (applying c. 5.2, 5.3, in R.5) (c.VII.1)***

441. Pursuant to Article 22(3) of the AML Law, financial institutions must include the name and address of the originator and beneficiary on all wire transfers. This provision does not require including originator's account number or a unique reference number in the event that no account number is available. No distinction is made between cross-border or internal wire transfers, nor is any distinction made between wire transfers of smaller or larger values. No provision requires inclusion of the originators account number, or a unique reference number.

#### ***Inclusion of Originator Information in Cross-Border & Domestic Wire Transfers (c.VII.2 and c. VII.3)***

442. Iraqi laws, regulations and other enforceable means do not differentiate between cross-border and domestic wire transfers.

#### ***Duties of intermediary and beneficiary institutions and technical limitations (c. VII.4, c. VII.4.1)***

443. Art. 22(3) of the AML Law requires that the originator and beneficiary name and address are included in all wire transfers and shall remain with the wire transfer from its origin to its disbursement. No provision requires inclusion of the originators account number or a unique reference number in the wire transfer.

444. Although there are no specific legal or technical AML/CFT provisions applicable to cross-border wire transfers, financial institutions are obligated to maintain wire transfer transaction records for five years.

#### ***Incomplete originator information (c.VII.5)***

445. There are no provisions in the AML Law or other relevant laws which set forth procedures in respect of what financial institutions should undertake when complete originator or beneficiary information is not included in wire transfers.

#### ***Compliance monitoring (c.VII.6)***

446. There are no effective measures in place to monitor the compliance of financial institutions with obligations relating to including complete originator or beneficiary information on all wire transfers, and no evidence was provided to indicate that supervisory authorities are monitoring compliance with these provisions.



*Sanctions (c.VII.7)*

447. Article 9 of the AML Law states that if the CBI determines that a financial institution has violated the law it may take appropriate enforcement measures, which range from issuing a monetary penalty to ordering the violating person to cease the activity resulting in the violation.

*Additional elements (c.VII.8 & c.VII.9)*

448. No Iraqi laws or regulations make any distinction with respect to the value of wire transfers, whether internal or cross border, in respect of the requirement to include originator and beneficiary information in wire transfers.

*Effectiveness*

Recommendation 10:

449. The AML Law recordkeeping requirements apply to all financial institutions. Although defined as financial institutions in the AML Law, insurance and securities operations are not monitored for compliance with AML recordkeeping requirements by the CBI. The respective supervisory authorities for the insurance and securities sectors are responsible for monitoring compliance with recordkeeping requirements, but the extent to which these requirements are being monitored or enforced is not clear. The Insurance Business Act and Securities Law contain record keeping provisions but do not specify how long these records must be kept. The evaluation team was unable to determine how long these two sectors keep customer identification, account and other information on file.
450. The CBI conducts compliance inspections in respect of obligations under the Banking Law for financial institutions but not for entities in the insurance and securities sectors.
451. Private sector representatives stated that they maintain records for at least 5 years, and officials from banks headquarter abroad follow their home country recordkeeping obligations.
452. There is no money laundering-related prosecutions in Iraq, however there have been successful terrorist financing-related prosecutions. The evaluation team was unable to determine if customer and account records from financial institutions aided in the terrorist financing prosecutions, or whether insufficient recordkeeping has ever impeded financial investigations.

SRVII:

453. Although various laws require including the originator and beneficiary name and address in all wire transfers, there is little evidence that this requirement is being monitored for compliance by relevant supervisory authorities. No provision requires inclusion of the originator's account number or a unique reference number in the wire transfer.
454. Some private sector representatives stated that they obtain and verify originator and beneficiary information for wire transfers. If any information is missing, some financial institutions noted that they reject the transfer and will not complete it.

### 3.5.2. Recommendations and Comments

#### Record keeping (Recommendation 10) & Wire transfers (Special Recommendation VII)

- The AML Law’s recordkeeping requirements should be implemented by all financial institutions, since it is not clear that these obligations are being effectively implemented in each sector.
- Supervisory authorities should ensure that recordkeeping requirements are included in compliance inspections for all sectors, and that sanctions are imposed when instances of non-compliance is identified.
- Relevant laws should be amended to require that the account number of the originator (or unique reference number if no account number) is included in wire transfers at all stages of the payment chain.
- Supervisory authorities should ensure that compliance with the obligation to include full originator and beneficiary information in wire transfers is included in all compliance monitoring inspections for all sectors, and instances of non-compliance are appropriately sanctioned.
- Authorities should consider drafting obligatory procedures for reporting entities to follow when they receive wire transfers with incomplete originator and beneficiary information.
- Authorities should consider whether it would be appropriate to distinguish requirements for full originator and beneficiary information in respect of wire transfers on the basis of whether they are internal (domestic) or cross-border transfers.

### 3.5.3 Compliance with Recommendation 10 and Special Recommendation VII

|               | Rating    | Summary of factors underlying rating                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|---------------|-----------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>R.10</b>   | <b>PC</b> | <ul style="list-style-type: none"> <li>• Although recordkeeping requirements are contained in the AML Law, these obligations are not being effectively implemented by all financial institutions, assessed for compliance during on-site inspections, or are non-compliance effectively sanctioned.</li> <li>• The respective supervisory authorities for the insurance and securities industries are responsible for monitoring compliance with recordkeeping requirements applicable to these sectors. There are no defined time periods for how long to maintain records, and there are no AML recordkeeping requirements in the Insurance Business Regulation Act or the Securities Law.</li> <li>• No available information about whether customer and account records from financial institutions aided in terrorist financing prosecutions, or whether insufficient recordkeeping has ever impeded financial investigations.</li> </ul> |
| <b>SR.VII</b> | <b>NC</b> | <ul style="list-style-type: none"> <li>• There is no provision in Iraqi laws, regulations, or other enforceable means that requires inclusion of the originator’s account number (or unique identifier) in all segments of wire transfers.</li> <li>• It is not clear that obligations to include full originator and beneficiary information in wire transfers are being monitored for compliance.</li> <li>• No provisions in the AML Law or other relevant laws set forth procedures for</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                         |

|  | Rating | Summary of factors underlying rating                                                                                                                                                                                                                                                                                                                                                                                                  |
|--|--------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|  |        | <p>financial institutions to follow when full originator or beneficiary information is not included in wire transfers.</p> <ul style="list-style-type: none"> <li>Although there are wire transfer provisions contained in the AML Law, these obligations are not being effectively implemented by all financial institutions, assessed for compliance during inspections, or appropriately sanctioned for non-compliance.</li> </ul> |

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

#### **3.6.1 Description and Analysis**

##### **Legal Framework**

455. There are no requirements in Iraqi laws, regulations or other measures that reporting entities pay special attention to complex, unusually large transactions or unusual patterns of transactions which have no apparent economic or lawful purpose.

##### **Special Attention to Complex, Unusual, Large Transactions (c. 11.1)**

456. There are no requirements for reporting institutions to pay attention to complex, unusually large transaction or unusual transaction patterns or those which have no apparent legal or economic purpose.

##### **Examination of Complex & Unusual Transactions (c. 11.2)**

457. There is no requirement in any law, regulation or other measure to examine as far as possible the purpose of complex, unusually large, or unusual patterns of transactions, or those with no apparent lawful or economic purpose. Article 15 of the AML Law merely requires financial institution to determine the extent to apply CDD/KYC measures on a risk sensitive basis depending on the type of customer, business relationship or transaction, but provides no further definition, detail or guidance on how this should be done in order to assist identification of unusual or suspicious transactions. Also there is no obligation to document or maintain findings resulting from inquiries into the nature of such transactions.

##### **Record keeping of findings of Examinations (c.11.3)**

458. As there is no requirement to enquire into further information or documentation relating to large, complex or unusual transactions, unusual patterns or transactions with no apparent lawful or economic purpose, there is also no requirement to maintain such documentation or resulting findings for any length of time.

##### **Special Attention to Countries not Sufficiently Applying FATF Recommendations**

##### **Recommendation 21 c.21.1, 21.1.1 & 21.2**

459. There are no references in law, regulation or guidance that require financial institutions to give special attention to business relationships and transactions with persons from or in countries which do not or insufficiently apply the FATF Recommendations.

460. There are no provisions or procedures that allow supervisors to designate countries with weak AML/CFT systems as representing higher risks.

461. There are no laws, regulations or other enforceable means to examine transactions with no apparent economic, lawful purpose from such countries.

#### *Ability to Apply Counter-measures c.21.3*

462. There are no laws, regulations, or other enforceable means to issue orders to apply countermeasures in regard to transactions connected to countries that do not comply with the FATF Recommendations. To date, no such orders or countermeasures have been ordered by any supervisory authority or other Iraqi authority, and no financial institution has applied any such countermeasures.

#### ***Effectiveness***

463. Recommendation 11: There is no requirement that reporting entities inquire into transactions that are complex, unusually large, or involve unusual patterns of transactions, or appear to have no legal or economic purpose, and there is no requirement to document the findings of such inquiries.

464. Recommendation 21: There is no requirement that attention be paid to business relationships and transactions with persons from or in countries which do not or insufficiently apply the FATF Recommendations, or that transactions with no apparent economic, lawful purpose from these countries be examined. Nor are there provisions or procedures concerning the application of counter measures to countries that do not comply with the FATF's Recommendations.

### ***3.6.2 Recommendations and Comments***

#### *Recommendation 11*

- Obligate reporting entities to pay special attention to transactions that are unusually large and/or complex, and where unusually patterns of transactions are detected, as well as transactions that appear to have no legal or economic purpose.
- Require that when reporting entities detect any such transactions, they inquire into the background details and purpose of the transaction by obtaining further facts and documentation. Require that reporting entities document these findings in appropriate files and maintain this documentation for a minimum of 5 years after the client has ceased relations with the financial institution.

#### *Recommendation 21*

- Ensure appropriate laws or regulations authorize competent authorities, when appropriate, to issue orders that require reporting entities to apply counter-measures to persons and transactions related to countries which authorities determine do not comply with FATF's Recommendations.
- Require reporting entities to implement orders from competent authorities to comply with requirements regarding application of counter-measures to clients or transactions related to designated countries that do not comply with FATF's Recommendations.

- Ensure that compliance with obligations to apply counter-measures is assessed and monitored by authorized supervisory bodies, and incidents of non-compliance appropriately sanctioned.

### 3.6.3 Compliance with Recommendations 11 & 21

|      | Rating | Summary of factors underlying rating                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
|------|--------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| R.11 | NC     | <ul style="list-style-type: none"> <li>• No obligations, regulations or guidance requiring special attention to be given to unusually large, complex or unusual patterns of transactions or those without visible legal or economic purpose.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                    |
| R.21 | NC     | <ul style="list-style-type: none"> <li>• No requirement that attention be paid to business relationships and transactions with persons from or in countries which do not or insufficiently apply the FATF Recommendations.</li> <li>• No laws or regulations authorize authorities to issue orders to apply countermeasures to designated countries that inadequately comply with FATF's Recommendations, and no such countermeasures have ever been ordered or implemented.</li> <li>• No laws, regulations, or other enforceable means require the examination of transactions with no apparent economic, lawful purpose from such countries.</li> </ul> |

## 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 (Suspicious Transaction Reporting)

##### Requirements to file STRs on ML and TF to FIU (c.13.1, 13.2, 13.5 & SR.IV.1)

465. Article 19 of the AML Law requires a financial institution that has reason to know that a suspicious transaction has occurred, whether effected by a customer or other person, where the total value of the transaction or series of potentially related transactions is equal to or greater than 4 million IQD (USD 3,000) to notify the FIU of the transaction, including all facts and circumstances. Such a report shall be made as soon as is reasonably possible, but in no case later than 14 days after the occurrence of the event causing suspicion or giving reason for suspicion.
466. A financial institution may report a transaction to the FIU pursuant to this Article if the financial institution believes that the transaction is relevant to a possible violation of any law or regulation, even if the report is not required under the AML Law.
467. "Suspicious transaction" as defined in Article 2.9 of the AML law, refers to a transaction, including but not limited to the opening of an account, if the financial institution knows, suspects, or has reason to suspect that: a) the transaction involves funds derived from illegal activities or ML or the transaction is intended or conducted in order to evade any law or regulation or to avoid any transaction reporting requirement under any law or regulation; b) the transaction involves funds intended for the financing of crime, including, but not limited to, terrorism; c) the transaction involves funds or assets over which a criminal organization has power of disposal; d) the transaction is designed to evade any requirements of this law or any regulations or orders issued under the authority of this Act; or e) the transaction has no apparent business or other lawful purpose or is not the sort in which the particular customer would normally be expected to engage, and the bank (and not all financial institutions) couldn't find a reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction.

468. The 14 day period granted to financial institutions to file an STR is not acceptable in term of FIU effectiveness.

***Reporting Threshold & Attempted transactions (c.13.3 & c.IV.2)***

469. Although the AML Law requires the MLRO to immediately notify the competent prosecuting and investigative authority if it reasonably suspects that a transaction, conducted or attempted, involves ML/TF related funds. There is no obligation on financial institutions to report attempted suspicious transactions. Moreover, the suspicious transactions reporting obligation is subject to a reporting threshold of 4 million IQDs (USD 3,493). Both points are not in line with FATF requirements.

***Filing of STRs Regardless of Possible Involvement of Tax Matters (c.13.4 & c.IV.2)***

470. The AML Law does exempt financial institutions from filing an STR if it involves tax matters. On the contrary, Iraq has opted for an all-offences approach which covers tax crime. Therefore, a possible involvement of tax matters in a suspicious transaction is not an obstacle to filing STRs.

***Effectiveness***

471. In 2011, only 1 ML related STR has been reported to the MLRO by a bank. The FIU has no clear policies and procedures for processing STRs.

***Recommendation 14***

***Protection for Making STRs (c. 14.1)***

472. The AML Law provides safeguards from liability related to the filing of an STR. In fact, Article 23.1 of the AML Law provides that a financial institution, or director, officer, employee, or agent of a financial institution, that reports a possible violation of law or regulation or a suspicious transaction, or information potentially relevant to such a violation, to the MLRO, or otherwise under the authority of this Act, shall not be liable under any law or regulation of Iraq, any constitution, law, or regulation of any political subdivision of Iraq, or under any contract or other legally enforceable agreement, including any arbitration agreement, for the disclosure or for any failure to provide notice of the disclosure to the person who is the subject of the disclosure or any other person identified in the disclosure.<sup>51</sup>

473. Moreover, Article 23.2 states that no financial institution, supervisory authority, or government body may discriminate against any employee with respect to compensation, terms, conditions, or privileges of employment because the employee or any person acting pursuant to the request of the employee provided information to any supervisory authority, or government body regarding a possible violation of any provision of this Act, or any regulation promulgated there under, by the financial institution, supervisory authority, or government body. An aggrieved past or present employee may bring suit within 2 years of the alleged discrimination. A court may order any person who committed a violation to reinstate the employee to their former position, pay compensatory damages, or take other appropriate actions to remedy past discrimination. The protections of this paragraph shall not apply to any employee who deliberately causes or participates in the alleged violation of law or regulation, or knowingly or recklessly provides substantially false information to a supervisory authority, or government body.

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51 These provisions are also found in Article 18.3 of the AML Law.

*Prohibition against Tipping-Off (c. 14.2)*

474. Article 19 of the AML Law prohibits any person or institution making an STR from revealing that fact to a customer or other third party. A person who willfully violates this provision shall be fined not more than 10 million Iraqi dinars (USD 8,733), or imprisoned for not more than 1 year, or both. Although the prohibition does not mention clearly directors, officers and employees of the institution, these can be covered by the fact that the penalty for “tipping off” targets any person who violates this provision.

*Additional elements (c. 14.3)*

475. There are no provisions in the AML Law or in any CBI or MLRO regulations that ensure that the confidentiality of names and personal details of the staff from financial institutions that make a STR. However, the MLRO stated that STRs are sent in the name of the bank and do not mention the name of the employee.

*Effectiveness*

476. Despite the legal protection related to the filing of a STR, several Iraqi authorities met by the assessment team stated that most employees are afraid of being fired by their management if they report any suspicious transactions. This may partially explain the low number of STR received by the MLRO.

477. Refraining from reporting suspicious transactions also undermines from the importance of the tipping-off prohibition.

**Recommendation 25 (Feedback for Financial Institutions with respect to STR) c.25.2**

478. Article 7 of the AML Law provides that the CBI shall inform the financial institutions it supervises of their obligations under Section 5 (CDD & Reporting obligations), and may issue regulations directing how they must comply. The regulations shall require all financial institutions to establish internal policies, procedures, and controls adequate for the institutions' businesses, and adequate employee training programs, and shall require banks and those other financial institutions that the CBI designates, to designate a compliance officer and an independent audit function to test the institution's AML program. The CBI shall issue and periodically update a list of financial activities which may constitute "suspicious transactions" and shall publish the list for the benefit of financial institutions.

479. Article 12 of the AML Law requires the MLRO/FIU to respond to any inquiry by a financial institution under Article 18 paragraph 2 (STR), within one week of the inquiry, by providing guidance to that institution as to how that institution should proceed. Guidance may include: informing the competent prosecutor's office, performing further research on the issues causing the financial institution's concern, filing a formal report of a suspicious transaction with the MLRO, or taking no action other than completing the transaction as requested by the customer. The guidance shall be binding upon the financial institution and all other affected parties.

**Recommendation 19 (Consideration of Reporting of Currency Transactions above a Threshold)**

480. Article 20 of the AML Law requires cash transactions to be reported by financial institutions equal to or above 15 million ID (USD \$13,100). Also, multiple currency transactions by a client in one business day which total 15 million ID shall be reported to the FIU.

481. However, the AML Law exempts banks from this reporting obligations as follows:

- Bank-to-bank cash transactions
- Cash transactions between a bank and any government authority
- Cash transactions between any bank and any other person designated by the CBI in its sole discretion.

482. The exemptions for cash transaction reporting obligations regarding any transactions between banks and any government authority (which could exempt cash transactions of all state-owned banks) and transactions between a bank and “any other person so designated by the CBI in the CBI’s sole discretion” are likely to result in many transactions that may be useful for analysis purposes not being reported. Such provisions invite opportunities for corruption and undermine effectiveness of this reporting obligation.

### *3.7.2 Recommendations and Comments*

#### *Recommendation 13 and SR.IV*

- Financial institutions should be required to report STR when they suspect or have reasonable grounds to suspect that funds are the proceeds of a criminal activity, and not after 14 days.
- Financial institutions should be required to report attempted transactions.
- Reporting obligations for suspicious transactions should not be subject to a reporting threshold.
- Authorities need to take greater efforts to increase awareness among the private sector on the potential ML/TF threats.

#### *Recommendation 19*

- The exemptions for cash transaction reporting obligations regarding any transactions between banks and any government entity or authority should be amended to ensure that such exemption does not cover cash transactions in relation to state-owned banks.
- The exemption for cash transactions between any bank and any other person designated by the CBI in its sole discretion should be amended to remove the “sole discretion” of the CBI and raise that discretionary level to the authority of a Money Laundering Committee or similar high level multi-agency policy body.

#### *Recommendation 25*

- There are no procedures followed by the FIU or CBI in responding to inquiries of financial institutions or providing guidance in respect of STR submissions, as there has only been 1 STR.
- The AML Law has been in effect for several years and no action has been taken by the FIU or CBI to improve the effectiveness of financial institutions in identifying and reporting suspicious transactions by providing adequate guidance or training to improve skills of FIs in implementation or compliance with reporting obligations.
- The FIU/CBI should consider providing training programs to reporting institutions on identification and reporting of suspicious transactions. However, it is necessary to clarify the definition of what constitutes a suspicious transaction, so that staffs of reporting institutions know what they are looking for.



### 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  | NC     | <ul style="list-style-type: none"> <li>Financial institutions are not required to report STR as soon as it suspects or has reasonable grounds to suspect that funds are the proceeds of a criminal activity.</li> <li>Financial institutions are not required to report attempted transactions.</li> <li>Reporting obligation is related to a threshold.</li> <li>Lack of effectiveness of the reporting process.</li> </ul>                                                            |
| R.14  | PC     | Low level of reporting raise questions of effectiveness.                                                                                                                                                                                                                                                                                                                                                                                                                                |
| R.19  | C      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| R.25  | NC     | <ul style="list-style-type: none"> <li>There has only been 1 STR received by the FIU since the AML Law took effect (2004) and no apparent efforts by the FIU/CBI to provide feedback or guidance to improve implementation or compliance with STR reporting requirements.</li> </ul>                                                                                                                                                                                                    |
| SR.IV | NC     | <ul style="list-style-type: none"> <li>Financial institutions are not required to file an STR as soon as it suspects or has reasonable grounds to suspect that funds are the proceeds of a criminal activity.</li> <li>Financial institutions are not required to report attempted transactions which are suspicious.</li> <li>The suspicious transaction reporting obligation is subject to a reporting threshold.</li> <li>Lack of effectiveness of the reporting process.</li> </ul> |

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

#### 3.8.1 Description and Analysis

##### Legal Framework:

483. Article 7(b) of the AML Law states: *“The CBI shall inform the financial institutions it supervises of their obligations under Section 5 and may issue regulations directing how they must comply. The regulations shall require all financial institutions to establish internal policies, procedures, and controls adequate for the institutions’ businesses, and adequate employee training programs, and shall require banks and other financial institutions that the CBI designates to designate a compliance officer and an independent audit function to test the institution’s AML program.”*

484. CBI issues “Circulars” addressed to entities under CBI supervision. The mandatory nature and enforceability of these Circulars is not clear due to the language used in the Circulars, the fact that messages and requirements in some Circulars are repeated in subsequent Circulars, which indicates a compliance issue. Further, there was no evidence that any sanctions have ever been imposed for lack of compliance with requirements in Circulars. Circulars related to AML/CFT internal compliance programs are as follows:

- CBI Circular No. 2 (24/1/2012) on the importance of combating ML and reminding banks to have internal AML procedures including KYC procedures, and report suspicious transactions.

- CBI Circular No. 30 (3/11/2010) is addressed to financial brokerage firms, banks, remittance companies, money exchange companies, investment companies and stock exchange companies, elaborates the obligation to designate an AML/CFT Compliance Officer; sets forth the qualifications and obligations of the AML/CFT Compliance Officer; and informs financial institutions to notify the MLRO of the name of the AML/CFT Compliance Officer.
- CBI Circular No. 51 (10/2/2009) reminds banks and remittance companies to ensure that the Internal Audit Unit is sufficiently independent, well trained and has the necessary human, financial and technical resources in order to test effectiveness of AML/CFT functions and controls.
- CBI Circular No. 28 (17/4/2008) reminds banks and remittance companies to send financial statements every 15 days, stamped by the Compliance Unit and confirming that no suspicious transactions were executed.
- CBI Regulation No. 1 (26/6/2007) addressed to banks and remittance companies, regarding CDD and KYC measures.
- CBI Circular No. 11 (7/6/2007) addressed to banks, regarding ML indicators to be added to the AML manual.
- CBI Circular No. 8 (3/5/2007) addressed to banks, regarding the functions of the AML/CFT Compliance Unit functions.

***Establish and Maintain Internal Controls to Prevent ML and TF (c. 15.1, 15.1.1 & 15.1.2)***

485. Financial institutions are required to establish internal policies, procedures and controls pursuant to Article 7(b) of the AML Law. These CDD/KYC obligations are further elaborated in Articles 15, 16, 17 and 18 of the AML Law, the recordkeeping requirement is found in Article 22 of the AML Law and the reporting obligation is found in Article 19 (suspicious transaction reporting) and Article 20 (cash transaction reporting). Article 7(b) goes on to require that “*financial institutions that CBI designates*” must designate a compliance officer, and an independent audit function to test the institution’s AML/CFT programs.
486. CBI Circular No. 30 (2010) is addressed to financial brokerage firms, banks, remittance companies, money exchange companies, investment companies and stock exchange companies and requires these to designate an AML/CFT Compliance officer of ‘good’ education.
487. Neither the above requirements indicate that the AML/CFT Compliance officer should be of management level, nor they indicate any further criteria for what constitutes education or experience level. Neither provision specifies that the Compliance Officer and other appropriate staff must have timely access to customer identification data and other CDD information, transaction records and other relevant information. Further, the AML Law requirement appears to only require that financial institutions “designated by the CBI” are obligated to designate a Compliance Officer. It is not clear that all financial institutions must do so.
488. The Circular requires financial institutions to notify the CBI of the name and contacts of the designated compliance officer.

***Independent Audit of Internal Controls to Prevent ML and TF (c. 15.2)***

489. Article 7(b) of the AML Law requires financial institutions which the CBI designates to have an independent audit function to test the institution's AML program. CBI Circular No. 51 of 2009 requires financial institutions to ensure that the Internal Audit Unit is sufficiently independent, well trained and has the necessary human, financial and technical resources in order to test effectiveness of AML/CFT functions and controls.

***Ongoing Employee Training on AML/CFT Matters (c. 15.3)***

490. Article 7(b) of the AML Law requires financial institutions to establish adequate employee training programs. There is no further detail as to how financial institutions might determine whether internal employee training programs are "adequate." The effectiveness of this requirement is impeded due to the lack of any details to indicate how often financial institutions are expected to train their staff on AML/CFT policies and procedures, which staff (whether all, or some) must undergo the training, or whether it is necessary to maintain records of the staff training.

***Employee Screening Procedures (c. 15.4)***

491. There are no requirements that financial institutions screen employees to ensure high standards of integrity in hiring.

***Additional element—Independence of the compliance officer (c. 15.5)***

492. There are no provisions which require that the AML/CFT Compliance Officer report directly to the board of directors.

***Recommendation 22***

***Application of AML/CFT Measures to Foreign Branches and Subsidiaries (c. 22.1, 22.1.1 & 22.1.2)***

493. Article 9 of the Banking Law requires Iraqi banks to obtain CBI approval before establishing branches, subsidiaries or representative offices in foreign countries. Article 13 of the Banking Law authorizes the CBI to revoke a license or permit if (Art. 13(c)) a bank conducts or administers operations in an unsafe or unsound manner or (Art. 13(f)) if a subsidiary of a bank has engaged in criminal activities constituting fraud, money laundering or terrorist financing. Thus, this provision can likely be used as a basis for the CBI to take action to suspend or revoke a license or deny permission to continue operations of a branch or subsidiary of an Iraqi bank located abroad, if it is being operated in an unsafe or unsound manner, including in relation to inadequate implementation of AML/CFT internal controls. However, no such actions have ever been taken by the CBI in relation to ML or TF cases or non-compliance.

494. Article 20(2) of the AML Law, relating to Cash Transaction Reports, defines 'financial institution' for the purposes of this Article to include domestic branches. However, this provision relates only to the filing of CTRs by domestic branches, and neither it, nor any other provision provides further direction or detail with respect to internal control requirements in relation to domestic or foreign branches or subsidiaries of Iraqi financial institutions, or branches or subsidiaries of foreign financial institutions operating in Iraq.

**Requirement to Inform Home Country Supervisor if Foreign Branches & Subsidiaries are Unable to Implement AML/CFT Measures (c. 22.2):**

495. There is no requirement that foreign branches and subsidiaries of Iraqi banks inform their home country supervisory authority if foreign AML/CFT laws or requirements prevent them from complying with AML/CFT requirements of Iraq. Nor is there any requirement that branches or subsidiaries of foreign financial institutions located in Iraq notify Iraqi authorities or their home country supervisory authority where Iraqi AML/CFT laws or requirements prevent them from compliance with home country requirements.

***Additional Element—Consistency of CDD Measures at Group Level (c. 22.3)***

496. There are no requirements that financial institutions subject to Core Principles are required to apply consistent CDD measures at the group level taking into account the activity of the customer with the various branches and majority owned subsidiaries.

***Effectiveness***

497. The requirement for financial institutions to designate an AML/CFT compliance officer lacks adequate specificity as to the required level of educational and/or professional experience and seniority.

498. The lack of specificity in internal AML/CFT control requirements hinders the ability of institutions to implement systems and procedures that meet these requirements, and the lack of clarity further impedes objective enforcement. The lack of specificity regarding depth and scope of implementation of internal control requirements renders these obligations vague with respect to implementation and likely difficult to enforce.

**3.8.2 Recommendations and Comments**

- AML/CFT control requirements should be tailored specifically to the different operational nature of the non-banking sectors so they can be more appropriately implemented and enable these sections to have a clearer idea of what constitutes full compliance with internal control obligations. This will also make compliance monitoring more effective and objective.
- The requirement to designate an AML/CFT Compliance Officer should specify that the AML/CFT Compliance officer should have an appropriate level of educational and professional experience, and be of management level. Either further specificity in this regulation or in guidance should elaborate specific factors for fulfilling these requirements in the Iraqi context.
- AML/CFT compliance personnel and other relevant staff should be required to have access to relevant banking documents, in particular CDD/KYC information.
- The requirements for internal AML/CFT training of staff should contain sufficient detail regarding implementation to enable compliance monitoring and sanctioning of non-compliance.
- There should be a clear requirement that financial institutions screen employees as part of hiring procedures to ensure a high level of staff integrity.
- When branches and subsidiaries of Iraqi banks located abroad are confronted with differing standards of mandatory AML/CFT requirements between the home country and host country,

they should be required to apply the higher (stricter) of the two standards. Iraqi subsidiaries and branches located abroad, as well as branches and subsidiaries of foreign banks located in Iraq should be required inform relevant supervisory authorities in the event of any direct conflict of AML/CFT requirements of home and host country which may prevent the institution from fulfilling mandatory AML/CFT implementation obligations of one of the countries.

### 3.8.3 Compliance with Recommendations 15 and 22

|             | Rating    | Summary of factors underlying rating                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
|-------------|-----------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>R.15</b> | <b>PC</b> | <ul style="list-style-type: none"> <li>• No requirement that AML/CFT Compliance officer be of management level or have sufficient professional experience.</li> <li>• No requirement that the compliance officer and relevant staff have access to appropriate CDD/KYC files and all necessary banking records.</li> <li>• Requirement to conduct on-going AML/CFT training for employees lacks specificity with regard to frequency or extent of employees that should receive such training.</li> <li>• No requirement for screening new employees to ensure high standards when hiring employees.</li> </ul> |
| <b>R.22</b> | <b>NC</b> | <ul style="list-style-type: none"> <li>• No legal obligation to apply the higher standards of AML/CFT obligations in cases where the home and host country differ.</li> <li>• No legal obligation to inform home country supervisor when foreign branch or subsidiary is prevented from implementing mandatory Iraqi AML/CFT requirements due to conflict with local requirements.</li> </ul>                                                                                                                                                                                                                   |

## 3.9 Shell banks (R.18)

### 3.9.1 Description and Analysis

#### Legal Framework

499. Article 8 of the Banking Law states that the CBI will grant a license for operations when it is satisfied of the applicant's intention to maintain a physical presence at a fixed address in Iraq. Articles 4 and 5 of the Banking Law describe the conditions for obtaining a license and detail the requirements of the licensing application.
500. Article 42 of the Central Bank Law states that the CBI, by court order can enter an establishment and examine the accounts, books, documents and other records.
501. This provision further states that if the CBI determines that there are reasonable grounds to suspect that such persons engage in an activity that is subject to the regulatory supervision by the CBI without the appropriate license, permit or registration certificate, law enforcement officials shall assist the CBI to gain access to the premises of such persons and to examine the accounts, books and other records.
502. If the CBI determines that a person engages in an activity without the appropriate license, permit or registration, the CBI shall serve an order directing that person promptly to cease such activity. The order shall be accompanied by a statement describing the facts and law supporting the existence of a violation, and shall request such person to provide a written response within three days after the date of service of such order. If, after a review of any such response and, in any event, within one calendar week from the date of service of its order, the CBI determines that the activity has not ceased, pursuant to Article 62, the CBI may impose administrative penalties in amounts that range

up to ten million IQD (USD 8,733) per violation. At the CBI’s discretion, these penalties may be imposed on a daily basis for each day that the violation continues until the CBI determines that compliance is achieved.

503. The penalty provision allows only for imposition of a rather low level administrative penalty, which is not likely to be effective in view of the seriousness of ML/TF risks of those operating shell banks or engaging in unlicensed financial activities. In most cases, following an order to cease operations, criminals are likely to transfer their assets/resources out of the jurisdiction and re-locate operations to ensure the CBI cannot detect unauthorized activities or reach assets for purposes of potential investigation.

***Prohibition of Establishment of Shell Banks (c.18.1)***

504. Article 8 of the Banking Law states that a license will not be granted to a financial institution unless authorities are satisfied of the applicant’s intention to maintain a physical presence at a fixed address in Iraq. Article 42 of the Central Bank Law prohibits unlicensed persons from operating in Iraq.

***Prohibition of Correspondent Banking with Shell Banks (c.18.2)***

505. There are no laws, regulation or prudential requirements which require financial institutions to implement AML/CFT controls, specifically the prohibition of establishing correspondent relationships with shell banks.

***Requirement to Satisfy Respondent Financial Institutions – Prohibition of Use of Accounts by Shell Banks (c.18.3)***

506. There are no laws, regulations, or other enforceable means for financial institutions to satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks. As a result, there is no apparent way in which supervisory officials could detect whether a bank is involved in a correspondent relationship with a shell bank.

***3.9.2 Recommendations and Comment***

- Legal provisions should specifically prohibit financial institutions from establishing any relations, including correspondent relations, with a shell bank. Such requirement should be monitored regularly during compliance inspections.
- The penalty provisions for engaging in financial activities without a license could be made more effective if it included more serious penalties for failure to comply with an order to cease financial activities when operating without a license.

|             | <b>Rating</b> | <b>Summary of factors underlying rating</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
|-------------|---------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>R.18</b> | <b>PC</b>     | <ul style="list-style-type: none"> <li>• There is no specific prohibition against shell banks operating in Iraq.</li> <li>• There is no prohibition against establishing correspondent banking relationships with shell banks.</li> <li>• There are no internal control provisions requiring financial institutions to ensure the banks with which they are establish correspondent relations are not shell banks.</li> <li>• Ineffective penalty provisions for engaging in unlicensed financial activities.</li> </ul> |

## ***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)***

507. The Central Bank of Iraq supervises, regulates, licenses and monitors compliance of banks and financial institutions pursuant to the Central Bank Law and the Banking Law. Pursuant to the AML Law, the CBI is responsible for the AML/CFT supervision and compliance monitoring of financial institutions and all other AML/CFT reporting entities. Thus, AML supervision and compliance monitoring of state-owned financial institutions and participants in the insurance and securities sectors (both state-owned and privately owned) has not yet commenced. Although, there exists prudential supervisory authorities for these sectors, their role in supervision or monitoring of AML/CFT compliance is not clear. The insurance and securities supervisory authorities acknowledged that AML/CFT supervision of their respective sectors is solely the responsibility of the CBI.
508. With respect to the KRG, evaluators are of the opinion that the Central Bank Law, Banking Law and the AML Law are currently valid in the territory of the KRG (at the time of the on-site AML/CFT Evaluation Mission), and are applicable with respect to financial institutions and other designated reporting entities. These laws are not systematically enforced in the KRG due to the current autonomous status. The KRG does not yet have its own independent Central Bank and thus, still works in cooperation and coordination with the CBI based in Baghdad.
509. The Insurance supervisory authority in Iraq is the Insurance Diwan. It was created and is authorized by the Insurance Business Regulation Act of 2005 and is within the Ministry of Finance. The Insurance Diwan is responsible for supervising, regulating and licensing insurance entities in Iraq.
510. The Iraq Securities Commission (ISC) is the statutory regulator of the capital markets, and is responsible for supervising, regulating and enforcing pursuant to Interim Law on the Securities Markets, Order No. 74 (2004). The ISC receives annual and quarterly reports that the Iraqi Stock Exchange (ISX) listed companies are required to file, and also from persons who hold more than 10% voting shares of a listed company.
511. The Board of Supreme Audit serves as public guardian by identifying fraud, waste and abuse and promoting anti-corruption and integrity in government. In this role it audits and can monitor compliance of a state-owned or private sector entity upon the request of the Cabinet of Ministers. Up to 2007, it was authorized to audit ministries, agencies and state-owned entities, but in 2007, its authority was extended to cover private sector entities. Since 2007, the BSA has conducted 3-4 AML inspections in private banks. It reports directly to the Cabinet of Ministers and carries out these functions only on the basis of specific requests of Cabinet Ministers. In carrying out its audit functions, the BSA can assess compliance with regulatory requirements which include AML obligations; however, this work is completely separate from the work of the MLRO. The BSA has no enforcement authority with respect to compliance, and can only issue recommendations for remedial measures.
512. The following chart indicates supervisory authorities responsible for general supervision of the specified financial activities and the authority responsible for AML/CFT supervision.

| <b>Financial Activities</b>                                                                                                                                                                                                                        | <b>Prudential Supervisor</b> | <b>AML/CFT Supervisor</b> |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------|---------------------------|
| 1. Accepting deposits and other repayable funds from the public                                                                                                                                                                                    | CBI                          | CBI                       |
| 2. Lending                                                                                                                                                                                                                                         | CBI                          | CBI                       |
| 3. Financial leasing                                                                                                                                                                                                                               | CBI                          | CBI                       |
| 4. Transfer of money or value                                                                                                                                                                                                                      | CBI                          | CBI                       |
| 5. Issuing and managing means of payment                                                                                                                                                                                                           | CBI                          | CBI                       |
| 6. Financial guarantees and commitments                                                                                                                                                                                                            | CBI                          | CBI                       |
| 7. Trading in: <ul style="list-style-type: none"> <li>• money market instruments</li> <li>• foreign exchange</li> <li>• exchange, interest rate and index instruments</li> <li>• transferable securities</li> <li>• commodities/futures</li> </ul> | Iraq Securities Commission   | CBI                       |
| 8. Participation in securities issues and provision of financial services related to such issues                                                                                                                                                   | Iraq Securities Commission   | CBI                       |
| 9. Individual and collective portfolio management                                                                                                                                                                                                  | Iraq Securities Commission   | CBI                       |
| 10. Safekeeping and administration of cash or liquid securities on behalf of other persons                                                                                                                                                         | Iraq Securities Commission   | CBI                       |
| 11. Investing, administering, managing funds on behalf of others                                                                                                                                                                                   | Iraq Securities Commission   | CBI                       |
| 12. Underwriting/placement of life insurance & other investment related insurance                                                                                                                                                                  | Insurance Commission         | CBI                       |
| 13. Money and currency changing                                                                                                                                                                                                                    | CBI                          | CBI                       |

## **Legal Framework**

### **Banking and Financial Institutions**

513. Art. 16(d) of the Central Bank Law authorizes the CBI to issue licenses or permits and adopt procedures to regulate the safety and soundness of banks as further specified by the Banking Law. No provision in either the Central Bank Law or Banking Law specifically defines or lists by category the types of institutions directly subject to CBI supervision and regulation, however, Article 27 of the Banking Law specifies the banking activities, which includes:

- Receiving deposits
- Extending credit
- Buying and selling for its own account or for the account of customers: money market instruments, foreign currency, precious metals, exchange and interest rate instruments, stocks and other transferable securities, forward contracts, swap agreements, futures, options and other derivatives relating to currencies, stocks, bonds, precious metals or interest rates
- Entering into contingent commitments including guarantees and letters of credit for its own account and for the account of customers
- Providing clearing, settlement and transfer services for money, securities, payment orders and payment instruments



- Money brokering
- Safekeeping and administration of valuables including securities
- Providing trust services
- Providing services as portfolio manager of securities or as financial adviser, agent or consultant
- Providing financial information and credit reference services and
- Anything that shall be incidental to the foregoing and other activities not specifically prohibited under the Banking law, as the CBI may, by regulation authorize as a banking activity.

514. Article 40 of the Central Bank Law grants CBI exclusive authority to take all actions necessary to:

*“ . . . license, regulate and supervise banks and their subsidiaries to obtain compliance with the this law and the Banking law, including the authority to conduct off-site surveillance and on-site examinations of licensees and their subsidiaries in a manner and at the times chosen by the CBI; to require banks and their subsidiaries to provide all such information as the CBI may request regarding the affairs of a bank, its subsidiaries and their customers; and to take remedial action as provided in this Law and the banking law, to enforce compliance by licensees and their subsidiaries with such laws and with any regulations, prudential standards, guidelines or directives issued by the CBI in connection with its implementation of such laws. Actions by an entity of the Government other than the CBI to regulate the lending and credit activities of banks are without legal force.”*

## **Insurance Sector**

515. The Insurance Supervisor (Insurance Diwan) was established in 2008, pursuant to the Insurance Business Regulation Act of 2005 and is responsible for oversight and regulation of an open, safe and transparent financial market to support the insurance industry. The Insurance Diwan is located in the Ministry of Finance and among its responsibilities are included:

- Examine complaints related to insurance services and take appropriate decisions - Art 8(8)
- Issue orders and necessary decisions for the implementation of functions and authorities under this law – Art. 8(9)
- Collect Licensing fees - Art. 9
- Issue regulations relating to solvency margins, guarantee funds, calculating technical reserves, reinsurance criteria, investing of insurer’s funds, nature and location of insurer’s assets to meet insurance obligations, qualifications of auditors, accounting policies, accounts and registers, ethical and professional rules, combating money laundering in insurance activities, and licensing. – Art. 12.
- Monitor compliance with insurance laws and regulations. – Art. 47
- Liquidate companies where necessary. Art. 48

516. Article 35 of this law authorizes the Insurance Diwan to require anyone subject to its supervision to abstain from processing any case or transaction if it was the result of any activity connected with money laundering, and the Diwan can inform any official or judicial party. Although the law (Art. 47) gives authority to the Diwan to monitor compliance with insurance laws and regulations, the law does not specifically give the supervisor the power to conduct on-site inspections. Thus, the Diwan’s supervisory authority is limited to requesting documents from entities under its supervision. Instead, the law requires a shareholder committee select an independent accountant to examine the financial information of the insurer and notify the Diwan if it finds that the insurer is unable to cover financial obligations, meet the capital adequacy requirements if the accounting practice of insurer does not conform to the legal framework’s requirements on acceptable accounting practices.

517. There is no clear authority for the Insurance Diwan to supervise, monitor/inspect or enforce compliance of insurance companies, re-insurers, agents or other participants in the insurance markets with AML/CFT obligations. This authority is delegated under the AML Law to the CBI. However, the Insurance Diwan is authorized under the Insurance Law (Article 97) to impose a fine of not less than 100,000 Iraqi Dinar (USD \$87) and not more than 5 million Iraqi Dinar (USD 4,366) for any violation of Art. 35, related to executing transactions involving money laundering. Delineation of AML supervisory functions between the CBI and Insurance Diwan is not entirely clear.

### **Iraq Securities and Exchange Commission**

518. The Interim Law on Securities Markets No.74 (2004) authorizes the creation of the Iraq Stock Exchange and the Iraq Securities and Exchange Commission.

519. The Securities Commission is authorized under the section 12 of the 2004 Interim Securities law to:

- inspect operations of the Stock Exchange, the Depository and brokers and other persons, including banks and their securities operations
- promulgate rules for disclosure of holdings and acquisition of significant blocks of securities in joint stock companies
- enforce the Securities law and take appropriate disciplinary actions, including bringing civil and criminal actions
- suspend trading in any security admitted on the Exchange, or
- Suspend or revoke the Exchange's listing or authorization of trading of a security if the commission finds that the issuer of a security has failed to comply with provisions of the law.

520. The Iraq Securities Exchange is authorized to:

- operate and regulate members and listed companies in a way that is consistent with protecting investors and promoting investor confidence
- promote interests of investors in efficient, reliable, competitive, transparent and honest markets,
- organize and facilitate fair, efficient and orderly transactions in securities including clearing and settlement
- regulate dealings in securities-related services and transactions
- assist in capital-raising for listed companies or which desire to be listed on the Exchange
- engage in investor education programs
- collect, analyze and publish statistics and information
- establish and support contacts with stock exchanges of Arab and international markets
- Undertake other services and activities necessary to support its objectives.

521. This current law permits off-exchange trading if the Securities Commission adopts appropriate regulations, but it appears that no such regulations are yet in effect. The law contains listing and disclosure requirements.

522. There are no AML/CFT provisions in the Securities Law relating to internal control obligations or reporting obligations, nor are there any provisions indicating that the Securities Commission or the Iraqi Stock Exchange has a role in monitoring compliance with AML/CFT obligations of market participants. Although the AML Law grants the CBI authority to monitor and enforce compliance with AML/CFT obligations with respect to market participants in the securities sector, this supervisory function is not yet being carried out due to resource and capacity challenges.

523. Section 5 of the Securities law sets forth licensing requirements of brokers/dealers, and other mandatory trading obligations of brokers/dealers. Section 8 of the law gives the Securities Commission approval authority over all governing instruments and rules of the Stock Exchange and imposes disciplinary sanctions for violations of regulations by the Exchange.
524. Section 11 authorizes a Business Conduct Committee (BCC) which has authority to make binding decisions upon members and listed companies with respect to violations of the Securities Law and rules of the Exchange or Securities Commission applicable to broker's activities. The BCC can issue warning letters, letters of compliance with orders, monetary penalties, restitution orders for disgorgement of profits, as well as suspend a broker's license or broker representative or associated person from exchange activities. The BCC can also order a halt to trading in the securities of a company for a time period, revoke broker licenses, and cancel authorization of a company to trade on the Exchange. Section 15 of the law authorizes the Securities Commission to impose monetary fines and penalties, including pursuit of criminal sanctions which may include imprisonment.

### *3.10.1 Description and Analysis*

**Competent authorities - powers and resources: Designation of Competent Authority (c. 23.2); Power for Supervisors to Monitor AML/CFT Requirement (c. 29.1); Authority to conduct AML/CFT Inspections by Supervisors (c. 29.2); Power for Supervisors to Compel Production of Records (c. 29.3 & 29.3.1); Adequacy of Resources – Supervisory Authorities (R.30)**

#### **Designation of Competent Authority (c. 23.2)**

525. The CBI has wide authority pursuant to the Central Bank Law and Banking Law to supervise, monitor and enforce compliance of banks with obligations in these laws and the AML/CFT law. There is no definition of "financial institution" in the Central Bank Law or Banking law, however, the AML/CFT law, in Article 5 defines "financial institutions" (for AML/CFT purposes) to include:

- *Banks*
- *Managers of investment funds*
- *Insurance institutions*
- *Persons who trade in securities*
- *Money transmitters, foreign currency exchange houses, or any other entity that effects foreign exchange transactions on a regular basis above the threshold amount of 15 million Iraqi dinar (USD 12,800) per week.*

526. Art. 6 of the AML/CFT Law extends the definition of financial institutions as follows:

*"Financial institution shall also refer to persons who, on a professional basis, accept, keep on deposit, invest or transfer, or assist the investment or transfer, of financial assets belonging to others. Such persons shall include, but not be limited to those who:*

- *Undertake credit transactions (including consumer credit or mortgages, factoring, financing of commercial transactions or financial leasing*
- *Trade on their own account or for others in the bank notes or cash money market instruments, currency, precious metals, raw materials for use in production of other items, commodities or securities (bearer or other) and derivatives of any such tradable items;*
- *Offer or distribute shares in funds, in the capacity of distributor of a domestic or foreign investment fund, or in the capacity of representative of a foreign investment fund;*

- *Undertake asset management*
- *Make investments as investment adviser*
- *Keep or manage securities and*
- *Deal in precious metals, stones or jewels.*

527. The CBI is granted extensive powers to supervise, regulate, conduct off-site and on-site surveillance examinations of banks and their subsidiaries, and enforce compliance, pursuant to Art. 40 of the Central Bank Law. Article 7(e) of the AML Law authorizes the CBI to perform inspections or instruct an auditing body that the CBI designates to perform examinations and forward any reports to the CBI. These provisions grant the CBI adequate legal authority to supervise, monitor and enforce compliance of certain financial institutions with AML/CFT requirements, conduct inspections that include reviewing policies, procedures and examine books and records, as well as conduct sample testing.

528. Pursuant to Article 53(1) of the Banking law, the Central Bank may conduct inspections and “*review the statements, documents, information, clarifications and proof submitted by banks in the application of this law.*” Article 53(2) goes on to state that the “*CBI may request that banks, or any of its subsidiaries or affiliates, provide and corroborate in writing when it deems necessary, any additional information, reports, documents, clarifications or proof.*” The AML/CFT law (Art. 8) authorizes the CBI “*to require financial institutions it supervises and the institution’s auditing bodies to provide to the CBI all information and documents needed for the performance of the CBI’s duties.*” These provisions provide the CBI sufficient authority to compel production of documents without obtaining a court order.

#### Insurance Sector

529. The current Insurance Law does not grant sufficient powers to the insurance supervisor for effective discharge of its supervisory responsibilities. In particular, the law does not explicitly give the supervisor the power to conduct on-site inspections, for purposes of general supervision or AML supervision. Instead, the law requires that the shareholder committee select an independent accountant to examine the financial information of the insurer and notify the Diwan if it finds that the insurer is unable to cover financial obligations, meet the capital adequacy requirements if the accounting practices of the insurer do not conform to the legal framework’s requirements on acceptable accounting practices. Nor have any regulations or guidance been issued setting forth how AML obligations are to be implemented in the insurance sector.

#### Securities Sector

530. The supervisory and regulatory infrastructure for the securities sector is weak, and doesn’t yet provide sufficient safeguards to give issuers and investors complete confidence. Improvements in laws that provide clearer provisions on contract enforcement, shareholder and creditors rights, efficient and fair judicial processes, corporate governance, accounting and auditing standards are still needed to match regional benchmarks. The regulatory framework to protect investors from basic systemic risks, including ML/TF risks, needs strengthening. Neither the Securities Commission, nor the Stock Exchange has a role in monitoring or enforcing compliance with AML/CFT obligations.

**Power for Supervisors to Monitor AML/CFT Requirements (c. 29.1), Authority to Conduct AML/CFT Inspections (c. 29.2) and Power for Supervisors to Compete Production of Records (c. 29.3 & 29.3.1)**

531. Legally, the CBI is the designated supervisory authority to monitor compliance with AML requirements of all reporting entities. CBI possesses adequate legal authority to supervise, monitor compliance with AML obligations by conducting inspections, including on-site inspections, which include a review of policies, procedures, books, records and do sample testing. The CBI also has sufficient authority to issue production orders, and obtain documents without recourse to the courts from the institutions it supervises. However, as the AML law does not encompass internal controls or reporting obligations related to terrorist financing, the CBI's supervisory authority is limited to assessing compliance with AML obligations.
532. Article 2(6) of the AML Law includes the following provision: *“The CBI may by regulation, determine that the definition of a financial institution applies only to entities above a specified size and designate other persons who shall also be considered financial institutions for purposes of this Act.”* CBI officials have assured the evaluation team that, to date, no such action to reduce the number or type of financial institutions subject to which AML obligations apply has been taken. However, CBI already lacks effective supervisory authority over the large state-owned bank sector, and this provision appears to provide CBI with authority to further reduce the scope of institutions subject to AML obligations without apparent limitation or justification. International standards allow for the use of a risk-based approach in designing an AML system, but such approach cannot limit application of the most basic AML obligations. Reduction in application of certain obligations must be based on clearly documented evidence that the ML/TF risks are lower, and that other adequate safeguards, checks and controls exist elsewhere.
533. In practice, although the CBI regulates and supervises private banks, it does not have, in practice, supervisory authority over, nor does it monitor compliance with AML obligations of state-owned banks. Discussions with various officials revealed that the state-owned banks “belong” to the Ministry of Finance and report to it on all budgetary, administrative, hiring/personnel and other matters including AML/CFT issues. In addition, all employees of state-owned banks and other entities are classified as civil servants. The Ministry of Finance does not appear to have any legal prudential supervisory authority pursuant to the Banking Law, Central Bank Law, or AML Law, nor does any other law provide it with any powers or authorities in respect of the AML/CFT system.
534. A 2011 World Bank Review of the Iraqi Financial Sector indicates that prudential supervision by the Central Bank is rather weak. This report says of the 2 largest state-owned banks:
- “The CBI should have the resources and expertise to be able to exercise authoritative supervision. At this time, the Ministry of Finance continues to determine the key policies and practices of these two banks, and the CBI cannot effectively supervise these banks. No conclusive information was available to the mission on how Rafidain Bank and Rasheed Bank are supervised. Market observers point to similar concerns over the lack of effective supervision of TBI [Trade Bank of Iraq]. The fact that the CBI is unable to exercise effective supervision over Rafidain Bank and Rasheed Bank implies that by far the greater part of the banking system in terms of assets is not under effective CBI supervision.”*<sup>52</sup>
535. However, discussions with representatives of state-owned banks revealed they had a good understanding of the importance of AML internal control systems, but that AML controls in state-

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52 Financial Sector Review: Republic of Iraq, World Bank (2011), pg. 29.

owned banks are very limited. As a result, state-owned banks have requested further AML training from the Ministry of Finance, but none has been provided to date. State-owned banks have not requested any AML training from the CBI as coordinator of the national AML/CFT system.

536. Supervised institutions indicated that, based on their experiences with AML inspections, the CBI was in need of training in AML supervision, regulation and conducting inspections to assess compliance with internal AML/CFT control obligations. In respect of AML inspections, no written AML inspection procedures were provided, nor follow up procedures to ensure identified deficiencies were effectively addressed. Inspection documents provided by CBI indicated AML inspections were limited in scope and depth. The evaluation team was provided one sanitized letter from the CBI to a small private bank following an on-site inspection which assessed compliance with prudential and AML requirements. The letter mentioned no information on sufficiency of compliance with AML obligations or internal controls; except that it recommended that the bank should collect more documentation to fulfill CDD obligations. The letter included very little information on the type or extent of deficiencies, and no specific remedies, guidelines, or follow up deadlines regarding remedial procedures. No sanctions were imposed.
537. Although CBI indicated that prudential and AML inspections were conducted for banks, remittance companies and money exchanges on average once per year, the evaluation team could not verify that CBI conducted any AM compliance inspections on other financial institutions or non-financial businesses or professions subject to its supervision.

#### **Adequacy of Resources – Supervisory Authorities (c.30)**

538. Article 11 of the AML Law states: *“The CBI may require payment or reimbursement from a financial institution it supervises for the cost of CBI’s supervisory activity under this law – including the cost of legal, accounting and auditing fees.”* This provision indicates that adequate financial resources to cover costs of AML supervision and compliance inspections may not be available from the CBI general administrative budget. Covering the costs of AML inspections by a system of direct invoicing of inspected institutions can, without appropriate transparency and integrity safeguards, invite opportunities for corruption and as well as seriously compromise the perception of CBI as an objective, transparent, fair and responsible supervisory authority.
539. The fact that the evaluation team was unable to confirm that the CBI has conducted any on-site inspections of reporting entities beyond banks, remittance or money transfer companies, also indicates that financial, human and technical resources are lacking, as well as sufficient expertise. Further evidence of the lack of resources is indicated by the *2011 World Bank Review of the Iraq Financial Sector*<sup>53</sup> which states that between 2010-2011 CBI reduced staff from 2650 to 1600. Although this report indicates that further staff cuts are planned, the Supervision Dept. of the CBI indicated to the evaluation team that they expect to increase staffing in the coming year, but no specifics were available.
540. The CBI’s Bank Supervision unit currently has about 200 staff, 40 of which are on-site inspectors, 20 are off-site inspectors, and 9 of these have conducted AML inspections. However, none are dedicated solely to AML/CFT inspections. As the total number of supervised entities CBI is responsible for inspecting is 46 banks and 354 remittance companies, it is not clear to the evaluation team that the CBI has adequate human, financial or technical resources adequate to carry out its supervisory functions to effectively monitor compliance with these entities as well as the rest of the reporting entities for which compliance monitoring functions have not yet been undertaken.

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53 at page 34.

## Insurance Sector

541. The Insurance Diwan does not currently have effective general or AML supervisory powers over insurance companies, re-insurers or agents pursuant to the Insurance Law. In fact, the Insurance Diwan does not possess powers to conduct on-site inspections, for general or AML compliance purposes, but pursuant to Article 37, the Diwan can request and inspect documents. The lack of power to conduct on-site inspections is not only blinds the Insurance Diwan from uncovering documentation that is likely to be relevant to compliance monitoring, but also prevents the supervisor from conducting of sample testing, which is considered an effective and important method of financial supervision and regulation.
542. Article 35(2) of the Insurance Law requires insurers to “commit to combat money laundering in the insurance business” and have policies in place to prevent and detect money laundering. However, no regulations or guidance (enforceable or otherwise) has been issued which set forth policies, procedures or practices insurers should implement to comply with AML requirements, and no AML compliance inspections have been conducted by CBI in the insurance sector. Further no AML outreach or training programs have commenced in the insurance sector.
543. As the Insurance Diwan has no AML supervisory authority in the insurance sector, no resources have been dedicated to AML supervision or compliance monitoring. Further, with no authority to conduct on-site inspections, no resources are dedicated to this method of ensuring compliance with insurance regulations. However, the Insurance Diwan is aware of the importance of protecting the insurance sector from financial crime and money laundering (not terrorist financing), but to more effectively participate in this effort, the role of this supervisory authority needs to be clarified and technical training regarding AML issues is needed.

## Securities Sector

544. There are no AML/CFT provisions in the Securities Law, nor does the Securities Commission or Stock Exchange have responsibilities with respect to supervision, compliance monitoring, or penalizing non-compliance with AML requirements in respect of market participants. Section 6(5) of the Securities Law authorizes the Board of Governors of the Stock Exchange to issue various rules, operating procedures, conduct oversight activity of the Exchange and (Art. 6(5)(h)) “*take necessary measures with regard to suspicious operations according to the Exchange rules, this Law and the rules of the Commission.*” However, no regulations, rules or procedures have been issued regarding measures that must be taken to identify suspicious transactions, nor has any guidance or information been issued regarding procedures to be taken to detect or report suspicious operations. Officials indicated that no outreach or AML training programs have taken place involving market participants in the securities sector, nor have any compliance monitoring or inspection activities commenced.
545. Article 5(14) authorizes the Securities Commission and the Stock Exchange to “*gain access to any information relevant to enforcement of this Law or the rules of the Exchange or Commission from brokers or their agents, employees or owners, without any need for notice or approval by that broker, their representatives or associated persons.*” This provision grants authorities powers to conduct supervisory inspections and compel production of documents and records for general regulatory and compliance monitoring purposes. Supervisory authorities in the securities sector lack authority to monitor compliance of securities sector entities with AML requirements, therefore, no resources are currently dedicated to this purpose.

546. However, officials from the Securities Commission and the Stock Exchange are aware of the importance of their roles in preventing and detecting ML/TF in the securities sector. These officials agreed that their roles should be more clearly defined in the overall AML/CFT efforts so they can play a more active role. Capacity building, training and technical assistance is necessary, as well as clearer channels for cooperation, collaboration and dialogue with other ministries and agencies involved in AML/CFT efforts.
547. The evaluation team understands that the staff of the Iraq Securities Commission is rather small, approximately 46 employees. Sufficient information was not available to effectively assess supervisory resources available in the securities sector, but as the regulatory infrastructure and many of its foundations remain weak, and a new draft law has been pending for several years, (since 2008), it is not apparent that sufficient or effective resources, expertise, technical or human resources are available. Discussions with supervisory authorities of the securities markets indicated that they are not involved in the drafting process of the new securities law and have not seen a recent draft of its current status. This raises serious questions as to the way in which policies are being considered, adopted and translated into laws and regulations necessary to govern the sector.

**Sanctions: Powers of Enforcement & Sanction (c. 29.4); Availability of Effective, Proportionate & Dissuasive Sanctions (c. 17.1); Designation of Authority to Impose Sanctions (c. 17.2); Ability to Sanction Directors & Senior Management of Financial Institutions (c. 17.3); Range of Sanctions—Scope and Proportionality (c. 17.4)**

548. Article 56 of the Banking Law sets forth penalty provisions that can be imposed by the CBI including administrative penalties and corrective measures. These sanctions apply to violations of the Banking Law or any regulation or order issued by the CBI, or for unsafe or unsound banking operations. These sanctions provisions include a fairly wide range of administrative actions, including:
- a. Send a written warning to the bank
  - b. Give orders to the bank
  - c. Request that the bank submit a program of measures it intends to take or a detailed description of measures it has taken to eliminate the violation and correct the situation
  - d. Request that the bank cease some of its operations or bar it from distributing profits or dividends
  - e. Impose any restriction on the granting of credit deemed appropriate
  - f. In addition to any minimum balance stipulated in the Central Bank Law and other legally required deposits, require the bank to deposit and maintain balances with the CBI without interest for a period deemed appropriate by the CBI
  - g. Request that the chairman of the board of directors convene the board of directors to review and examine the violations attributed to the bank and to take the necessary measures to eliminate the violations; in this case, one or more representatives of the CBI shall attend the board of directors meeting
  - h. Request the bank temporarily or finally suspend from the office any authorized manager or designated branch manager, depending on the seriousness of the violation
  - i. Request that the bank remove the chairman or any of the members of the bank's board of directors
  - j. Dissolve the bank's board of directors and appoint a conservator
  - k. Impose an administrative penalty on the bank, provided that at the discretion of the CBI administrative penalties may be imposed on a daily basis until the violation has eased or compliance is achieved
  - l. Revoke the bank's license or permit



- m. Impose penalties of up to 5 million Iraqi dinar (USD 4,366) per day, and not to exceed 5% of its paid-in capital.
549. Article 9 of the AML Law incorporates by reference the above-mentioned sanctions for any violations, and further stipulates that if the CBI determines that a financial institution it supervises has violated this Law it may take appropriate enforcement measures. In particular, the CBI may:
- issue an order to cease the activity resulting in the violation
  - assess a monetary penalty under the provisions of the Central Bank of Iraq Law to the violating institution, or any person engaged in or participating in the activity violating this Act
  - publish the results of any enforcement action, including the names of any persons involved
  - issue an order that a person found to have violated this Law or participated in a violation of this Law shall not be permitted to be involved in the affairs of a financial institution either permanently or temporarily
  - withdraw authorization to act as financial institutions if the institutions themselves or persons responsible for administering or managing their business are found to have seriously or repeatedly violated their obligations under this Act.
550. It is not clear that a sufficiently wide range of available sanctions can be imposed against natural persons or directors or senior management. Based on the list of sanctions under the Banking Law, it does not appear that the CBI has power itself to remove a bank officer, director or manager. Rather sanctions (h) and (i) state that the CBI has only the power to “request the bank to remove” officers or directors. However, the CBI possesses legal power to withdraw, restrict or suspend a financial institution’s license.
551. Although the CBI has adequate legal powers of enforcement to impose a wide and flexible range of sanctions against financial institutions for violations of the Banking Law or AML Law, the maximum monetary penalty of 5 million Iraqi dinar per day (USD 4,366) or up to 5% of the paid-in capital is somewhat low and insufficiently proportionate or deterrent in respect of the level of harm from money laundering or terrorist financing that can result when violations of internal AML/CFT control requirements occur. This level of penalties would be considered by criminals as a ‘cost of doing business,’ and would not likely have any preventive or deterrent effect. Consideration should be given to increasing the maximum penalties available.
552. CBI officials informed the evaluation team that monetary penalties are rarely used as sanctions for violation of prudential or AML/CFT requirements. Data provided to the evaluation team indicated that monetary penalties have been imposed on financial institutions on 3 occasions. In each case, a single penalty of IQD 10 million (USD \$8,733) was imposed. In 2 of these cases, the penalties imposed were for non-compliance with internal AML control requirements (i.e., failure to verify CDD data, and failure to maintain records). In the third case, 1 bank and 2 money transfer companies were fined for executing a payment transfer “while knowing that the money being transferred was the proceeds of an embezzlement,” although there have been no convictions for money laundering to date in Iraq.
553. CBI officials acknowledged that the sanction most frequently used by the CBI was warning letters or temporary suspension of a financial institution from participation in currency auctions. No statistics were provided in regard to how often these measures have been imposed. CBI officials indicated that only in one instance a monetary penalty was imposed on an entity engaging in banking activities without a license. The penalty was promptly paid by the company.

554. Under the Banking and AML Laws, the CBI can impose disciplinary sanctions against directors and senior management of financial institutions, as well as anyone else the CBI deems to be involved in the violation. Although the range of available sanctions is wide in the law, sanctions are rarely used, monetary penalties are rarely imposed, and the limit for monetary penalties is very low. CBI has the legal authority to seek enforcement of monetary penalties through civil courts, and can initiate criminal prosecution, but has had no reason to pursue these avenues to date.
555. Although the Insurance Diwan has authority under the Insurance Business Regulation Act of 2005 to suspend insurance licenses (Art. 23), and order an insurance company to refrain from processing an insurance transaction (Art. 35), these sanctions have never been used to penalize non-compliance with AML obligations, as the Insurance Diwan does not monitor compliance with AML obligations in the insurance sector.
556. Although the Securities Law, Art. 6(6)(h) authorizes the Board of Governors of the Stock Exchange to “take necessary measures with regard to suspicious operations according to the Exchange rules, this Law and the rules of the Commission”, no such actions have been taken with regard AML compliance or suspicious transactions.
557. The Securities Commission is authorized, pursuant to Article 12(14) of the Securities Law bring civil or criminal actions relating to violations of its provisions to issue orders for production. In addition it can issue a cease and desist order to prevent a violation or future violation of the law (Art. 12(15)(a)), and impose administrative penalties of up to IQD 50 million (USD \$ 43,668) for violations involving fraud, deceit or willful or reckless disregard of a regulatory requirement, or of up to IQD 25 million (USD \$21,834) for any other violation. No penalties to date for violation of AML obligations have been imposed upon persons or entities in the securities sector.

**Market entry: Fit and Proper Criteria and Prevention of Criminals from Controlling Institutions (c. 23.3 & 23.3.1); Licensing or Registration of Value Transfer/Exchange Services (c. 23.5); Licensing of other Financial Institutions (c. 23.7)**

558. The Banking Law sets forth Licensing procedures and requirements in Articles 4-8 and article 8(6) sets forth licensing criteria which requires that the CBI be satisfied on the basis of license application regarding:
- The validity of the documents submitted in the application process
  - The financial status and history of the applicant
  - The character and professional experience of the administrators as fit and proper persons
  - The identity and character of the owners as fit and proper persons in particular persons with qualifying holdings
  - The adequacy of staffing, operational and financial resources and capital structure to cover all obligations and liabilities with respect to the proposed activities
  - Soundness of proposed operations
  - Viability of the business plan
  - Applicants intention to maintain physical presence at a fixed address in Iraq; and
  - Where applicant is a subsidiary of a foreign bank or bank holding company or concerning the permit for a branch of a foreign bank, that an adequate level of prudential supervision is exercised on a consolidated basis by the relevant foreign supervisory authority.
559. Article 13 of the Banking Law contains provisions on license revocation procedures. Licenses can be revoked on grounds of:

- Fraudulent statements in or in connection with the license or permit application
- Bank has not made use of its license
- Activities conducted in unsafe or unsound manner
- Violation of CBI order
- Violations of law or regulation in a way that materially affects financial soundness of the bank, or condition or restriction attached to a license or permit issued by CBI
- Engaging in criminal activities constituting fraud, money laundering or terrorist financing
- Parent foreign bank or holding company has lost its license
- CBI is hindered in supervising the bank due to transfer of bank's administration, operations, books or records outside of Iraq without prior notice or written approval
- CBI is hindered in supervision because the bank is a member of a group or bank is a subsidiary of a foreign bank that is not adequately supervised; or the foreign supervisory authority responsible for supervision of the bank or the foreign bank or bank holding company is under conservatorship or receivership.

560. The evaluation team received a copy of the licensing procedures used by the Central Bank, which are quite extensive. The license application is quite comprehensive, and applicants are required to provide documentation on the following:

- risk and credit management strategies
- organizational plan for the banking business
- information on the source and quantity of funds used in capitalization
- information technology plans
- plans for training staff
- description of parent country's AML/CFT requirements
- plan for implementation of AML/CFT requirements
- Confirmations from any foreign supervisory authority of good status with foreign authority, confirmation that bank is subject to consolidated supervision, and description of foreign supervisor's inspection system
- Copies of the latest 3 audited financial statements
- Confirmation from external auditor willing to undertake auditing for the bank
- Any changes in financial position since last financial statements
- Risk-based capital ratio indicating compliance with regulations of foreign supervisory authority and regulations issued by CBI
- Articles of incorporation
- Verification of each owner of a qualified holding and his/her nationality, permanent address, profession, business, including beneficial ownership
- Letters from 2 other individuals certifying soundness of his/her financial position
- List of shareholders and ultimate beneficiaries
- Organizational chart
- Internal control systems descriptions
- Copies of all other banking licenses

561. CBI's fit and proper requirements for licensing financial institutions CBI are quite detailed. In addition to the required verification procedures of the documents listed above, CBI officials conduct background checks to determine the existence of any past criminal record, and verify educational and professional experience of all applicants in addition to analyzing financial statements and documents. In 2012 the CBI granted 3 new bank licenses; and in 2011, 5 new bank licenses were

granted. The CBI procedures require conducting beneficial ownership checks and verifying the ownership and control structure. Although the evaluation team could not verify the extent to which these procedures are actually followed, currently, Iraq has very limited participation of foreign banks and financial institutions in their financial system, so expertise in conducting these checks is limited.

562. Although imposition of disciplinary sanctions and license suspension or revocation are available sanctions, CBI officials reported that no disciplinary actions to date have been taken, nor actions to revoke or suspend licenses of banks or other financial institutions for reasons of non-compliance with AML/CFT requirements.

#### Insurance Licensing and Fit/Proper

563. The Insurance Law requires insurers to be licensed but there are significant exemptions. The Diwan can allow an insurer to operate before obtaining a license and foreign insurers or insurers affiliated with a foreign insurer can operate without a license provided they come from a country that apply the IAIS core principles for insurance. Insurers that hold an old license can also continue operating under an old license and are not required to apply to be licensed in accordance with the requirements of the law. The Insurance Law does not define the permissible legal forms of insurers and allows a wide array of company types to conduct insurance business.

564. The Insurance Law contains “fit and proper” requirements for board members and key functionalities with respect to professional experience, but does not include licensing criteria for the insurer’s significant owners, auditors and actuary. The requirements for board members and key functionalities’ integrity are insufficient, making a criminal conviction or a serial violation of the Insurance Law or the Companies Law the only barrier to not being considered fit and proper (Art. 42). The Insurance Law does not stipulate that the supervisor shall assess the qualifications of auditors and actuaries, nor does it obligate the supervisor to take measures to prevent criminals or their associates from holding or being the beneficial owner of a significant or controlling interest or holding a management or executive function in an insurance company.

#### Securities Licensing and Fit and Proper

565. Section 5 of the Securities Law sets forth licensing requirements of securities brokers/dealers, and other mandatory trading obligations of broker/dealers. It requires sets forth certain “fit and proper” requirements related to professional experience, financial solvency and prohibits anyone from being licensed who has been convicted of any felony, or a misdemeanor related to financial fraud. However, the law does not require the Securities Commission or other body to take other measures to prevent criminals or their associates from holding or being the beneficial owner of a significant or controlling interest or holding a management or executive function in a securities company. Section 8 of the law gives the Securities Commission approval authority over all governing instruments and rules of the Stock Exchange and ability to impose disciplinary sanctions for violations of regulations by the Exchange.

566. Although the Interim Securities law states that no stock exchange may operate without a license from the ISC, the ISX, as successor to the Baghdad Stock Exchange, was licensed and operates by virtue of the Interim Law and is thus enjoys a privileged position with respect to the ISC. Theoretically the ISX is subject to regulatory oversight by the ISC, but it was not possible to assess how this operates in practice. Based on the provisions of the Securities Law, regulatory oversight is rather weak, as many rules and procedures the ISC is authorized to issue do not yet exist.

## Non-bank financial institutions (MVTs)

567. The AML Law defines financial institutions to include Money and Value Transfer Services, money transmitters and exchange houses, and dealers in precious metals, stones, and jewels. Article 16(d) of the Central Bank Law authorizes CBI to issue licenses or permits and adopt procedures to regulate the safety and soundness of banks as further specified by the Banking Law. No provision in either the Central Bank Law or Banking law specifically defines or lists by category the types of institutions directly subject to CBI supervision and regulation, but rather provides categories of financial services which include money transmitters and exchange houses. The CBI has licensed 320 exchange houses and 34 money transmitters. Authorities noted that exchange houses and money transmitters do not use the same licensing application as banks, but no regulations or procedures related to licensing of exchange houses or money transmitters were provided to the evaluation team, so these were not assessed.

### **Ongoing supervision: Regulation and Supervision of Financial Institutions (c. 23.1); Application of Prudential Regulations to AML/CFT (c. 23.4); Monitoring and Supervision of Value Transfer/Exchange Services (c. 23.6); AML/CFT Supervision of other Financial Institutions (c. 23.7); Guidelines for Financial Institutions (c. 25.1)**

## Banking Sector

568. Prudential regulations for banks were issued by the CBI in 2010, and the CBI supervises compliance and conducts on-site and off-site supervision inspections in accordance with these prudential regulations which include a requirement to apply AML/CFT controls pursuant to the AML Law, as well as ensure fitness and propriety of banks and financial institutions in the licensing process. On-site inspections are conducted on average once per year for private banks, however, the role of CBI in prudential and AML supervision of state-owned banks is not clear.

569. CBI has not issued guidelines that are useful for financial sector entities in effectively understanding and implementing AML/CFT obligations. Although numerous Circulars have been issued that relate to AML issues, they are not sufficiently instructive or detailed. These Circulars tend to generally remind financial institutions to comply with AML obligations and stress the importance, but are not sufficiently instructive. For example, in 2009 Circulars were sent to financial institutions attaching copies of the FATF Recommendations and Evaluation Methodology with an instruction to “implement relevant recommendations.” The role of the AML/CFT supervisory body is to translate the requirements of the international standards to an operational level of detail so financial institutions know exactly what is expected in regards to implementation.

570. No guidance has been issued regarding AML/CFT compliance for entities that operate in the insurance or securities sectors. The AML/CFT obligations spelled out in the AML law and related regulations are geared toward banking businesses, products and services. AML/CFT obligations for the insurance and securities sectors must be more clearly tailored to the products and services of those sectors.

## Insurance Sector

571. The current Insurance Law in almost all the regulated areas falls short in respect of several essential elements listed in the Insurance Core Principles (ICPs) and Methodology issued by the International Association of Insurance Supervisors (IAIS). In particular, the supervisor lacks authority to conduct on-site inspections to assess prudential compliance. The supervisor’s role in regard to enforcement of compliance with AML obligations is unclear, as the CBI has been delegated authority to monitor

AML compliance in the insurance sector, but the CBI has not begun to carry out this function. Therefore, it is advisable to amend the Insurance Law so it can be brought in compliance with international standards recognized by the Insurance Core Principles, and the supervisor's role in respect of AML compliance enforcement in the sector needs to be clarified.

#### Securities Sector

572. The Securities market supervisory structures do not include the tools and objectives set forth in the IOSCO Objectives and Principles of Securities Regulation which set forth best practices for monitoring and supervision of capital markets. The Securities Law authorizes the ISC to have a Chairman and 4 other commissioners, 3 of whom are to be part-time. Its website names only three Commissioners, currently the Chairman and 2 others.
573. The ISC has issued around 14 "instructions" to brokers and issuers, which are generally short, and appear to be modified versions of previous instructions. With regards to brokers, the instructions cover: minimum capital requirements, disclosure of financial statements to the ISC, information for non-Iraqis seeking to trade and procedures for suspension and cessation of ISX membership of companies, procedures for segregation of client accounts and procedures for opening broker branches in provinces.
574. With respect to listed companies, the ISC has issued instructions concerning conditions and requirements for listing companies at the ISX, dates of suspending and re-allowing trading, financial disclosures of listed companies, disclosure requirements of significant holdings and procedures for de-listing companies. The ISC will not issue regulations until the new Securities Law comes into force. As the evaluation team received no information on the actual compliance monitoring or enforcement of these requirements, an assessment cannot be made with respect to effectiveness.

#### Money Value Transfer Systems Sector

575. CBI noted that off-site prudential examinations occur once a year for money transmitters and exchange houses. An observation from an industry representative was that in the past 6 years, only 3 CBI examinations occurred. The MLRO confirmed they receive some information about these entities pursuant to CBI's off-site inspections.

#### *Effectiveness*

##### Competent authorities/powers and resources (c.23.2, c.29.1, c.29.2, c.29.3, c.29.3.1, & R. 30):

576. The lack of harmonization between legislative delegation of AML/CFT supervisory authority in respective laws governing supervision of the state-owned banks, insurance and securities sectors contributes to confusion in regard to functional responsibilities for AML/CFT compliance monitoring and enforcement, which harms effectiveness.
577. The authority given to CBI in the last sentence of Art. 6 of the AML Law, allowing the CBI to exempt by regulation financial institutions (based on size) that shall be subject to the AML/CFT law, can harm effectiveness of the AML/CFT system.
578. The provision in the AML Law Art. 11, which allow the CBI to seek direct reimbursement from financial institutions for costs related to supervisory inspections, without appropriate safeguards to ensure against corruption can seriously harm the effectiveness of the AML/CFT system.

579. The lack of legal authority for the insurance supervisor to conduct on-site inspections seriously impedes the effectiveness of the insurance supervisor in its supervisory role.

Sanctions (c.29.4, c.17.1, c.17.2, c.17.3 & c.17.4):

580. Monetary penalties as an enforcement tool to ensure compliance with AML violations are rarely used.

581. Insufficient range of sanctions harms effectiveness of enforcement of penalties

582. No sanctions have been imposed for AML violations in the insurance or securities sectors.

Market Entry (c.23.3 & c.23.3.2, c.23.5 & c.23.7):

583. The Insurance Law contains several exemptions to licensing provisions for those entities operating in the insurance sector. Although the sector is currently rather small, this can undermine effectiveness of supervision of the insurance sector, including for AML/CFT purposes.

584. Lack of sufficient integrity criteria in licensing requirements undermines effectiveness of protecting financial sectors from entry of criminals and their associates.

585. Licensing procedures for banks, non-bank financial institutions and insurance and securities entries are not sufficiently effective to prevent criminals or their associates from holding or being the beneficial owner of a significant or controlling interest or holding management function in financial institutions.

On-going Supervision (c.23.1, c.23.4, c.23.6, c.23.7, & c.25.1):

586. The lack of AML/CFT expertise, resources and capacity of supervisory authorities impedes effectiveness of AML/CFT supervision in all categories of financial sector entities.

587. The lack of clarity regarding the role and responsibility of CBI in regard to prudential and AML/CFT supervision of state-owned banks undermines significantly effectiveness of AML/CFT supervision in the banking sector.

588. The lack of clarity regarding the roles and responsibilities of insurance and securities sector supervisory bodies in AML/CFT supervision undermines the effectiveness of supervision of these sectors.

589. The various CBI Circulars related to AML obligations are not effective guidance for financial sector institutions in helping to fully understand and implement internal controls and comply with reporting requirements. These Circulars are not sufficiently detailed for banking institutions, and no guidance has been issued aimed at assisting insurance or securities sector entities implement AML requirements. The lack of such guidance impedes the ability of reporting entities to effectively implement AML obligations, and increases challenges in the supervisory authority's ability to monitor compliance.

**3.10.2 Recommendations and Comments**

- Consider whether adequate safeguards exist in respect of the current scheme which authorizes the CBI to fund costs of AML/CFT compliance monitoring and inspections by directly seeking

reimbursement for such costs from the supervised entities (Art. 11 of the AML law) to ensure against corruption and other risks that may undermine effectiveness of supervisory inspections.

- Seek AML/CFT technical training, improve capacity building programs and dedicate additional resources to AML/CFT supervision of all financial sector entities.
- Experience and more detailed procedures to assess ownership and control structures in screening of license applicants for financial sector entities is needed, particularly in view of the anticipated economic growth and foreign investment that is likely.
- Improve effectiveness of implementation of recognized Core Principles of financial institutions as mandatory and enforceable regulations to ensure they apply for AML/CFT purposes and to ensure sufficient screening of fitness, propriety and integrity with respect to all license applicants and holders.
- Improve effectiveness of implementation of recognized Core Principles of financial institutions as mandatory and enforceable regulations to ensure they apply for AML/CFT purposes and to ensure sufficient screening of fitness, propriety and integrity with respect to all license applicants and holders.
- Fully implement feasible, practical and legally enforceable frameworks for AML/CFT supervision and compliance monitoring of all financial sector entities, including state-owned banks, as well as all entities in the insurance and securities sectors.
- Remove or more rationally limit (based on an appropriate risk-based approach that meets international standards) broad legal authority for supervisory exemption of entities subject to supervision from AML/CFT obligations.
- Ensure that all designated supervisory bodies have effective powers to monitor compliance, conduct on-site inspections, review policies, procedures, books, records and undertake sample testing to evaluate effectiveness of compliance, and compel production of documents and information.
- The range, scope and levels of monetary penalties in regard to AML/CFT sanctions should be re-considered in terms of proportionality, dissuasiveness and effectiveness. The range of sanctions that can be imposed against individuals employed by or representing financial institutions should be expanded.
- Appropriate supervisory authorities should issue clear and effective guidance, tailored to specific sectors, to enhance the ability of the various financial sectors to understand and implement AML/CFT obligations.



### 3.10.3 Compliance with Recommendations 23, 30, 29, 17 & 25

|      | Rating | Summary of factors relevant to s.2.10 underlying overall rating                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
|------|--------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| R.17 | PC     | <ul style="list-style-type: none"> <li>• Although available sanctions include imposition of monetary penalties, these are rarely used to address instances of non-compliance.</li> <li>• Monetary penalty provisions for non-compliance with AML/CFT requirements are insufficiently deterrent or effective with respect to financial institutions.</li> <li>• No civil, criminal sanctions or disciplinary have been imposed or enforced against a state-owned bank or any entity in the insurance or securities sectors for non-compliance with AML/CFT obligations.</li> <li>• Insufficient range of sanctions available in relation to natural persons who work for financial institutions, including directors and senior management, for AML/CFT violations.</li> <li>• Insufficient range of sanctions impedes effectiveness of enforcement.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                              |
| R.23 | PC     | <ul style="list-style-type: none"> <li>• Supervision and compliance monitoring of AML/CFT obligations in state-owned banks, as well as the entire insurance and securities sectors has not yet commenced.</li> <li>• Laws regulating the insurance and securities sectors are unclear as to the role of these respective supervisory authorities in regards to AML/CFT supervision.</li> <li>• Current laws and regulations are ineffective in preventing criminals and associates from holding or being beneficial owner of or holding a controlling interest in or holding a management functions in financial institutions.</li> <li>• Implementation of recognized Core Principles of financial institutions in relation to AML/CFT controls needs improvement in the banking sector and is non-existent in the insurance and securities sectors.</li> <li>• Although CBI licenses and supervises money transmitters and exchange houses, the quality of AML/CFT compliance monitoring is lacking which harms effectiveness of implementation and enforcement.</li> </ul>                                                                                                                                                                               |
| R.25 | NC     | <ul style="list-style-type: none"> <li>• AML/CFT Guidelines have not been issued to assist entities in the insurance and securities sectors comply with applicable AML/CFT obligations.</li> <li>• Guidelines issued by the CBI for banks, money exchanges and remitters are insufficient and ineffective to assist these entities to understand and implement effective AML/CFT controls.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| R.29 | NC     | <ul style="list-style-type: none"> <li>• Although the CBI has wide-ranging supervisory and oversight authority to monitor AML/CFT compliance by conducting on-site inspections, reviewing policies, procedures, books, files, documents, and compelling production of documents, these activities have not yet commenced with respect to state-owned banks, or any entities in the insurance or securities sectors.</li> <li>• The AML/CFT supervisory functions of the insurance and securities supervisors are unclear, and as a result they play no role in implementation, supervision or compliance monitoring in their respective sectors.</li> <li>• The Insurance Supervisor lacks legal authority to conduct on-site inspections to monitor compliance with prudential requirements</li> <li>• Use by CBI of its powers of enforcement to ensure compliance of AML/CFT obligations by financial institutions as well as their directors and senior management is very weak.</li> <li>• The authority under the AML Law given to the CBI to invoice financial institutions for direct costs of supervisory inspections – including AML/CFT compliance inspections – is of serious concern due to lack of safeguards to deter corruption.</li> </ul> |

### *3.11 Money or value transfer services (SR.VI)*

#### *3.11.1 Description and Analysis*

##### ***Legal framework***

590. Central Bank Law Articles 40 and 42 authorize the CBI to supervise financial institutions and take actions against unlicensed institutions. General licensing provisions are also set forth in the Banking Law in Articles 4, 5 and 8. Permitted banking activities are set forth in the Banking Law in Articles 26-28. However, neither of these laws specifically defines “financial institutions.” Rather, “financial institution” is defined in Article 2 of the AML Law, and this definition includes money transmitters, persons who provide services related to payments, foreign currency exchange houses and other entities that execute foreign exchange transactions above 15 million IQD (USD 13,100) per week. There are no specific licensing procedures. Authorities noted that exchange houses and money transmitters do not use the same licensing application forms as banks.
591. Article 7 of the AML Law gives CBI the authority to license, supervise and monitor compliance of MVTSSs. In the MVTSS sector, the CBI has licensed 34 money transmitters and 320 exchange houses.
592. According to Article 2 of the AML Law the definition of activities related to money transmitters is: money transmitters direct or indirect, and formal and informal, including persons who provide services related to payments, including but not limited to electronic transfers on behalf of third parties, and persons who issue or manage means of payment, such as credit cards and travelers checks, or persons who undertake hawala transactions.
593. According to Article 2 of the AML Law the definition of activities related to foreign currency exchange houses is: foreign currency exchange houses or any other entity that effects foreign exchange transactions on a regular basis above 15 million IQD (USD 13,100) per week.
594. The AML Law also stipulates that persons providing a service for the transmission of money or value including through an informal money or value transfer system or network including a hawala shall retain records of all transactions above 500,000 IQD (USD 437) including but not limited to, the originator and the originator’s agent, ultimate beneficiary, all intermediaries, dates, amounts, and forms of transactions.
595. The CBI has issued Circulars to money transmitters and exchange houses, but most appear to be directed only to banks, money transmitters and money exchanges:
- 2 CBI Circulars in 2009 addressed to banks and remittance companies, contained the FATF Evaluation Methodology and 40 + 9 Recommendations, requesting that these entities apply the relevant recommendations. No details, advice or guidance on which of the FATF Recommendations or Methodology criteria were to be implemented, nor how to apply or implement them.
  - CBI Circular No 2 (24/1/2012) on the importance of combating ML and reminding banks to have internal AML procedures including CDD/KYC procedures, and report suspicious transactions.
  - CBI Circular No. 30 (3/11/2010) is addressed to financial brokerage firms, banks, remittance companies, money exchange companies, investment companies and stock exchange companies. It elaborates the obligation to designate an AML/CFT Compliance Officer, sets for the

qualifications and obligations of the AML/CFT Compliance Officer, and informs financial institutions to notify the MLRO of the name of the AML/CFT Compliance Officer.

- CBI Circular No. 51 (10/2/2009) reminds banks and remittance companies to ensure that the Internal Audit Unit is sufficiently independent, well trained and has the necessary human, financial and technical resources in order to test effectiveness of the AML/CFT functions and controls.
- CBI Circular No. 28 (17/4/2008) reminds banks and remittance companies to send financial statements every 15 days, stamped by the Compliance Unit and confirming that no suspicious transactions were executed.
- CBI Regulation No. 1 (26/6/2007) addressed to banks and remittance companies regarding CDD and KYC measures.
- CBI Circular No 30 (2010) is addressed to financial brokerage firms, banks, remittance companies, money exchange companies, investment companies and stock exchange companies. It requires designation of an AML/CFT Compliance Officer of “good education.”

#### ***Designation of Registration or Licensing Authority (c. VI.1)***

596. The CBI has the authority to license, supervise and monitor compliance of MVTS businesses. However, the CBI is authorized only to license and supervise those which transact more than 15 million IQD (USD 13,100) per week. The evaluation team was not provided with data about MVTS, which execute transactions below this threshold. There was no available information about whether MVTS operators engaged in transactions below the threshold are licensed or registered.
597. The licensing application process for MVTS operators is unclear. The assessment team did not obtain the filing and screening procedures for the actual licensing application. The capitalization requirements for money transmitters to obtain a license is 250 million IQD (218,341 USD) and for exchange houses it is 150 million IQD (131,004 USD). According to MLRO documentation, CBI has licensed 320 exchange houses in Iraq, approximately 200 of these exchange houses are in Baghdad. The CBI has licensed 34 money transmitters in Iraq.

#### ***Application of FATF Recommendations (applying R.4-11, 13-15 & 21-23, & SRI-IX)(c. VI.2)***

598. Pursuant to the AML Law, all MVTS are subject to the same requirements as other financial institutions as defined in this law. All deficiencies noted in Section 3 of this report apply to MVTS operators, including the fact that written AML/CFT inspection procedures do not appear to exist for MVTS. Nor was any evidence provided that AML/CFT inspections of MVTS were carried out, or that any AML/CFT deficiencies have ever been identified, remedied, nor have any instances of non-compliance with internal control requirements been penalized.
599. By law, money transmitters are required to retain records of all transactions above 500,000 IQD (USD 437), including but not limited to the originator and the originator’s agent, ultimate beneficiary, all intermediaries, and dates, amounts, and forms of transactions. The assessors were unable to verify whether such recordkeeping requirements are monitored by supervisory authorities for compliance, or whether any instances of non-compliance have ever been identified.
600. There was an overall lack of information and documentation available to the Evaluation Team about AML/CFT supervision and compliance monitoring of MVTS. However, authorities provided documentation about 3 instances of MVTS operators being sanctioned for non-compliance with AML obligations. Each of the enforcement actions resulted in a civil penalty of IQD 10 million (USD \$8,733). The violations ranged from executing a money transfer while knowing the funds were the proceeds of embezzlement, lack of record-keeping and database management, and failure to

verify customer records. Apart from these 3 instances of non-compliance, it is not clear that AML/CFT obligations are monitored for compliance or enforced on a systematic basis in this sector.

601. No STRs or CTRs have been submitted to the MLRO by MVTS operators.
602. The license application filing and screening procedures related to MVTS were not provided, thus assessors cannot conclude that licensing procedures include any form of background checks to ensure that criminals are not able to obtain an operating license.
603. Government officials and representatives from the private sector noted that exchange houses and money transmitters conduct substantial funds transfers with entities in neighboring countries. Assessors are not aware of any CBI regulations requiring MVTS operators to apply any form of enhanced due diligence, limit business relationships or financial transactions, or any other counter measures with respect to jurisdictions which do not sufficiently apply international AML/CFT standards.
604. Although MVTS operators are subject to AML/CFT on-site examinations, evaluators could not confirm that any such examinations have taken place.

***Monitoring of Value Transfer Service Operators (c. VI.3)***

605. There are no effective monitoring systems in place to ensure that MVTS operators comply with the AML/CFT obligations.

***List of Agents (c. VI.4)***

606. At the time of the on-site assessment, no laws, regulations or other enforceable means were in place to require MVTS providers to maintain a current list of agents.

***Sanctions (applying c. 17.1-17.4 in R.17)(c. VI.5)***

607. According to the provisions on regulatory enforcement in the AML/CFT and CBI laws, these measures are compliant with this recommendation. However, due to the limited number of enforcement actions (3 actions over 8 years), there is little indication that supervisory authorities apply any sanctions effectively and systematically in instances of non-compliance with AML/CFT obligations.

***Additional Element—Applying Best Practices Paper for SR VI (c. VI.6)***

608. The elements of the Best Practices Paper are not being applied in the MVTS sector.

***Effectiveness***

609. Neither the CBI nor MLRO have sufficient capacity, technical or human resources to supervise and monitor AML/CFT compliance in the MVTS sector. As noted above, the MLRO has never carried out AML/CFT compliance inspections on any MVTS operators. Nor have any MVTS operators ever filed STR or CTR reports to the MLRO. As a result, effective AML/CFT supervision of the MVTS sector is not clear. Based on interviews with government and private sector officials, the assessors understood that the ML/TF risks in the MVTS sector are rather high and lack requisite internal controls to mitigate these risks.

610. There is no available statistical data regarding the volume of financial transactions carried out by money transmitters or exchange houses or the estimated total assets in this sector.

611. The CBI did not provide the assessors with the license application filing and screening procedures related to MVTS. The evaluation team cannot conclude that licensing procedures include any form of background checks to ensure that criminals are not able to obtain an operating license.

### 3.11.2 Recommendations and Comments

- The CBI or MLRO should be allocated sufficient resources or another competent authority with sufficient resources should supervise and monitor the MVTS sector.
- Appropriate authorities should create a reasonable strategy to commence AML/CFT awareness-raising, outreach as well as training on compliance with AML/CFT requirements in this sector, and then commence a regular program of AML/CFT compliance monitoring.
- The CBI/MLRO should ensure that background checks have been undertaken on individuals who hold licenses to operate money transmitter companies and exchanges.
- The CBI/MLRO should issue regulations and guidance to the MVTS sector on implementation of AML/CFT controls specifically in the MVTS sector (which in some ways differs from banking institutions).

### 3.11.3 Compliance with Special Recommendation VI

|       | Rating | Summary of factors underlying rating                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
|-------|--------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| SR.VI | NC     | <ul style="list-style-type: none"> <li>• Licensing criteria and procedures for MVTSs are not clear.</li> <li>• Neither the CBI nor MLRO are conducting AML/CFT compliance monitoring of the MVTS sector on a systematic basis, and very few monetary penalties have been imposed for non-compliance with AML/CFT obligations.</li> <li>• No STRs or CTRs have been received by the MLRO from MVTS operators.</li> <li>• No enforceable regulations or guidelines have been issued by authorities regarding application of internal AML/CFT controls to the MVTS sector.</li> <li>• No requirements for MVTS providers to maintain a current list of agents.</li> </ul> |

## 4. PREVENTIVE MEASURES – DESIGNATED NON-FINANCIAL BUSINESSES AND PROFESSIONS

### 4.1 CDD and Record Keeping (R. 12)

#### 4.1.1 Description & Analysis

##### **Legal Framework**

612. As noted in Section 3.2.1 (Rec. 5), Article 2 of the AML Law categorizes types of financial institutions. The DNFBP listed as financial institutions are dealers in precious metals, stones or jewels.

##### **CDD Measures for DNFBPs applying c. 5.1-5.18, to 12.1**

613. Casinos - Pursuant to Section 7 (389) of the Penal Code, public establishments providing gambling services, such as casinos, are criminalized. Penalties apply to persons who open or operate these establishments, including the cashiers, and anyone who is found gambling at these establishments. The penal code does not extend to internet gambling, which is a gap in the domestic gambling criminalization regime.

614. Real estate agents are not subject to AML/CFT obligations.

615. Dealers in precious metals and dealers in precious stones are required by the AML Law to adhere to CDD/KYC requirements, reporting obligations, and record keeping requirements. The Ministry of Planning issues licenses for these businesses to operate. The CTR reporting threshold is 15 million IQD (13,100 USD). Although this category of DNFBP is included in the AML Law, there has not been any interaction between, or supervision by the CBI and this sector. The CBI has not issued any further regulations or other enforceable means to provide guidance to this sector. It is unclear whether or not these businesses are aware of their AML/CFT obligations. Dealers in precious metals, stones and jewels have never submitted STRs to the MLRO.

616. Lawyers, notaries, other independent legal professionals and accountants are not subject to the AML/CFT regime.

617. There was no available information about the role of lawyers, notaries, accountants and other similar independent professionals play in the management of financial services. Under the Modified Practicing Law Code Number 173 (1965), Iraqi lawyers are not technically obliged to be members of the Iraqi Bar Association, but in practice, obtaining an obligatory lawyer's license is not feasible without Bar membership. Members of the Kurdistan Bar Association are allowed to be members of the Iraqi Bar Association and vice versa. It is estimated that the number of lawyers in Iraq is approximately 38,000.

618. The Iraqi Union of Accountants and Auditors and the Chartered Iraqi Accountants Association are the 2 main professional associations. According to Article 14 of the Investment Law, investors must keep proper records audited by a certified accountant. The National Investment Commissions' website notes that the certified accountant must be members of the Chartered Iraqi Accountants.

619. Trust and company service providers are not subject to the AML/CFT regime.

### *CDD Measures for DNFBPs applying R. 6, & 8-11 to 12.2*

620. No AML regulations, guidance, results of compliance monitoring or sanctions were available regarding compliance with AML obligations of dealers in precious metals, stones or jewelry. Therefore, the assessment team was not satisfied that AML/CFT obligations are implemented in this sector.

#### Analysis of Effectiveness

621. Only two of the five DNFBP categories are addressed in Iraq's laws:

- Casinos: Law enforcement officials said that there have been cases of underground casinos, but that these operations are typically small-scale and do not pose a ML or TF threat.
- Precious Metals and Stones: This is the only DNFBP sector included in the AML Law that is subject to AML/CFT obligations. Dealers in precious metals, stones, and jewels are not monitored or supervised by the CBI or other supervisory body for AML/CFT compliance.

622. Regarding the three categories not addressed in the AML/CFT Law:

- Real estate agents are not subject to the AML/CFT regime, and there was no available information or statistics about the ML/TF risks in this sector.
- There is a lack of clarity among officials regarding the financial management functions of lawyers, notaries, accountants, and other legal professionals, or whether or not there is any ML or TF risks in these sectors.
- There is even less clarity among officials as to whether or not trust and company service providers even exist in Iraq. Some Iraqi officials said that the government provides some of these services, such as managing the estate of a deceased person. There was no available information or statistics about the ML/TF risks to this sector.

#### **4.1.2 Recommendations & Comments**

- Amend and harmonize relevant laws to ensure AML/CFT obligations are mandatory to all necessary categories of DNFBPs: real estate agents, lawyers, accountants, notaries, and trust and company service providers. Where necessary, amend supervisory laws to extend supervisory authority to these additional sectors.
- Create an inter-agency policy level AML/CFT Coordinating Committee to identify and lead implementation of AML/CFT controls in various sectors, including DNFBP sectors.
- Conduct an effective AML/CFT risk assessment which identifies specific risks in each DNFBP sector and create AML/CFT compliance programs which correspond to those risks.
- Once identified and adequately resourced, supervisory authorities should issue guidance specifically tailored to DNFBPs and provide feedback on implementation issues.
- DNFBP training and outreach should occur to raise awareness about the ML/TF risks in the DNFBP sectors and about the implementation of applicable AML/CFT obligations.

For the precious metals, stones and jewels sectors:

- An adequately resourced supervisory authority should be designated and tasked with AML/CFT supervision of the precious metals, stones and jewels sector.
- Enforceable AML/CFT obligations as well as guidance, specifically applicable to dealers in precious metals, stones and jewels should ensure that applicable AML/CFT obligations are clear to dealers in the sector as well as the designated supervisory authority.

|      | Rating | Summary of factors underlying rating                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
|------|--------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| R.12 | NC     | <ul style="list-style-type: none"> <li>• Several categories of DNFBPs are not covered by the AML/CFT regime, including real estate agents, accountants, notaries, lawyers, other independent legal professionals and trust and company service providers.</li> <li>• Dealers in precious metals and stones are subject to Iraq’s AML/CFT regime, but the CBI/MLRO does not supervise, monitor or enforce AML/CFT compliance in these sectors.</li> <li>• There is no requirement to give special attention to unusually large, complex or unusual patterns of transactions, or those with no visible legal or economic purpose.</li> <li>• There are no laws, regulations or other enforceable means to require DNFBPs to have policies or procedures in place to mitigate risks of ML/TF through new technologies.</li> <li>• There is no requirement in law, regulation or other enforceable means to identify foreign PEPs or obtain senior management approval to establish or approve PEP accounts.</li> <li>• No laws, regulations or other enforceable means require the monitoring of accounts or inquiring about the source and wealth of PEPs.</li> <li>• Although CDD and recordkeeping requirements are contained in the AML Law, these obligations are not being effectively implemented by DNFBPs covered by the AML Law.</li> <li>• Several categories of DNFBPs are not covered by the AML Law and are not subject to CDD or recordkeeping requirements.</li> </ul> |

## 4.2 Monitoring transactions & other issues (R. 6 applying R. 13-15, 17, 21)

### 4.2.1 Description and Analysis

#### Legal Framework

623. All obligations for monitoring, STR or CTR reporting, internal AML/CFT controls and sanctions included in the AML Law are applicable to dealers in precious metals, stones and jewels. The other designated categories of DNFBPs are not subject to the AML/CFT regime in Iraq. See Section 3 and 4.1 above for description of the AML law requirements and the extent to which they meet international standards.
624. Implementation of the STR/CTR reporting requirements set forth in the AML Law has not commenced in the dealers in precious metals, stones, and jewels sector, and these businesses are unaware of their obligations under the AML Law.



***STR and tipping off/safe harbor (R. 16.1-2)***

- 625. The same STR/CTR reporting obligations, tipping off prohibition and safe harbor provisions in the AML Law that apply to financial institutions, as noted in section 3.7, also apply to dealers in precious, metals, and jewels. Not all DNFBP categories are included in the AML law.
- 626. There are no STR/CTR reporting requirements for lawyers, accountants, and notaries, other independent legal professionals or trust and company service providers.

***Internal control requirements for DNFBP (applying 16.3, R. 15)***

- 627. As noted in 16.1, recommendations 13 and 14 apply to dealers in precious, metals, and jewels. As noted in Section 3, the same provisions of the AML Law regarding internal policies and controls/screening, training and audits apply to the precious metals, stones, and jewels sector.
- 628. Accountants are not subject to Iraq’s AML/CFT regime.
- 629. Article 19 of the AML Law applies the STR/CTR reporting obligation to dealers in precious metals, stones, and jewels. However, no transaction reports have been received by the MLRO from this sector.

***Effectiveness and Statistics (R. 32.1-3)***

- 630. Iraq has not reviewed the effectiveness of its AML/CFT systems related to the DNFBP sectors. There are no statistics about the DNFBP sectors related to STRs, CTRs, ML or TF prosecutions, or frozen, seized or confiscated property.

***4.2.2 Recommendations & Comments***

- DNFBPs should be made aware of their obligations under the AML Law and supported in implementing those provisions by the MLRO.
- An adequately resourced supervisory authority (or authorities) should be designated responsible for AML/CFT supervision in respective DNFBP sectors.
- Amend the AML Law to ensure all required categories of DNFBPs are subject to AML/CFT obligations (real estate agents, accountants, lawyers, notaries, other independent legal professionals and trust and company service providers).

***4.2.3 Compliance with Recommendation 16***

|             | <b>Rating</b> | <b>Summary of factors relevant to s.4.2 underlying overall rating</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
|-------------|---------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>R.16</b> | <b>NC</b>     | <ul style="list-style-type: none"><li>• No STRs/CTRs have been received by the MLRO from dealers in precious metals and stones.</li><li>• Dealers in precious metals, stones and jewels have never been monitored or supervised for compliance with AML/CFT obligations.</li><li>• Real estate agents, accountants, lawyers, notaries, other independent legal professionals and trust and company service providers are not subject to AML/CFT obligations.</li><li>• There are no available AML/CFT statistics relating to DNFBPs.</li><li>• Negligible ability to measure effectiveness.</li></ul> |

### **4.3 Regulation, Supervision and Monitoring (R. 24-25)**

#### **4.3.1 Description and Analysis**

##### ***Legal Framework***

631. As noted in Section 4.1, casinos and gambling are criminalized in Iraq, and several categories of DNFBPs are not included in the AML Law. Dealers in precious metals, stones, and jewels are subject to the same regulatory, supervision, and monitoring requirements as financial institutions in the AML/CFT Law see Section 3, but no compliance monitoring or supervision in this sector has yet commenced.

##### ***Regulation & Supervision of Casinos (c. 24.1, 24.1.1, 24.1.2, 24.1.3)***

632. Casinos and gambling are criminalized in Iraq, therefore this category of DNFBP is not subject to regulation or supervision.

##### ***Monitoring Systems for other DNFBPs c. 24.2, 24.2.1***

633. The only DNFBP subject to Iraq's AML/CFT regime is dealers in precious metals, stones and jewels. At the time of drafting this report, this sector was not subject to effective systems for monitoring and ensuring compliance with AML/CFT requirements.

634. The CBI is the designated competent authority for monitoring and ensuring compliance with the AML law. Neither the CBI, nor the MLRO have adequate powers or capacity to perform these functions, including powers to monitor AML/CFT compliance or sanction non-compliance.

##### ***Guidelines for DNFBPs applying 25.1-2***

635. Neither the CBI nor MLRO have issued AML/CFT guidance specific to the DNFBP sectors, nor conducted any outreach to involving DNFBP sectors.

##### ***Adequacy of Resources – Supervisory Authorities (R. 30)***

636. Neither the MLRO nor CBI is adequately resourced, or staffed to effectively supervise AML/CFT compliance of the one designated DNFBP sector subject to AML/CFT obligations. The MLRO staff has not been provided with AML/CFT training related to DNFBPs.

##### ***Analysis of Effectiveness***

637. Dealers in precious metals, stones, and jewels and the MLRO/CBI, as the designated supervisory authority for this sector, have not established any contact or working relationship. Therefore, outreach, regulation, supervision, and monitoring of this sector has not commenced.

#### **4.3.2 Recommendations and Comments**

- An inter-agency policy level task force should adopt and implement an AML/CFT strategy that covers all required DNFBP sectors, and addresses supervisory resource issues. The strategy should include a plan for outreach to the various sectors, issuing of sector-specific AML/CFT obligations, and a plan for compliance monitoring.

- Officials should dedicate sufficient human, technical and financial resources to make tangible improvements in the legal framework, supervision, regulation, and compliance monitoring of DNFBPs. The legal framework needs improvement to enable supervisory enforcement of AML/CFT obligations throughout DNFBP sectors and the ability to monitor compliance and enforce penalties in instances of non-compliance.

#### 4.3.3 Compliance with Recommendations 24 & 25 (criteria 25.1, DNFBP)

|      | Rating | Summary of factors relevant to s.4.3 underlying overall rating                                                                                                                                                                                                                                                                                                                                                        |
|------|--------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| R.24 | NC     | <ul style="list-style-type: none"> <li>• AML supervision of the DNFBP sector has not commenced.</li> <li>• The designated authority responsible for monitoring compliance of DNFBPs with AML/CFT requirements lacks sufficient human, technical and other resources to carry out this function.</li> <li>• There are no effective systems for monitoring and ensuring compliance with AML/CFT requirements</li> </ul> |
| R.25 | NC     | <ul style="list-style-type: none"> <li>• The MLRO has not issued sector-specific AML/CFT regulations or guidance to the DNFBP sector.</li> <li>• No outreach has been done in respect of any DNFBP sectors.</li> </ul>                                                                                                                                                                                                |

#### 4.4 Other non-financial businesses and professions

*Application to businesses and professions other than DNFBPs (R. 20)*

##### 4.4.1 Description and Analysis

638. The improvements of the security situation in Iraq are resulting in significant re-building efforts that range from small-scale construction projects to large-scale infrastructure projects, some funded by the public sector and some by joint public-private partnerships. Vast sums of funds are involved in these ventures and could become risks for money laundering and terrorist financing. The construction sector, both public and private ventures, could benefit from being subject to the AML/CFT system.
639. Consideration could also be given to requiring companies involved in the extractive industries and antiquities markets to be subject to AML/CFT controls, as the ML/TF risks may be high in those sectors.
640. Iraq derives 90% of its GDP from oil revenues, and in many countries dependent on natural resources as the primary source of revenue; it is common that such sectors face high ML/TF risks, particularly from corruption. Authorities could consider identifying the high risk points for money laundering, terrorist financing and corruption in the value chain of its extractive industries, and implement a strategy and implementation plan to mitigate those risks.
641. Iraq's rich cultural history has left a legacy of artifacts dating back thousands of years. The black market for and the legitimate sale of antiquities world-wide is a lucrative enterprise. This sector is vulnerable to illicit actors trying to conceal the proceeds of crime or money or either profiting from sales to finance terrorism. The sale of Iraqi antiquities before 2003 and the large-scale looting of antiquities post-2003 have elevated this sector to high risk for ML/TF abuse. Authorities should seriously consider subjecting antiquity dealers, markets, auction houses, and other related businesses to appropriate levels of AML/CFT controls.

#### ***Other non-financial businesses and professions (c.20.1)***

642. Article 2 of the AML Law stipulates that the CBI may, by regulation, determine that the definition of financial institution applies only to entities above a specified size and designate other persons who shall also be considered financial institutions for purposes of the law. The latter part of this provision allows for Iraq to include in its AML/CFT regime other sectors where ML/TF risks may be high, for example, antiquities dealers, auction houses, and the oil sector. As the likelihood that ML/TF risks in these sectors may be high, Iraqi officials should undertake a strategic risk analysis and consider including these sectors in the country's AML/CFT regime.

#### ***Modern secure transaction techniques (c.20.2)***

643. Since 2006, Iraq has been modernizing its payment systems. These include a real time gross settlement payment system (RTGS) for banks, a very nascent regional check clearing system, an even less developed retail payment system, and a full automatic clearing house for small payment orders. It is unclear if these payment systems are accessible to money remitters and exchange houses, and if ML or TF is greatly reduced since financial sector supervision and monitoring is largely inadequate.

#### ***4.4.2 Recommendations and Comments***

- Iraq should consider what types of companies should be identified as high risk due to weak oversight and supervisory systems, including of state-owned companies, as well as high risk sectors, such as the construction, oil and antiquities sectors.

#### ***4.4.3 Compliance with Recommendation 20***

|             | <b>Rating</b> | <b>Summary of factors underlying rating</b>                                                                                                                                                                                                                                                                                                                                                                                 |
|-------------|---------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>R.20</b> | <b>PC</b>     | <ul style="list-style-type: none"><li>• Businesses and professions other than DNFBPs vulnerable to ML or TF are not yet subject to AML/CFT obligations.</li><li>• Although Iraq has been developing measures to use modern secure technologies for conducting transactions that are less vulnerable to money laundering, informal transactions in the form of cash are still prevalent and represent ML/TF risks.</li></ul> |

## 5. LEGAL PERSONS AND ARRANGEMENTS AND NON-PROFIT ORGANIZATIONS

### 5.1 *Legal Persons – Access to beneficial ownership and control information (R.33)*

#### 5.1.1 *Description and Analysis*

##### **General framework**

644. Article 2 of the AML law defines the “beneficial owner” as a person, whether or not named as the owner, who can effectively manage or direct the use of the funds in an account. This definition, which normally refers to a proxy holder, is not in line with the FATF definition of beneficial owner.
645. Except for some specific activities, the Iraqi Companies' law allows 100% foreign ownership of companies without any restrictions to nationalities, individuals or companies. The shareholder may be a natural person, a juristic one, Iraqi or other. Furthermore, some companies' types may be owned by one person, which means that a foreign company or natural person may own solely 100% of an Iraqi company.
646. There are three types of companies that may be established in Iraq, which are State Companies, Mixed Companies and Private Companies. **All of these companies must be registered with the Registrar of Companies (Ministry of Trade)**. State companies are government owned entities, and governed by the State Companies Law No. 22 of 1997.
647. The Iraqi Companies Law (CL) No.21 issued on August 18, 1997, as amended by the Coalition Provisional Authority Order No. 64 on February 29, 2004, governs Mixed Companies and Private Companies.
648. The mixed company shall be formed by the agreement between one or more persons from the state sector and one or more persons from outside this sector. The state sector's share in the mixed company's capital must not initially be less than 25%. A mixed company may also be formed by two or more persons from the mixed sector. When the state sector's share falls below 25%, the company shall be treated as a private company. The mixed company must be competitive in its business operations as the Government will not compensate it any losses.
649. There are 2 types of Companies that can be either mixed or private:
- The joint-stock company: shall be formed by not less than five persons, who will participate in it by owning shares through public subscription and will be responsible for the company's debts in so far as the nominal value of the shares to which they have subscribed.
  - The limited liability company (LLC): shall be formed by no more than 25 natural or legal persons, who will subscribe to its shares and will be responsible for the company's debts in so far as the nominal value of the shares to which they have subscribed.
650. There are 3 types of Companies that can only be private:
- The joint liability company: shall be formed by not less than two and not more than 25 persons, each owning a quota of its capital. They shall jointly assume personal and unlimited responsibility for all of its obligations.

- The sole owner enterprise: is a company formed by one person, who owns the one quota in it and assumes personal and unlimited responsibility for all of its obligations.
- The simple company: shall consist of several partners, who are not less than two and not more than five and who have contributed shares to the capital. In such a company one or more may contribute services with the others offering funds. A simple company is similar to a partnership where the partners carry unlimited liability to the extent of their shares in the company. A simple company does not need to be registered with the Registrar of Companies Department. A notarized establishment contract signed by all the partners will suffice; however, a copy of the establishment contract should be placed with the Registrar of Companies.

651. All companies, whether representative office, branch or a new Iraqi company are obliged (after registration) to retain both a lawyer and an auditor.

***Measures to prevent unlawful use of legal persons by requiring transparency c.33.1***

652. The Registration of Companies Department of the Iraqi Ministry of Trade (Registrar) administers the provisions of several Iraqi commercial laws and regulations, including the Companies Law (CL) and the State Companies Law. The responsibilities of the Registrar include registering all business entities, approving incorporation and other establishment documents, monitoring and keeping records of company activities, inspecting company accounts and records, directing company dissolution where appropriate, and providing the government with requested information about any of the registered entities.

653. In accordance with the CL and in order to establish a Company in Iraq, the founders (domestic, foreign or mixed) shall prepare a contract for the company which is signed by them or their legal representative.

654. The contract shall contain at a minimum: i) the company's name and corporate form, with the word "mixed" added if it is a mixed sector company, and any other acceptable elements; ii) the company's head office, which must be in Iraq; iii) the purposes for which the company is established and the general nature of the business to be transacted; iv) the company's capital divided in quotas and shares; v) the method of distributing profits and losses in the joint liability company; vi) the number of elected members in the board of directors of the private joint-stock company; and vii) the names of the founders and their nationalities, professions, permanent addresses, and the number of shares they own as well as their percentage of the capital.

655. The founder of a limited liability company when there are no other founders, or the founder of a sole owner enterprise shall prepare a statement, which shall serve the purpose of a company contract and shall be subject to the provisions that are applicable to the contract whenever they occur in this law.

656. The application for establishment shall be submitted to the Ministry of Trade/Registrar of Companies with the following attachments: i) the company's contract; ii) the subscription document of the joint-stock company signed by the founders; iii) a statement from the bank or banks proving that the capital required in Article 28 has been deposited; and iv) the technical and economic feasibility study on the joint-stock company.

657. The Registrar is required either to approve or disapprove an application in writing within 10 days. The company acquires corporate status from the date of the issuance of its establishment certificate; the certificate being considered as proof of this status.

658. A company which is established in Iraq in accordance with the provisions as described above is considered an Iraqi company.
659. It should be mentioned that Kurdistan Region has its own companies register.
660. The registered information that the Registrar requires only covers items that represent the commercial companies including the owners of the shares, but it does not sufficiently cover the beneficial ownership and control of legal persons (as defined by FATF). In other terms, the information registered concerns the nominal owners and authorized persons, but not per se the economic owners.
661. Access to information on beneficial owners of legal persons c.33.2
662. The CL doesn't ensure that the public has a right to access the information recorded in the Registrar. However, Article 206 states that the Registrar shall issue a special bulletin for the companies in which he will publish, at their expense, everything that pertains to their affairs in accordance with the provisions of this law.
663. Competent authorities indicated that, pursuant to a judicial authorization, they have the right to obtain all information needed from the Registrar which is used as a decisive proof on the information therein recorded.
664. Moreover, Article 218 provides that any company official who purposely gives inaccurate statements or information to an official authority on the company's business, results of operations, financial condition, member shares and quotas, and distribution of dividends shall be subject to punishment of imprisonment for a period of not more than one year, or a fine of not more than 12,000,000 IQD (USD 10,480), or both, depending on the severity of the violation. Article 219 also provides that any company official who bars a competent authority from seeing the company's records and documents shall be subject to punishment of imprisonment for a period of not more than six months or a fine of not more than 12,000,000 IQD (USD 10,480) , or both, depending on the severity of the violation.
665. Beyond the registration of basic company information in the Registrar, there are no up-to-date measures in place to prevent the unlawful use of legal persons in relation to ML and TF by ensuring that the commercial, corporate and other laws require adequate transparency concerning the beneficial ownership and control of legal persons. What is not registered or kept cannot be accessed either.

### ***Prevention of Misuse of Bearer Shares c.33.3***

666. Despite the fact that Iraqi legislation doesn't provide for legal persons to issue bearer shares, Article 29 of the CL states that the capital of the joint-stock company and the limited liability company shall be divided into nominal shares of equal cash value which may be issued in bearer shares, and the Companies Law allows form 100% foreign ownership of companies. Further, Article 2 of the AML law includes such shares within the definition of monetary instruments which can represent proceeds of crime. Bearer shares exist and are being used in Iraq, but the extent and volume of their use could not be determined due to the lack of statistics. However, regulatory provisions to mitigate the risks of misuse of bearer shares, including for ML/TF purposes, do not exist.

***Additional Element – Access to information on beneficial owners of legal persons by financial institutions c.33.4***

667. Information collected by the Company Registry is not publicly available. Banks and other FIs should usually receive all required CDD information from their customers and ensure that where necessary it is authenticated.

***5.1.2 Recommendations and Comments***

- Even though the registered information that is in Registrar should cover sufficient data, it does not sufficiently cover the beneficial ownership and control of legal persons. In order to comply with R.33, the authorities should either require legal entities to provide accurate information on beneficial owner and control structure of legal persons; or
- Use their powers under the CPL to obtain information on beneficial owner and control structure of legal persons.

***5.1.3 Compliance with Recommendations 33***

|             | <b>Rating</b> | <b>Summary of factors underlying rating</b>                                                                                                                                                                                                                                                                                                                                                                                       |
|-------------|---------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>R.33</b> | <b>PC</b>     | <ul style="list-style-type: none"><li>• The registration system does not sufficiently cover the beneficial ownership and control of legal persons.</li><li>• The current company registration system is not sufficiently effective to prevent the unlawful use of legal persons for purposes of money laundering or terrorist financing.</li><li>• Lack of provisions to mitigate the risks of misuse of bearer shares.</li></ul> |

***5.2 Legal Arrangements – Access to beneficial ownership and control information (R.34)***

***5.2.1 Description and Analysis***

***Legal Framework***

668. Although the Bank Law issued by CPA Order No. 40 of 3003, provides in Article 27 on “banking activities” that a bank may engage in different activities, including providing trust services, subject to the terms and conditions of its banking license or permit. Iraqi legislation, as is the case in most MENA countries, does not provide for the creation of trusts or other similar legal arrangements. At the time of the assessment, there was no information available to evaluators indicating that the private sector holds funds under foreign trusts and/or provides other trust services. Moreover, Iraq is not party to the Hague Convention of 1 July 1985 on the Law Applicable to Trusts and on their Recognition.

669. Such foreign legal entities can nevertheless have access, in theory, to the Iraqi financial system, in which case they would be subject to the usual identification requirements.

***5.2.2 Recommendations and Comments***

While the Iraqi legal system does not provide for the creation of trusts, it may be useful for Iraq to consider examining the issue of trusts and other legal arrangements established abroad. After such an examination it might then consider developing awareness raising exercises or recommendations for



Iraqi financial institutions or investigative authorities that may in the future come into contact with such arrangements either as part of commercial transactions or through a law enforcement investigations.

### 5.2.3 Compliance with Recommendations 34

|      | Rating | Summary of factors underlying rating |
|------|--------|--------------------------------------|
| R.34 | N/A    |                                      |

## 5.3 Non-profit organizations (SR.VIII)

### 5.3.1 Description and Analysis

#### Legal Framework

670. The Law of Non-Governmental Organizations (NGO) (Law no. 12 of 2010), its first amendment of 2011, and Executive Regulation #1 provide the legal framework for the supervision and the monitoring of three categories of NGOs: (1) Iraqi NGOs; (2) foreign NGO branches; and (3) NGO networks. The Council of Ministers' (COMs) NGO Department is the competent authority mandated to implement the law.

671. To operate in Iraq, all NGOs must register with the COMs NGO Department. At the time of the drafting of this report, authorities told assessors that there are 670 registered NGOs in Iraq. However, industry representatives noted that prior to 2010 there were over 7000 registered NGOs. The assessors believe that the sharp decline in registered NGOs was due to the 2010 arrest of an al Qaeda-linked terrorist who was the Director of The Human Rights Organization, an Iraqi NGO. Pursuant to uncovering al-Joubari's safe haven in the NGO sector, the Iraqi government significantly increased the requirements to obtain NGO registration certification, including performing background checks on individuals who own or control NGOs.

672. The key requirements provided in the legal framework to own or control a NGO is for a minimum of three founding members to be Iraqi nationals, at least 18 years of age and legally competent, or in the case of a foreign branch, for the individual to have permanent residency status in Iraq; and to have a clean criminal record. During the on-site mission, authorities said that the Ministry of Interior performs criminal record background checks and provides a letter of confirmation to the Department as to whether or not the concerned individuals are fit and proper. Regarding foreigners, the NGO Department noted that they do not request the same criminal background check, since these procedures should already have been undertaken when foreigners applied for Iraqi residency status.

#### Registration Requirements

##### Domestic NGOs:

673. The registration application for a domestic Iraqi NGO must contain the following core information:

- official name of the organization;
- physical address that has been certified by a competent authority
- Iraqi nationality certificate and civil identification card, or, documentation of permanent residence of foreign persons, and confirmation of a clean criminal record:
  - names

- phone numbers
- email addresses; and
- signatures of the three founding members;
- NGO bylaws; and
- Statement of establishment and objectives

*Foreign NGOs:*

674. The registration application for foreign NGO branches, in addition to the requirements for domestic NGOs, must contain the following core information:
- A detailed statement of the objectives the organization seeks to fulfill in Iraq;
  - the names and contact information of the foreign NGO's current Iraq-based staff members:
    - Iraqi Nationals: Iraqi nationality certificate and civil status identify card; and
    - Foreign Nationals: Copy of the passport and residence documents
  - Bylaws of the parent organization and proof of registration in home jurisdiction;
  - An activity report on the foreign NGO's activities outside of Iraq.

*NGO Networks:*

675. The registration application for NGO Networks, in addition to the requirements for domestic and foreign NGO branches, must contain a copy of the GOI-issued NGO registration certificates. A foreign NGO representative is not permitted to be the head of a NGO network. A NGO network acquires legal status independent of the member organizations. The number of foreign NGOs registered with the network may not exceed 25 percent of the total number of members.

*Registration Requirements for all NGOs:*

676. Identification of the body within the organization that makes the decisions regarding modification of bylaws, organizational mergers, divisions, or dissolution. NGOs are also required to provide information about its financial resources, the sum of annual membership fees, and to identify the body responsible for employee compensation and hiring/appointments.

*Financial and Administrative Obligations*

677. Each registered NGO must submit the following items on an annual basis: (1) A financial report; and (2) an organizational activity and projects report.
678. All financial transactions, including receipt of donations, undertaken by a NGO must go through a bank account established at either a state-owned or private bank. Iraqi authorities stated that this provision also applies to international funds transfers and bank accounts held in foreign jurisdictions. Once a NGO has registered, authorities stated that the NGO can open a bank account. Executive Regulation # 1 further stipulates that financial institutions must verify the legal status of charities and refrain from opening any account for a NGO until receiving a certificate from a competent authority on the status, activity and permission that allows the organization to open an account. When asked what is needed to for an NGO to open a bank account, several banking officials said it would be necessary for the NGO to provide its registration certificate and a permission letter from the NGO Department.

679. Although a records maintenance time period is not specified, all NGOs are required to maintain the following records:

- the names, addresses, nationalities, ages, and positions of each NGO member; and
- the decisions of the general assembly and admin board.

680. All NGOs are required to maintain the following financial records for five years:

- bank account records that detail the NGO's revenues and expenses;
- a record of monies containing the NGO's transferable and non transferable money with the values and details for each; and
- a record of activities and projects including type of activity or project, the financing entity and the benefit of it.

681. If an NGO's budget exceeds IQD 75 million (USD 65,502) annually the organization is required to use one of the Board of Supreme Audits (BSA) approved accountants to conduct an internal audit of its financial activity. The law also stipulates that NGO accounting records must conform to the legally approved accounting principles. However, Iraqi government agencies, financial institutions, and companies do not appear to be implementing internationally accepted IFRS-compliant accounting standards.<sup>54</sup>

#### *Penalties*

682. Any violation of the NGO Law's provisions could result in the suspension of the organization's activities for up to 30 days or dissolution of the organization depending on the prohibited activity. These penalties are largely geared toward administrative violations. The NGO Department is authorized to suspend a NGO's operations, but the decision to dissolve a NGO only can be taken voluntarily by the NGO or by a court order. Iraqi authorities noted that administrative penalties have been applied to NGOs in such cases as not informing the Department about a change of address, not submitting requisite organizational activity or financial reports on time, or for providing inaccurate bank account information. The NGO Department did not provide information about whether or not a NGO had ever been dissolved pursuant to the NGO Law's provisions.

683. NGOs are prohibited from violating the constitution or other Iraqi laws, using NGO funds for personal benefit, including tax evasion, and raising funds or providing financial support to persons in public positions or to political candidates. Theoretically, the criminalization of terrorist financing as specified in the AML/CFT law could be applied to NGOs. The NGO Department indicated that there are no known cases of TF in the NGO sector.

684. Only a judicial court may authorize the freezing of a NGO's bank account(s), however the assessors did not find out if a NGO's bank account has ever been frozen for ML or TF.

#### *Analysis of Effectiveness*

685. Iraqi officials explained that during the former regime, there was a functioning Ministry of Social Affairs, but that it dissolved in the post-2003 political environment. The NGO Department is the sole authority responsible for registering, supervising and monitoring NGOs in Iraq. In meetings with other authorities from across different agencies, officials were aware that a NGO registry list exists and have used it to aid terrorism investigations. However, these agencies were not aware of the NGO

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54 World Bank, Financial Sector Review of the Republic of Iraq, page 71.

Department's role, functions, or existence. As noted in the legal framework section, the al-Jabouri case demonstrated the vulnerability of the NGO sector to terrorist abuse. However, it is unclear if this NGO's funds were diverted to terrorist acts, or if the NGO provided a front for him to evade detection from authorities. Despite this serious case of terrorist abuse of the NGO sector, according to industry officials there has not been any government outreach to the NGO community about the risks of TF or ML abuse.

686. There is no AML/CFT supervisory or compliance provisions contained in the NGO Law. The AML/CFT Law does not specify NGOs as a category of entities to be supervised or monitored. In practice, the FT provision of the AML/CFT Law could apply to NGOs and those who own or control them, since the NGO law states that any violation of the Iraqi constitution or Iraqi laws is prohibited. In this case, the Anti-Terrorism Law of 2005 would apply and may have been invoked to prosecute al-Jabouri.
687. Compliance examinations are not mentioned in the law, however they are carried out by the NGO Department staff on an intermittent basis. Officials noted that examinations are usually triggered by other NGOs reporting violations, or if the NGO Department analyzes the annual financial or activity reports for inaccuracies. A typical examination includes contacting beneficiaries to determine whether or not they receive donations. The assessors concluded that analyzing the annual financial records and bank statements is done from a prudential supervision standpoint, rather than from a good governance or CFT perspective. At the time of the on-site, authorities noted that an examination had never been triggered by allegations of TF.
688. Since 2010, industry representatives noted that although the NGO Department has increased the level of scrutiny in the registration application process, inflexible bureaucrats and excessively slow response times to NGO applicants or registration renewal approvals hinders badly needed aid from reaching the Iraqi people. Reportedly, the turn around time to process a NGO certificate takes more than 12 months. Industry officials said that potential donors will not provide funding to a NGO without a certificate, rendering them ineligible to apply for grants.

***Review of adequacy of laws and regulations of NPOs (c.VIII.1)***

689. To date, there has not been a review of the adequacy of NPO laws and regulations. A domestic sector review has not been undertaken to determine which NGOs are at risk of being misused for terrorist financing. Periodic assessments have not been conducted to review new information regarding the sector's vulnerabilities to terrorist activities.

***Outreach to the NPO sector to protect it from TF abuse (c.VIII.2)***

690. At the time of the on-site mission, authorities have conducted no outreach or awareness-raising to protect the sector from ML and TF abuses. Limited work has been done to promote transparency, accountability, integrity, and public confidence in the administration and management of all NGOs.

***Supervision or monitoring of NPOs that account for significant share of the sector's resources or international activities (c.VIII.3)***

691. Authorities have not undertaken a domestic review of the NGOs in the sector and review annual financial reports based on prudential standards only, they are not aware of a significant portion of the financial resources under control of the sector.

692. NGOs are required to provide authorities with annual reports about the international activities of foreign NGO branches, including foreign funds transfers or bank accounts held in other jurisdictions. Although NGOs are required to inform the NGO Department within 30 days of any changes regarding financial or programmatic activity, there is not a mechanism in place for the NGO Department to know about these changes without the NGO voluntarily disclosing this information.

***Information maintained by NPOs and availability to the public thereof (c. VIII.3.1)***

693. Pursuant to Article 18 of Law No. 12 of 2010:

- NGOs are required to submit annual activity reports and maintain records on general assembly and board decisions, however the NGO Law does not state a specific timeframe in which NGOs should maintain this information; and
- NGOs are required to maintain records on the identity of person(s) who own, control or direct their activities, including senior officers and board members. There is not a specific legal requirement to make this information publicly available.

***Measures in place to sanction violations of oversight rules by NPOs (c. VIII.3.2)***

694. Any violation of the NGO Law's provisions could result in the suspension of the organization's activities for up to 30 days or dissolution of the organization depending on the prohibited activity. These penalties are largely geared toward administrative violations. The NGO Department is authorized to suspend a NGO's operations, but the decision to dissolve a NGO only can be taken voluntarily by the NGO or by a court order.

695. NGOs are prohibited from violating the constitution or other Iraqi laws, using NGO funds for personal benefit, including tax evasion, and raising funds or providing financial support to persons in public positions or to political candidates.

***Licensing or registration of NPOs and availability of this information (c. VIII.3.3)***

696. To operate in Iraq, NGOs must register with the NGO Department of the Council of Ministers pursuant to Law No. 12 of 2010, Article 5. Theoretically, this information is available to competent authorities.

***Maintenance of records by NPOs, and availability to appropriate authorities (c. VIII. 3.4)***

697. NPOs are required to make available information to competent authorities. This information extends to all financial activities (establishing and maintaining domestic and international bank accounts and funds transfers, receipt of donations, payments to beneficiaries, and any other activity), which NGOs must maintain for no less than five years. In practice, it is unknown how this obligation is implemented.

698. The NGO oversight rules in Law No. 12 of 2010, Article 15 and Article 20, address the annual submission of project activity and financial report to the NGO Department, and coordination with the BSA in the event of suspicion of fraud or manipulation of accounts. If the BSA is brought in to audit a NGO's accounts, Article 20 requires the BSA to give 30 days advance notice to the NGO before the audit takes place. Although not stated in the law, compliance examinations are carried out by the NGO Department staff on an intermittent basis.

***Countries should implement measures to ensure that they can effectively investigate and gather information on NGOs. (c. VIII.4.1-3)***

699. (4.1) The NGO Department serves as the defector repository that maintains the NGO registry, approves applications for registration, and conducts periodic examinations. There is no clear evidence of an official mechanism of cooperation, coordination, or information sharing on NGOs of potential terrorist financing concern.
700. (4.2) Competent authorities should have timely access to the annual activity and financial reports submitted to the NGO Department.
701. (4.3) There is not a clear mechanism in place for all authorities to share information promptly in order to take preventive or investigative action when there is suspicion of or reasonable grounds to suspect that a NGO is being exploited for terrorist financing purposes or is a front organization for terrorist fundraising. Although the MOI has some expertise and capability to investigate terrorism cases, they have less expertise in the terrorist financing domain. That said, MOI authorities did inform assessors that they have identified terrorist financing in the NGO sector and have forwarded cases to the appropriate judicial authorities. A deficiency regarding mechanisms that allow for prompt investigative and preventive measures is that the BSA is required to inform a NGO 30 days prior to auditing the organization's accounts if there is suspicion of fraud or manipulation of accounts. The 30 days' notice defeats the purpose of applying preventive measures.

***Responding to international requests regarding NPOs - points of contacts and procedures (c. VIII.5)***

702. Appropriate points of contact and procedures have not been established to respond to international requests for information regarding NGOs that are suspected of terrorist financing or other forms of terrorist support.

***5.3.2 Recommendations and Comments***

- Increase the staff and resources of the NGO Department to facilitate thorough application review, sufficient background checks, and sharply increase application approval and renewal response times. The NGO registry should be accurate and updated, so competent authorities can access information in a timely manner. A 12+ month application approval and renewal processing time would hinder ML or TF investigations.
- Review the adequacy of existing NGO laws and regulations to identify gaps that do not address the abuse of terrorism and terrorist financing in the sector;
- Undertake a domestic sector review to determine which NGOs are at risk of being misused for terrorist financing;
- Develop a NPO and public sector awareness raising campaign about the risks of TF and ML and the need for mechanisms that create transparency and accountability in the NPO sector;
- Identify international counterparts to investigate or verify the financial activities of NPOs in other jurisdictions and to establish points of contact to effectively address NPO-related TF/ML issues that may arise;
- Work with international counterparts to learn best practices and share experiences on regulating NGOs and creating public awareness campaigns;

- The NGO Department should identify other government agencies that have or do not have access to the NGO registry and work toward developing a mechanism to coordinate and share information;
- Once established, the NGO Department should participate in policy committees on AML/CFT issues;
- Amend the NGO Law or issue regulations to allow the BSA to perform audits without prior notice, especially if terrorist financing is suspected;
- Amend the NGO Law or issue regulations to include criminal background checks on foreigners; and
- Require NGOs to ensure that accurate information is publicly available, i.e., such as through a website, about its objectives, activities, audits, names and titles of senior officials, including board members.

### 5.3.3 Compliance with Special Recommendation VIII

|         | Rating | Summary of factors underlying rating                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
|---------|--------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| SR.VIII | PC     | <ul style="list-style-type: none"> <li>• No review of the adequacy of existing laws and regulations regarding the exploitation or abuse of NPOs by terrorists or terrorist organizations.</li> <li>• No effective monitoring mechanism to ensure that information required by the NPO registration process stays accurate and is available in a timely manner to competent authorities.</li> <li>• No proportionate or dissuasive sanctions are in place to penalize NPOs for violating the NGO Law.</li> <li>• No outreach or awareness raising has been undertaken with the NPO and public sectors.</li> <li>• No demonstrated mechanism for international cooperation regarding TF in the NPO sector.</li> <li>• No mechanism that requires NPOs to have publicly available information about its activities and senior officials.</li> </ul> |

## 6. NATIONAL AND INTERNATIONAL COOPERATION

### 6.1 National cooperation and coordination (R.31)

#### 6.1.1 Description and Analysis

##### **Legal Framework**

703. The evaluation team was not made aware of any legal provisions covering co-ordination. Legal provisions regarding co-operation:

- Article 53, Criminal Procedure Code, which deals with the geographical jurisdiction of an Investigating Judge (inside Iraq) where in whole or in part an offence has occurred and the need for them to then contact their counterpart in another Iraqi jurisdiction should the investigation.
- AML Law (regarding CBI and the FIU):
  - Article 12 (1)(c) in regard to the FIU – to cooperate and interact with and exchange information with Iraqi state authorities, competent bodies of other countries and international organizations on money laundering, financing of crime, and financing of terrorism.
  - Article 13 allows, **at the CBI discretion**, the CBI and FIU to provide information and documents to Iraqi governmental ministries, authorities, and agencies concerning matters governed by this Law. It also permits the CBI and FIU to ask for information from these same agencies in order to support CBI and FIU operations.

##### ***Mechanisms for domestic cooperation and coordination in AML/CFT c.31.1***

704. Iraq, including the Kurdish Region, does not have, as a whole or either individually, national policies or strategy for the satisfactory implementation an AML/CFT regime. There are no policy committees for overseeing any component part of an AML/CFT regime to gauge effectiveness, day-to-day co-operation, co-ordination or implementation of the AML or CFT laws and objectives.

705. Co-operation between Judicial authorities, between the Iraqi Governorates and the Kurdish Governorates, in both directions, has been described to the evaluation team as being extremely slow and very bureaucratic which hinders satisfactory investigations and prosecution.

706. One committee under the auspices of the Prime Minister's Office is said to deal solely with UNSCR 1373 matters, with members be drawn from: Council of Ministers, MoI, National Security, Counter Terrorism Service, MOD, MOFA and the CBI (represented by the FIU). This committee started in 2010 and meets, the evaluators were informed, at the beginning of each month. One agency represented called this the "105 Committee" pursuant to the number of the Council of Ministers memo numbered 105. The exact nature, make-up and role of this committee was not clear, as its member agencies were either unaware of the committee or described its functionality quite differently.

707. LEA co-operation: As criminal investigations fall completely under the control of an Investigating Judge, it is the Judge who determines where, when and how evidence should be sought. The process makes co-operation a formal legal procedure between the Judge the Investigating Officer, even if they are in different geographical region(s). In many cases, this process is not undertaken in a timely



fashion which (if conducted) would seriously cause serious delays in expediency of a M/L investigation that crossed judicial boundaries. T/F and corruption cases have Investigation Judges assigned who have competency in the Iraqi Governorates.

708. LEAs outside the judiciary described ad-hoc co-operation that was undertaken on a case by case basis as more common in terrorist cases. Each of the LEA appears to hold separate ‘intelligence’ databases but there is no common or routine sharing of this data.

#### ***Additional Elements – Mechanisms for consultation between competent authorities and regulated institutions c.31.2***

709. See above.

#### ***Review of the effectiveness of AML/CFT systems (Recommendation 32)***

710. The evaluation team was not provided with any statistics evidencing co-ordination or co-operation.

#### ***6.1.2 Recommendations and Comments***

- The lack of a national policy body overseeing implementation strategy and co-ordination has resulted in poor implementation of Iraq’s fight against M/L and T/F. Iraq would benefit from a high level, multi-agency committee that oversees such a strategy. It should also oversee successful implementation and effectiveness of the other recommendations listed below, and as necessary, the existence of a parallel committee within KRG.
- The lack of effective procedures for judicial co-operation between Iraqi Governorates and the Kurdish Governorates seriously effects cross jurisdictional investigation. This is a factor often exploited by criminals and criminal groups. Consider requiring the Supreme Judicial Councils in both Iraq and KRG, negotiate formal and effective procedures allowing for speedy and effective co-operation.
- AML/CFT co-operation needs to be improved generally across Governorate’s at the judicial level to ensure speedy and effective co-operation that reflect the speed in which money (or criminals themselves) moves through the financial sector.
- Judicial and LEA should review and better understand the difference levels of co-operation: evidence, intelligence and information sharing, necessary to implement good and effective AML/CFT system.
- LEAs tend to operate in isolation from each other. The fight against M/L and T/F requires a more multi-agency and systematic approach to co-operation. It is recommended that MoUs or other process be drawn up between key agencies to allow the sharing of operational and intelligence data- where and when it is operationally necessary.
- Consider more clearly defining the functionality and scope of committees formed or existing, to reduce overlap and increase effectiveness of all members and other relevant bodies working together. The so called “105 Committee” would benefit from such an approach.

### 6.1.3 Compliance with Recommendation 31

|             | Rating | Summary of factors underlying rating                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
|-------------|--------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>R.31</b> | N/C    | <ul style="list-style-type: none"> <li>• Iraq has never had an AML/CFT policy making body to look at co-ordination or co-operation.</li> <li>• There is no AML/CFT co-ordination and co-operation between the Iraqi Governorates and Kurdish Governorates.</li> <li>• More effective co-operation and co-ordination is necessary across domestic judicial (geographical) boundaries.</li> <li>• LEAs tend to work in isolation from each other and not to share AML/CFT data between different agencies.</li> </ul> |

## 6.2 The Conventions and UN Special Resolutions (R.35 & SR.I)

### 6.2.1 Description and Analysis

711. Iraq is party to the Vienna and Palermo Conventions but has not implemented all provisions. Iraq is not yet a party to the UN Convention on the Suppression of the Financing of Terrorism and most of its provisions are not implemented yet.
712. In addition, Iraq did not enact special laws and procedures to deal with the requirements under UNSCRs 1267 and 1373. For a full overview of the implementation of UNSCR 1267, successor resolutions, and UNSCR 1373, see section 2.4 on SR.III in this report.
713. It should be noted that according to Article 8 of the Constitution, Iraq shall establish relations on the basis of mutual interests and reciprocity, and respect its international obligations. Judges confirmed that based on this article, any treaty acceded to or ratified by Iraq becomes a part of domestic law and supersedes domestic law.

#### ***Ratification of AML Related UN Conventions (c. 35.1)***

714. Iraq is party to the Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna Convention) on July 22, 1998 pursuant to Law No. 23 of 1997.
715. Iraq is party to the United Nations Convention against Transnational Organized Crime (Palermo Convention) on March 17, 2008 pursuant to Law No. 20 of 2007.

#### ***Implementation of Vienna Convention***

716. Iraq has enacted legislation that covers some AML requirements of the Vienna Convention. The elements of the ML offense are not in line with the physical and material elements of ML as set forth by Article 3(1) (b) and (c) of the Vienna Convention. Proper ancillary offenses are criminalized by the law (see Section 2.1 on Recommendations 1 and 2 in this report for a full overview of the criminalization of ML). Moreover, the trafficking in narcotics and other drug-related offenses are criminalized by the Drugs Law No. 68 of 1965.
717. For provisional measures and for confiscation of proceeds of crime, applicable also on proceeds derived from drug related offenses and narcotics and instrumentalities in drug related cases – which are not fully implemented in line with the Convention, see Section 2.3 on R3. For mutual legal

assistance and extradition provisions, see Sections 6.3 – 6.4 on Recommendations 36 – 39 of this Report.

### ***Implementation of Palermo Convention***

718. Iraq has enacted legislation that covers some AML requirements of the Palermo Convention. Iraq has criminalized the participation in a criminal organization on the basis of the criminal conspiracy (Art. 55 – 57 of the PC). Moreover, participation in an armed terrorist gang is criminalized pursuant to Art. 2.3 Of the ATL.
719. For provisional measures and for confiscation of proceeds of crime – which are not fully implemented in line with the Convention, see Section 2.3 on R3.
720. Obstruction of justice is criminalized under Articles 233-273 of the PC. Criminal liability does extend to legal persons (see on R2 in Section 2.1 of this report).
721. For mutual legal assistance and extradition provisions, see Sections 6.3 – 6.4 on Recommendations 36 – 39 of this Report.

### ***Ratification of CFT Related UN Conventions (c. I.1)***

722. Iraqi Parliament has ratified the UN Convention for the Suppression of the Financing of Terrorism (New York Convention 1999) by virtue of Law No. 3 of January 31, 2012. However, it's not clear why this law hasn't been gazette and hence hasn't taken effect yet.<sup>55</sup>
723. Iraq has signed, ratified or accessed to only 6 out of a total of 12 international conventions relating to the fight against international terrorism (including 5 out of the 9 instruments listed in the annex to the TF Convention).
724. The instruments to which it has signed, ratified or acceded are as follows:
- Convention for the Suppression of Unlawful Seizure of Aircraft, done at The Hague on 16 December 1970 (by Law No. 127 of 1971);
  - Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 23 September 1971 (by Law No. 95 of 1980);
  - Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the United Nations on 14 December 1973 (by Law No. 3 of 1978);
  - International Convention against the Taking of Hostages, adopted by the General Assembly of the United Nations on 17 December 1979 (signed by Iraq on 22 April 1988);
  - Convention on Offences and Certain Other Acts Committed on Board Aircraft, done at Tokyo on 14 September 1963 (by Law No. 89 of 1980); and

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<sup>55</sup> Pursuant to Article 129 of the Constitution, *laws shall be published in the Official Gazette and shall take effect on the date of their publication, unless stipulated otherwise.*

- Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 24 February 1988 (instrument of accession to the Protocol filed by Iraq on 31 January 1990, date of accession: 2/3/1990).

725. In addition to the TF Convention, Iraq has not become party to the Convention on the Physical Protection of Nuclear Material, adopted at Vienna on 3 March 1980; Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on 10 March 1988; Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, done at Rome on 10 March 1988; International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on 15 December 1997; and Montreal Convention on the Marking of Plastic Explosives for the Purpose of Detection of 1991.

#### ***Implementation of TF Convention (Articles 2-18)***

726. As indicated above, Iraqi Parliament has ratified the TF Convention by virtue of Law No. 3 of January 31, 2012; however, this law hasn't been gazette and hence hasn't taken effect yet. Most of its provisions are not enforced in Iraq (see on SR II in Section 2.2 for Articles 2-6 and 17-18, SR II in Section 2.4 for Article 8; and Special Recommendation V in Sections 6.3 – 6.5 for Articles 7 and 9-18 of the TF Convention). TF has been criminalized but not in line with the requirements set out in the TF Convention.

#### ***Implementation of UN SCRs relating to Prevention and Suppression of FT (c. I.2)***

727. See Section 2.4 of this Report for an overview of the implementation of UNSCR 1267, and its successor resolutions, and UNSCR 1373. The strengths and shortcomings identified in that Section have an impact on the assessment of this SR I.

728. Iraq submitted 3 reports to the Counter-Terrorism Committee established pursuant to UNSCR 1373, on 26 December 2001<sup>56</sup>, 13 August 2002<sup>57</sup> and 19 April 2006.<sup>58</sup> None of the content of these reports would confirm the full implementation of SR III.

#### ***Additional element (c. 35.2)***

729. Iraq is party to the 1998 Arab Convention for the Suppression of Terrorism, signed by Iraq on 22 April 1998; and the 2010 Arab Convention on AML/CFT. However, joining regional counter-terrorism instruments cannot be viewed as an alternative to joining the remaining UN conventions (mentioned above).

730. Iraqi Parliament has also ratified the UN Convention for the Suppression of Acts of Nuclear Terrorism (New York Convention 2005) by virtue of Law No. 5 of January 31, 2012 and the Convention of the Organization of the Islamic Conference (OIC) on Combating International Terrorism of 1999. However, both these laws haven't been gazette and hence haven't taken effect yet.

731. Iraq became party to the United Nations Convention against Corruption (Merida Convention) on March 17, 2008 pursuant to Law No. 35 of 2007.

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56 S/2001/1291

57 S/2002/943

58 S/2006/280

### 6.2.2 Recommendations and Comments

732. In order to comply with R35 and SR I, Iraq should:

- Ratify the TF Convention.
- Implement UNSCR 1267 and successor resolutions, and UNSCR 1373.
- Take the necessary action in order to cover the shortcomings related to the implementation of the Vienna Convention, the Palermo Convention and the TF Convention.

### 6.2.3 Compliance with Recommendation 35 and Special Recommendation I

|             | Rating    | Summary of factors underlying rating                                                                                                                                                                                                                                                                   |
|-------------|-----------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>R.35</b> | <b>PC</b> | <ul style="list-style-type: none"><li>• There are shortcomings in the implementation of the Vienna and Palermo Conventions (i.e. the criminalization of ML).</li><li>• The TF Convention is not ratified, and there are shortcomings in the implementation (i.e. the criminalization of TF).</li></ul> |
| <b>SR.I</b> | <b>NC</b> | <ul style="list-style-type: none"><li>• The TF Convention is not ratified, and there are shortcomings in the implementation.</li><li>• Very limited implementation of UNSCR 1267.</li><li>• Lack of implementation of UNSCR 1373.</li></ul>                                                            |

## 6.3 Mutual Legal Assistance (R.36-38, SR.V)

### 6.3.1 Description and Analysis

733. The type and extent of international co-operation that Iraq may provide is mainly regulated by the Constitution, the AML Law, the CPL, the international conventions to which Iraq is party, and by other multilateral and bilateral agreements concluded by Iraq with various countries in the field of judicial assistance, exchange of information and extradition of criminals.

734. Moreover, as a member of Interpol, Iraq could engage in exchanges of information on international criminals and persons sought or prosecuted by other States, assisting in their arrest in the event that they enter Iraq.

### Recommendation 36

#### General description (c. 36.1 & c. 36.1.1)

735. Iraq does not have specific provisions regarding MLA in ML/FT investigations, prosecutions and related proceedings. The general framework for MLA set out in the CPL (Articles 353-356) is applicable.

736. The CPL provides that in requests from foreign countries for legal assistance and in the extradition of accused and sentenced persons, the instructions stipulated in the CPL will be followed in consultation with the regulations of international treaties and agreements and the principles of international law and the principle of reciprocity (Art. 352).

737. Thus with regard to ML, TF or any other offence, MLA relations are primarily governed by the bilateral and multi-lateral treaties to which Iraq is party. In case of the absence of such treaty or agreement, MLA can be provided on the basis of reciprocity.
738. Among the judicial agreements concluded by Iraq with various countries in the field of judicial assistance, exchange of information and extradition of criminals are as follows:
- Riyadh Arab Agreement for Judicial Cooperation (Law No. 110 of 1983);
  - The 2010 Arab Convention on AML/CFT;
  - Treaty on the extradition of criminals with Syria (1929);
  - Treaty on the extradition of criminals with Egypt (1931);
  - Treaty on the extradition of criminals with Turkey (1932);
  - Treaty on the extradition of criminals with the United Kingdom (1932);
  - Treaty on the extradition of criminals with the United States (1934);
  - Treaty on judicial cooperation and extradition of criminals with Iran (1937);
  - Treaty on the extradition of criminals with KSA (1951);
  - Treaty on the extradition of criminals with Yemen (1952);
  - Treaty on judicial and legal cooperation with the Soviet Union (1973);
  - Treaty on judicial and legal cooperation with Bulgaria (1990).
  - Treaty on the extradition of criminals with Iran (2011);
  - Treaty on judicial and legal cooperation in criminal matters with Iran (2011).
739. Mutual legal assistance may also be provided in accordance with related provisions contained in offense-related conventions such as the Vienna and the Palermo Conventions.
740. The scope of international agreements to which Iraq is party, covers the offering of many forms of assistance, including mutual assistance in order to conduct investigations, gathering evidences pursuit and arrest of fugitive accused persons or convicted criminals in addition to procedures relevant to the recognition of criminal judgments, cooperation for confiscation purposes and cooperation for purposes of asset recovery.
741. Iraqi authorities were unable to provide the evaluation team with MLA statistics in order to assess whether such assistance is being provided in a timely, constructive and effective manner.

*Conditions for mutual legal assistance (c. 36.2)*

742. For Iraq to be able to cooperate, MLA requests need to comply with Iraqi Law, and be on the basis of multilateral or bilateral agreements or on the basis of reciprocity.
743. In accordance with the rules set out in bilateral and multilateral agreements with other jurisdictions, mutual legal assistance is not in principle subject to unreasonable, disproportionate or unduly restrictive conditions.

*Efficiency of processes (c. 36.3)*

744. Pursuant to Articles 353-354 of the CPL, if a foreign state wants to take measures to pursue an investigation into any offence by means of the judicial authorities in Iraq it must send a request to this effect through diplomatic channels to the Ministry of Justice and the request must be accompanied by a complete statement of the circumstances of the offence, the evidence for the

charge, the paragraphs of the law which apply and a detailed specification of the measures which it wishes to take. If the Ministry of Justice considers that the request meets in full all its legal conditions (the existence of a treaty or on the basis of reciprocity) and that its implementation does not contravene the public regime in Iraq, it will refer it to the investigative judge in whose geographical area it falls in order to achieve the requested measures. If the requested measures are carried out, the magistrate will submit the documents to the Ministry of Justice for forwarding to the foreign state.

745. Iraqi authorities stated that practically, and since the Supreme Juridical Council has become independent from the Ministry of Justice, the MOFA (Internal Judicial Affairs Section) receives MLA requests and forwards these to the Supreme Juridical Council which, on his turn, forwards these to the competent Court. The competent Court will take the appropriate decision, whether to accept or to refuse the MLA request. This decision is then notified to the MOFA through the Supreme Juridical Council.
746. The MOFA stated that there was no MLA request sent or received regarding ML offence. It has also stated that in general MLA requests are handled in an effective way, and take from 3 to 6 months, depending on the case. This is not supported by statistics.
747. Iraqi authorities were unable to provide the evaluation team with MLA statistics in order to assess whether such assistance is being provided in a timely manner and without undue delay.

*Fiscal matters (c. 36.4)*

748. The international agreements to which Iraq is party do not stipulate that a request for mutual legal assistance can be refused on the sole ground that the offence is also considered to involve fiscal matters.

*Confidentiality requirements (c. 36.5)*

749. The international agreements to which Iraq is party do not stipulate that a request for mutual legal assistance can be refused on the grounds of laws that impose secrecy or confidentiality requirements. Moreover, Article 25 of the 2010 Arab Convention on AML/CFT, to which Iraq is party along with 12 other countries, clearly provides that the State Party, which receives a MLA request, may not reject it on the basis of bank secrecy.

*Use of law enforcement powers for MLA (c. 36.6)*

750. Judges confirmed that if the conditions for rendering mutual legal assistance are met, the powers of the relevant authorities are also available for use in response to requests for mutual legal assistance.

*Conflicts of jurisdiction (c. 36.7)*

751. To avoid conflict of jurisdiction, Article 365 (a) of the CPL provides that if more than one state requests an extradition for one offence, then the request of the state whose security or interests were damaged by the offence is submitted first, then that of the state in whose territory the offence took place and then that of the state of which the requested person is a citizen.
752. It should be noted that, with respect to extradition requests, a number of international agreements concluded by Iraq deal with this issue. See, Riyadh Agreement: Article 46 and the 2010 Arab Convention on AML/CFT: Articles 31-35.

*Additional element (c. 36.8)*

753. If the conditions for rendering mutual legal assistance are met, the powers of the relevant authorities are also available for use in response to requests for mutual legal assistance, but there is no mechanism in place to ensure direct cooperation between the judicial and law enforcement authorities of a foreign jurisdiction and the Iraqi authorities other than through the Interpol channels.

***International Cooperation under SRV (applying Recommendation 36 for TF)***

754. All above mentioned provisions apply to the fight against terrorism and TF.

755. The authorities did not provide any information on cases where mutual legal assistance has been granted in the fight against terrorism and TF. Given the lack of statistics and further information, the assessment team is not able to assess whether and to what extent Iraq is able to provide mutual legal assistance in a timely and effective manner, nor that the overall MLA framework regarding TF is implemented in an effective way.

***Recommendation 37***

*Dual criminality in regular MLA (c. 37.1 & c. 37.2)*

756. In principle, Iraq does not render MLA in the absence of dual criminality, even for less intrusive and non compulsory measures.

757. Dual criminality is formally required for all MLA and extradition requests. Pursuant to Article 357 of the CPL, the extraditable offence should carry a prison sentence of not less than two years under the laws of the state requesting extradition and of Iraq. Moreover, Article 31 of the 2010 Arab Convention on AML/CFT, to which Iraq is party along with 12 other countries, clearly requires that the act for which extradition is required should be criminalized by virtue of the domestic law of both the requesting State Party and the State Party from which extradition is requested.

758. Iraqi legislation does not require full agreement in the definitions of criminal offenses. A different legal classification should not pose an impediment either. Moreover, the Iraqi authorities stated that technical differences between Iraq's legal or criminal system and that of countries that have requested assistance won't be an impediment to rendering MLA. It's sufficient that the act is criminalized under the Iraqi legislation, irrelevant of other criteria such as differences in the manner in which each country categorizes or denominates the offence. Hence, Iraq should have no legal impediment to accept the extradition request where both countries criminalize the conduct underlying the offence. Iraqi authorities were unable to provide the evaluation team with MLA statistics in order to confirm that there were no practical impediments to rendering such assistance.

759. It should be noted, however, that the deficiencies in the ML offense described under R1 and R2 and in TF offence described under SR II may impact on Iraq's ability to provide MLA since dual criminality is a precondition.

***International Cooperation under SR V (applying Recommendation 37)***

760. The provisions described above apply equally to the fight against terrorism and TF.



### ***Statistics (Recommendation 36 and 37)***

761. Iraqi authorities were unable to provide the evaluation team with MLA statistics.

### ***Effectiveness (Recommendation 36 and Recommendation 37)***

762. In the absence of MLA statistics, the evaluation team wasn't able to assess the effectiveness of the MLA process.

### ***Recommendation 38***

#### *General framework (c. 38.1)*

#### *Timeliness to requests for provisional measures including confiscation (c. 38.1)*

763. Iraq does not have a specific framework for provisional measures and confiscation related to MLA, so the general MLA framework of the CPL applies. Thus with regard to provisional measures and confiscation related to ML, TF or any other offence, MLA relations are primarily governed by the bilateral and multi-lateral treaties to which Iraq is party. In case of the absence of such treaty or agreement, MLA can be provided on the basis of reciprocity.

764. In general, the scope of these treaties, including multilateral treaties such as the Vienna and Palermo Conventions, is sufficiently broad for Iraq to be the basis for many forms of assistance, including provisional measures such as the identification, freezing or seizure of properties and instrumentalities.

765. However, deficiencies regarding the provisional measures legal framework described under R3, especially the fact that provisional measures are not applicable to ML offences and to most of TF offences and predicate offences, may impact on Iraq's ability to reply positively to request for such measures.

766. Since confiscation is not a provisional measure, it should be studied under the Iraqi legal framework for the recognition of foreign judicial criminal judgments. The PC and the CPL are both silent about the exequatur of penal sentences pronounced by a foreign justice.<sup>59</sup>

767. Article 27 of the 2010 Arab Convention on AML/CFT, to which Iraq is party along with 12 other countries, deals with the recognition of criminal judgments/sentences. Pursuant to this article, each State Party shall recognize the criminal judgments/sentences rendered by the courts of any other State Party regarding ML/TF offences, unless said judgment is contradictory to the public order or law. Article 28 regarding the cooperation for confiscation purposes, states that any State Party receiving a request from another State Party that has jurisdiction on a ML/TF offence for the purpose of confiscating/forfeiting criminal proceeds, properties, equipment, or other tools existing in its territory, shall undertake the following: **a)** Refer the request to its competent authorities for issuing a confiscation order or ruling and enforce the latter in case of issuance; **b)** Refer the confiscation order or ruling rendered by a court in the territory of the requesting State Party to its competent authorities, for enforcing it as required.

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<sup>59</sup> The enforcement of foreign judgments in Iraq is subject to Law No. 40 of 1980 on Enforcement, as well as to Law No. 30 of 1928 on the Enforcement of Foreign Judgments, however both laws are only relevant for foreign civil judgments (Art. 6 of Law No. 30).

768. Hence, Iraq can in principle respond to a request of confiscation on the basis of a treaty or agreement. It should be noted, however, that the deficiencies in the ML offense described under R1 and R2 and in TF offence described under SR11 may impact on Iraq's ability to provide MLA since dual criminality is a precondition.

*Property of corresponding value (c. 38.2)*

769. There are no legal provisions allowing the confiscation of property of corresponding value (See c.3.1), therefore, Iraqi authorities have no legal basis to execute MLA requests relating to property of corresponding value.

*Coordination of seizure and confiscation actions with other countries (c. 38.3)*

770. There is no legal framework for the coordination of seizure and confiscation actions in the Iraqi legislation.

771. Provisions for coordinating provisional measures including seizure actions with other countries can be covered by the number of bilateral and multilateral agreements that Iraq has signed with other countries for the provision of MLA. This does not apply to confiscation (see above).

*Asset forfeiture fund (c. 38.4)*

772. In case of an ML/TF conviction, the Court shall order the person to be sentenced to forfeit to the Government of Iraq any property, real or personal, including but not limited to funds, involved in the offense, or any property traceable to the property, or any property gained as a result of the offense. (Article 6, AML Law). So far, Iraq had not considered the establishment of an asset forfeiture fund specifically designed for the purpose of law enforcement, health, education, or other appropriate purposes.

773. It worth mentioning that pursuant to Article 6.3 of the AML Law, the Minister of Finance, with the approval of the Council of Ministers, and subject to a prior judicial, administrative, or arbitral lien or judgment issued by a court of competent jurisdiction, is authorized to confiscate properties of "Ba'ath Party persons." Such confiscated blocked property shall promptly be transferred to the Development Fund for Iraq (DFI) or the successor to the DFI, if any. Should there be no successor to the DFI, such confiscated blocked property shall be transferred to the Ministry of Finance.

*Sharing of confiscated assets (c. 38.5)*

774. So far, Iraq had not considered authorizing the sharing of confiscated assets with other countries when confiscation is directly or indirectly a result of coordinated law enforcement actions. Considering the major gaps in the legal framework (see above), it may not surprise that no sharing has yet taken place.

*International Cooperation under SR V (applying c. 38.1-38.5 in R. 38, c. V.3)*

775. The MLA provisions regarding ML are applied in the same way when the request deals with TF. Therefore, the deficiencies identified in R38 apply equally to ML and TF cases, and therefore, to SRV.

*Additional element*

776. The language used by the confiscation provisions requires the conviction of the offender as a condition for the confiscation of profits. Hence, the Iraqi legal system seems not to know the non-conviction based confiscation (also known as civil confiscation). The exception to that rule is the confiscation of goods of which the manufacture, possession, acquisition, use, sale or advertisement for sale is considered an offense in itself (See Section 2.3 of this Report on R.3). This may prevent foreign non-criminal confiscation orders from being recognized and enforced in Iraq.

**Statistics and effectiveness (Recommendation 38 only)**

777. In the absence of any related statistics, the assessment team considered that such assistance was not provided by Iraq, or requested to Iraq. Consequently, the team was unable to fully evaluate the effectiveness of the system.

**6.3.2 Recommendations and Comments**

**Recommendation 36 and 38**

- In the absence of any related statistics, the assessment team was unable to fully evaluate the effectiveness of the system.
- On the legal side, the description above shows clearly that Iraq cannot respond positively to all MLA request especially with the shortcomings regarding the criminalization of ML/TF and to the confiscation and provisional measures framework. Iraq should take the necessary action in order to cover these shortcomings.
- Iraq should also review its legal framework to allow for the MLA to be rendered for less intrusive and non compulsory measures even in the absence of dual criminality. Specifically in relation to R38, Iraq should establish a legal basis to coordinate confiscation actions with other countries, consider setting up an asset forfeiture fund and considered authorizing the sharing of confiscated assets with other countries.

**6.3.3 Compliance with Recommendations 36 to 38 and Special Recommendation V**

|             | <b>Rating</b> | <b>Summary of factors relevant to s.6.3 underlying overall rating</b>                                                                                                                                                                                                                                   |
|-------------|---------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>R.36</b> | <b>PC</b>     | <ul style="list-style-type: none"><li>• Shortcomings relating to R.1, 2, 3, and SR.II have a negative impact on this Recommendation.</li><li>• Effectiveness could not be assessed due to the lack of statistics and information on practical cases being available.</li></ul>                          |
| <b>R.37</b> | <b>PC</b>     | <ul style="list-style-type: none"><li>• Iraq does not render MLA in the absence of dual criminality, not even for less intrusive and non compulsory measures.</li><li>• Effectiveness could not be assessed due to the lack of statistics and information on practical cases being available.</li></ul> |

|             | Rating    | Summary of factors relevant to s.6.3 underlying overall rating                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
|-------------|-----------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>R.38</b> | <b>NC</b> | <ul style="list-style-type: none"> <li>• Shortcomings relating to R.1, 2, 3, and SR.II have a negative impact on this Rec.</li> <li>• MLA requests relating to property of corresponding value cannot be executed in Iraq.</li> <li>• Iraq has no legal basis to coordinate confiscation actions with other countries.</li> <li>• Iraq has not considered setting up an asset forfeiture fund.</li> <li>• Iraq has not considered authorizing the sharing of confiscated assets with other county.</li> <li>• Effectiveness could not be assessed due to the lack of statistics and information on practical cases being available.</li> </ul> |
| <b>SR.V</b> | <b>NC</b> | <ul style="list-style-type: none"> <li>• Shortcomings relating to R.36, 37, 38, 39, 40 have a negative impact on this Rec.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |

## 6.4 Extradition (R.39, SR.V)

### 6.4.1 Description and Analysis

#### *ML and TF as extraditable offenses (c. 39.1 & SR V.4)*

778. The procedure for the extradition of criminals is regulated in Iraq by the CPL, Articles 357 – 368, and the relevant bilateral and multilateral treaties dealing with extradition to which the Iraq is party.
779. Article 357 of the CPL provides that the person who is the subject of the request for extradition should: 1) be accused of committing an offence which took place either inside or outside the state requesting the extradition and the offence should carry a prison sentence of not less than two years under the laws of the state requesting extradition and of Iraq (Dual criminality); and 2) been sentenced by the state requesting extradition to a prison sentence of not less than six months.
780. Since the ML offence is punishable with imprisonment for not more than 4 years (Art. 3 of the AML Law), and the TF offence is punishable with imprisonment for not more than 2 years (Art. 4 of the AML Law), both ML and TF offences are extraditable offences.
781. As for the extradition procedure, The CPL provides that the extradition request should be submitted in writing through diplomatic channels to the Ministry of Justice. In order to expedite matters the request may be made by telegram or telephone or post without attachments.
782. If it the request for extradition meets the legal conditions the Ministry of Justice will refer it to the Court of Felonies designated by the minister. The Court will require the person who is the subject of the request to appear before it at a specified session for questioning and listening to a statement from the representative of the requesting state if any. The Court will hear the witnesses in the defense of the person who is the subject of the request and review the evidence submitted to refute any charges. The person who is the subject of the request for extradition may appoint a lawyer to represent him and if the offence is a felony under Iraqi law the court must appoint a lawyer to defend him. After the court has heard the person's defense it will decide whether to accept or reject the request on the basis of the extent of the evidence put before them. This decision may not be appealed.
783. The court has the right to hold the person whose extradition is requested until it has finished its measures. If it is decided to reject the request for extradition the person is released immediately and the Ministry of Justice is informed of this. No repeat application is permitted for the same offence. If

it is decided to grant the extradition request then the papers are sent over to the Ministry of Justice with the judgment. The Minister of Justice has the right, with the agreement of the Foreign Minister, to agree to or refuse the handover, and if he agrees to it he has the right to stipulate that the person who is the subject of the request should not be tried for an offence other than the one for which he was handed over. This decision may not be appealed.

784. If the Minister of Justice asks the court to stop considering the request, the court has to suspend measures, release the person under investigation and send the papers back to the Ministry of Justice.
785. If more than one state requests extradition for one offence, then the request of the state whose security or interests were damaged by the offence is submitted first, then that of the state in whose territory the offence took place and then that of the state of which the requested person is a citizen. If the request for extradition refers to numerous offences, the question of which is given more weight will depend on the circumstances of the offence and its seriousness.
786. On issuing the decision to agree to the request for extradition the court must decide to hand over all items in the possession of the person who is the subject of the request which are connected with the offence or which were used in the commission of the offence or which could be used as evidence against him, provided this does not prejudice the rights of others.
787. If extradition is agreed and the requesting state does not take steps to transfer the person within two months of the date of notification that he was ready for extradition, he is to be released immediately and he cannot be extradited after that for the same offence.
788. Iraq has ratified the 2010 Arab Convention on AML/CFT with 12 Arab jurisdictions which specifically covers ML/TF related extradition, in addition to the Riyadh Arab Agreement for Judicial Co-operation with 19 Arab jurisdictions and bilateral agreements on legal and judicial assistance and extradition. Each agreement and treaty only refers to “a crime”, which is deemed to include ML and TF offences.

***Extradition of Iraqi citizens and prosecution of non-extraditable Iraqi citizens (c.39.2 & 39.3 & SR V.4)***

789. The Constitution (Art. 21) and the CPL (Art. 358) prohibit the extradition of Iraqi nationals; however, it's not clear on which basis Kurdistan extradites Iraqi nationals (See table below).
790. In case the extradition is ruled out on the grounds of nationality, the CPL does not stipulate that Iraq should, at the request of the country seeking extradition, submit the case without undue delay to its competent authorities for the purpose of prosecution of the offences set forth in the request. However, some multilateral or bilateral agreements to which Iraq is party allow the requested state to choose not to extradite its nationals, provided that the case is to be submitted to its competent authorities for prosecution (i.e. the Riyadh Agreement, Article 39; the 2010 Arab Convention on AML/CFT, Article 12; and the 2011 Treaty on judicial and legal cooperation in criminal matters with Iran, Article 12.1). Other bilateral agreements give the requested State the option to prosecute (i.e. the 2011 Treaty on the extradition of criminals with Iran (2011), Article 9). Moreover, one court order was provided to the evaluators in which the court decided to rule out the extradition of an Iraqi national and to refer the case to the competent Iraqi court for prosecution for forgery and money laundering offences.

**Measures to handle extradition without delay (c.39.4 & SR V.4)**

791. The Iraqi authorities did not provide any relevant statistics to verify the efficiency of the extradition requests and procedures. No information was provided neither on the length of time within which extradition requests are answered, nor on the extradition requests that have been denied or grounds for the denials.

*Additional element (c. 39.5 & SR.V8)*

792. Although Article 360 of the CPL provides that in order to expedite matters, an extradition request may be made by telegram or telephone or post without attachments, there are no mechanisms in place for simplified extradition procedures.

**Statistics and Effectiveness (Recommendation 39)**

793. The Iraqi authorities did not provide relevant statistics to verify the efficiency of the extradition requests and procedures. No information was provided neither on the length of time within which extradition requests are answered, nor on the extradition requests that have been denied and on the grounds for the denials. Two court orders were provided to the evaluators, deciding the extradition of a Turkish national for terrorism offence (2012) and a Bahraini for corruption and drug trafficking offences (2010).

794. In the absence of comprehensive statistics, the assessment team was unable to confirm the effectiveness of the extradition system in Iraq.

**Extradition Requests in the Kurdistan Region**

| Nationality of the accused | Requesting Country | Alleged Offence  | Arrest Date | Status                                                                                                                                                                                        |
|----------------------------|--------------------|------------------|-------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Turkish                    | Turkey             | Murder           | 25/9/2010   | Sulaymaniah Criminal Court decided to extradite the accused however due to the objection of the Kurdistan Ministry of Justice on the legal procedures, the accused hasn't been extradited yet |
| Iranian                    | Iran               | Murder           | 10/3/2011   | The accused hasn't been extradited yet, awaiting for the arrest of its 3 associates                                                                                                           |
| Iraqi                      | Norway             | Narcotics        | 15/1/2012   | The accused hasn't been extradited yet, awaiting for him to serve his sentence for evading from the prison                                                                                    |
| Iranian                    | Iran               | Assault          | 17/4/2011   | Released on 31/10/2011                                                                                                                                                                        |
| Iraqi                      | Iran               | Murder           | 7/2/2011    | Released on 2/4/2012                                                                                                                                                                          |
| Turkish                    | Turkey             | Abduction        | 4/3/2009    | Released on 27/9/2010                                                                                                                                                                         |
| Armenian                   | Russia             | Murder           | 18/3/2008   | Extradited through Interpol Moscow                                                                                                                                                            |
| Iraqi/Austrian             | Austria            | Attempted Murder | 4/5/2012    | Extradited through Interpol Vienna                                                                                                                                                            |

## 6.4.2 Recommendations and Comments

- In order to comply with R39, Iraq should review its legal system to clearly provide that, in case the extradition is ruled out on the grounds of nationality, at the request of the country seeking extradition, the case should be submitted without undue delay to its competent authorities for the purpose of prosecution of the offences set forth in the request.
- It should be noted however, that the deficiencies in the ML offense described under R1 and R2 and in TF offence described under SR.II may impact on Iraq's extradition ability since dual criminality is a precondition. Iraq should take the necessary action in order to cover these shortcomings.

## 6.4.3 Compliance with Recommendations 37 & 39, and Special Recommendation V

|             | Rating    | Summary of factors relevant to s.6.4 underlying overall rating                                                                                                                                                                                                                                                                                                                                                                          |
|-------------|-----------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>R.39</b> | <b>LC</b> | <ul style="list-style-type: none"> <li>• Shortcomings relating to R.1, 2 &amp; SR.II have a negative impact on this Rec.</li> <li>• No legal provisions providing that, in case the extradition is ruled out on the grounds of nationality, the case should be submitted for prosecution.</li> <li>• Effectiveness could not be fully assessed due to limited statistics and information on practical cases being available.</li> </ul> |
| <b>SR.V</b> | <b>NC</b> | <ul style="list-style-type: none"> <li>• Shortcomings relating to R. 36, 37, 38, 39 &amp; 40 have a negative impact on this Recommendation.</li> </ul>                                                                                                                                                                                                                                                                                  |

## 6.5 Other Forms of International Cooperation (R.40 & SR.V)

### 6.5.1 Description and Analysis

#### Legal Framework

795. There is no underpinning legal framework covering such co-operation.

#### Widest range of international cooperation (c.40.1)

796. International co-operation (outside the use of Bilateral and Mutual Legal Assistance routes) is generally not undertaken or encouraged. The evaluation team was not able to find any concrete examples of such co-operation.

797. There is a minor exception seen within the MoI where the Interpol channels are used to pass information but this does not extend to day-to-day operations under the jurisdiction of the Investigating Judge. The evaluation team was informed that FIU does undertake international cooperation and has staff allocated to this function, if such co-operation is undertaken the Governor of the CBI is also informed.

798. Jordan, Lebanon and Turkey were quoted as countries where co-operation can be undertaken by way of negotiated MOU (the AML Law is silent on any matter concerning international co-operation). An MOU with the UAE is delayed as the Iraqi FIU received a legal opinion from the Iraq Shura Council that matters effecting TF did not fall within the FIU's competence so the MOU could not be agreed upon. Further, cooperation through the FIU has never been sought on any TF case. Statistics were not provided covering ML co-operation.

*Provision of assistance in timely, constructive and effective manner (c.40.1.1)*

799. See above.

*Clear and effective gateways for exchange of information (c.40.2)*

800. The evaluation team was not able to identify any clear and or effective gateways for such exchanges.

*Spontaneous exchange of information (c.40.3)*

801. The evaluation team was not able to identify any spontaneous exchanges of information with international counterparts.

*Making inquiries on behalf of foreign counterparts (c.40.4)*

802. Enquires on behalf of foreign counterparts have to be sought by means of Bilateral or Mutual Legal Assistance requests or order that Judicial powers can be used to assist counterparts.

*FIU Authorized to Make Inquiries on Behalf of Foreign Counterparts (c. 40.4.1)*

803. See above.

*Conducting of investigation on behalf of foreign counterparts (c.40.5)*

804. See above.

**No unreasonable or unduly restrictive conditions on exchange of information (c.40.6); Provision of assistance regardless of possible involvement of fiscal matters (c.40.7); Provision of assistance regardless of existence of secrecy and confidentiality laws (c.40.8); and Safeguards in use of exchanged information (c.40.9)**

805. See (c.40.4) above the requirement to have to use Bilateral or Mutual Legal Assistance requests are unduly restrictive.

*Other forms of International Cooperation under SRV (applying Recommendation 40 for TF)*

806. See (c.40.4).The same conditions apply.

*Additional Element*

*Exchange of information with non-counterparts (c.40.10) & (c.40.10.1)*

807. See above.

*Provision of information to FIU by other competent authorities pursuant to request from foreign FIU (c.40.11)*

808. See above.



### 6.5.2 Recommendations and Comments

809. In order for Iraq to comply with R.40:

- A formal process based on law needs to be established that permits (and encourages) international co-operation outside the use or need for Bilateral and Mutual Legal Assistance.
- Agencies and the Judiciary need awareness raising and training in these areas of co-operation and their value in conducting cross border crimes.
- Amend relevant laws to clarify to all authorities that terrorist financing matters fall within the scope of official competency of the FIU, both domestically and internationally.

### 6.5.3 Compliance with Recommendation 40 and Special Recommendation V

|             | Rating    | Summary of factors relevant to s.6.5 underlying overall rating                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
|-------------|-----------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>R.40</b> | <b>NC</b> | <ul style="list-style-type: none"> <li>• Competent authorities are not able to provide the widest range of international cooperation to their foreign counterparts</li> <li>• Co-operation generally relies upon Bilateral and Mutual legal assistance, so is slow and unduly restrictive</li> <li>• There are no clear and effective gateways out the use of Bilateral and Mutual legal assistance</li> <li>• The above restrictive practices prevent ‘spontaneous’ sharing</li> <li>• LEA (Investigating Judges) can provide assistance to other authorities but only invoke these powers through Bilateral and Mutual legal assistance.</li> </ul> |
| <b>SR.V</b> | <b>NC</b> | <ul style="list-style-type: none"> <li>• Shortcomings relating to R. 36, 27, 38, 39 and 40 have a negative impact on this recommendation.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |

## 7. OTHER ISSUES

### 7.1 Resources and statistics

|             | Rating    | Summary of factors relevant to Recommendations 30 and 32 and underlying overall rating                                                                                                                                                                                                                                                                                                                                                                                           |
|-------------|-----------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>R.30</b> | <b>NC</b> | <ul style="list-style-type: none"> <li>The FIU, law enforcement and prosecution authorities, supervisors and other authorities involved in combating ML/TF are not adequately structured, funded or staffed, nor provided with technical and other resources to fully and effectively perform their functions.</li> <li>Adequate training has not been provided to competent authorities to enable the relevant authorities to effectively carry out their functions.</li> </ul> |
| <b>R.32</b> | <b>NC</b> | <ul style="list-style-type: none"> <li>There is an overall lack of meaningful statistics available or collected, with no systems or procedures in place to commence collection of necessary statistics to support operational or policy related AML/CFT activities in Iraq.</li> </ul>                                                                                                                                                                                           |

810. The FIU, law enforcement and prosecution authorities, supervisors and other authorities involved in combating ML/TF are not adequately structured, funded or staffed, nor provided with technical and other resources to fully and effectively perform their functions.
811. All agencies lack a ML/TF training strategy. Adequate and sustainable training has not been provided to competent authorities to enable the relevant authorities to effectively carry out their functions.
812. Iraq lacks any meaningful statistics with regard to money laundering and terrorist financing. There are no systems or procedures in place to commence collection of necessary statistics to support operational or policy related AML/CFT activities in Iraq.
813. Iraq's current status of state-building and transition create new ML/TF risks and threats which are quite high. Steps to assess and address these are not being effectively taken at the policy levels, and thus, ineffectively directed efforts to implement AML/CFT systems may not be having the desired effect.
814. Iraq continues to face pervasive corruption. Neither corruption, nor other predicate crimes can be effectively addressed without greater focus on following money trails which requires a different approach at all levels to AML/CFT efforts.
815. There is a low level of political commitment to implement effectively an AML/CFT system that is effective even at a basic level. In addition to exacerbating the ML/TF risks, by ensuring minimal risk that criminals can be caught or prosecuted, the situation creates structural weaknesses that impede effectiveness of the components of the AML/CFT system that are in place.

#### Recommended Action

- Authorities should consider undertaking a national AML/CFT risk assessment with the aim of setting forth a national AML/CFT strategy.
- Once a strategy is determined, responsibilities and duties of all authorities must be clarified, and a multi-agency task force with clear objectives should be authorized to take a leadership role in implementation, and held accountable for following up on achieving the objectives.

- Legislation is in need of improvement to clarify roles and responsibilities of authorities in the AML/CFT system. Authority delegated by legislation needs to be elaborated in an away that is clearer and more precise, and eliminate overbroad discretion of authorities to exempt from the coverage of the law entities and persons that should be subject to AML/CFT obligations.
- The National AML/CFT Strategy should set forth policies and procedures to begin to collect relevant statistics which can be analyzed by policy officials so that strategies and policies can monitored for effectiveness and adjusted accordingly to improve effectiveness of implementation, identify and close gaps in the AML/CFT system, and avoid duplication and waste of resources and efforts.

**TABLE 1. RATINGS OF COMPLIANCE WITH FATF RECOMMENDATIONS**

| <b>Rec.</b> | <b>Rating</b> | <b>Summary of factors underlying rating</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
|-------------|---------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>R.1</b>  | <b>NC</b>     | <ul style="list-style-type: none"> <li>• ML offence does not specifically cover “the concealment or disguise” in all cases.</li> <li>• By requiring a special motive, the material element of the ML offence is narrower than the one required under the international standards.</li> <li>• Self laundering is not criminalized.</li> <li>• Lack of an enforceable AML Law in the Kurdistan Region.</li> <li>• Lack of investigations and no convictions for ML despite the important number of criminal investigations for predicate offenses that generate proceeds (Lack of effectiveness).</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| <b>R.2</b>  | <b>NC</b>     | <ul style="list-style-type: none"> <li>• By requiring a special motive, the material element of the ML offence is narrower than the one required.</li> <li>• ML sanctions for natural and legal persons are not effective, proportionate and dissuasive.</li> <li>• Lack of an enforceable AML Law in Kurdistan Region.</li> <li>• Lack of investigations or convictions for ML despite the number of criminal investigations for predicate offenses that generate proceeds (Lack of effectiveness).</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| <b>R.3</b>  | <b>NC</b>     | <ul style="list-style-type: none"> <li>• Shortcomings relating to R1, R2 and SR11 have a negative impact on this Rec.</li> <li>• No legal provisions allowing the confiscation of property of corresponding value.</li> <li>• No provisional measures applicable to ML offences, to most of TF offences and predicate offences.</li> <li>• No provisional measures that cover instrumentalities, property of corresponding value and property owned by third parties.</li> <li>• Lack of use of the confiscation and provisional measures framework to achieve effectiveness in this area.</li> <li>• Lack of effectiveness in ML, TF and predicate offences regarding confiscation and provisional measures.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| <b>R.4</b>  | <b>C</b>      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| <b>R.5</b>  | <b>NC</b>     | <ul style="list-style-type: none"> <li>• The prohibition of anonymous, factitious, or numbered accounts does not prohibit maintaining such existing accounts, and is not applicable to institutions other than banks or remittance companies.(c.5.1)</li> <li>• Provisions on when to apply minimum standards CDD/KYC measures provide unfettered discretion to financial institutions in implementation, thus, effectiveness in assessing and enforcing compliance is not clear.(c.5.2)</li> <li>• The threshold exemption below which transactions are exempted from certain CDD requirements goes beyond standards that allow application of a risk-based approach. (C.5.2, 5.3)</li> <li>• There is no requirement to conduct CDD procedures on both the agent and principle when a person is representing another, or verify the authority by which a customer is acting on behalf of another. (c.5.4)</li> <li>• Insufficient CDD requirements obligating reporting entities to establish who is the beneficial owner of accounts and the natural persons that own or control legal entities, and to identify the legal form of legal entities (trust or other arrangements). (c.5.5)</li> <li>• The requirement to obtain information on the nature and purpose of the business relationship only applies after suspicious activity is detected. (c.5.6)</li> <li>• There is no effective obligation for reporting entities to conduct on-going due diligence. (c.5.7)</li> <li>• There exists no requirement to classify higher risk customers and apply enhanced due diligence measures, and no regulatory guidance to assist in the implementation of CDD/KYC risk decisions of financial institutions. (c.5.8)</li> <li>• CDD requirements permit financial institutions to apply reduced CDD measures without justification or evidence that the ML/TF risks are actually lower. (c.5.10)</li> </ul> |

| Rec.        | Rating     | Summary of factors underlying rating                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|-------------|------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|             |            | <ul style="list-style-type: none"> <li>• There is no requirement to ensure reduced CDD measures are limited to customers resident in countries that effectively implement international AML/CFT standards. (c.5.11)</li> <li>• Authorities have issued no guidelines to address the extent to which financial institutions may determine the application of CDD measures on a risk-sensitive basis. (c.5.12)</li> <li>• The degree of ambiguity in CDD obligations generally and the degree to which legal provisions permit discretion of financial institutions to decide the circumstances and timing of when CDD measures apply undermines effectiveness of implementation of by financial institutions as well as the ability of supervisory officials to assess compliance with CDD requirements. (c.5.3, 5.6, 5.9, 5.10, 5.12, 5.13, 5.14, 5.15, 5.16, 5.17, 5.18).</li> </ul>                                                          |
| <b>R.6</b>  | <b>NC</b>  | <ul style="list-style-type: none"> <li>• There is no requirement in law, regulation or other enforceable means to identify foreign PEPs or obtain senior management approval to establish or approve PEP accounts.</li> <li>• No laws, regulations or other enforceable means require the monitoring of accounts or inquiring about the source and wealth of PEPs.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| <b>R.7</b>  | <b>NC</b>  | <ul style="list-style-type: none"> <li>• There are no laws, regulation or other enforceable means which require financial institutions to:</li> <li>• implement risk control measures for correspondent relationships, nor gather information on respondent relationships</li> <li>• obtain a copy of any respondent institution's internal AML/CFT controls or assess them for effectiveness; and</li> <li>• document respective AML/CFT responsibilities of correspondent relations.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| <b>R.8</b>  | <b>NC</b>  | <ul style="list-style-type: none"> <li>• There are no laws, regulations or other enforceable means to require financial institutions to have policies or procedures in place to mitigate risks of ML/TF through misuse of technologies.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| <b>R.9</b>  | <b>N/A</b> |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| <b>R.10</b> | <b>PC</b>  | <ul style="list-style-type: none"> <li>• Although recordkeeping requirements are contained in the AML Law, these obligations are not being effectively implemented by all financial institutions, assessed for compliance during on-site inspections, or are non-compliance effectively sanctioned.</li> <li>• The respective supervisory authorities for the insurance and securities industries are responsible for monitoring compliance with recordkeeping requirements applicable to these sectors. There are no defined time periods for how long to maintain records, and there are no AML recordkeeping requirements in the Insurance Business Regulation Act or the Securities Law.</li> <li>• No available information about whether customer and account records from financial institutions aided in terrorist financing prosecutions, or whether insufficient recordkeeping has ever impeded financial investigations.</li> </ul> |
| <b>R.11</b> | <b>NC</b>  | <ul style="list-style-type: none"> <li>• No obligations, regulations or guidance requiring special attention to be given to unusually large, complex or unusual patterns of transactions or those without visible legal or economic purpose.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| <b>R.12</b> | <b>NC</b>  | <ul style="list-style-type: none"> <li>• Several categories of DNFBPs are not covered by the AML/CFT regime, including real estate agents, accountants, notaries, lawyers, other independent legal professionals and trust and company service providers.</li> <li>• Dealers in precious metals and stones are subject to Iraq's AML/CFT regime, but the CBI/MLRO does not supervise, monitor or enforce AML/CFT compliance in these sectors.</li> <li>• There is no requirement to give special attention to unusually large, complex or unusual patterns of transactions, or those with no visible legal or economic purpose.</li> <li>• There are no laws, regulations or other enforceable means to require DNFBPs to have policies or procedures in place to mitigate risks of ML/TF through new technologies.</li> <li>• There is no requirement in law, regulation or other enforceable means to identify foreign</li> </ul>            |

| Rec.        | Rating    | Summary of factors underlying rating                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|-------------|-----------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|             |           | <p>PEPs or obtain senior management approval to establish or approve PEP accounts.</p> <ul style="list-style-type: none"> <li>• No laws, regulations or other enforceable means require the monitoring of accounts or inquiring about the source and wealth of PEPs.</li> <li>• Although CDD and recordkeeping requirements are contained in the AML Law, these obligations are not being effectively implemented by DNFBBs covered by the AML Law.</li> <li>• Several categories of DNFBBs are not covered by the AML Law and are not subject to CDD or recordkeeping requirements.</li> </ul>                                                                                                                                                                                                                                                                |
| <b>R.13</b> | <b>NC</b> | <ul style="list-style-type: none"> <li>• Financial institutions are not required to report STR as soon as it suspects or has reasonable grounds to suspect that funds are the proceeds of a criminal activity.</li> <li>• Financial institutions are not required to report attempted transactions.</li> <li>• Reporting obligation is related to a threshold.</li> <li>• Lack of effectiveness of the reporting process.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                           |
| <b>R.14</b> | <b>PC</b> | Low level of reporting raise questions of effectiveness.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| <b>R.15</b> | <b>PC</b> | <ul style="list-style-type: none"> <li>• No requirement that AML/CFT Compliance officer be of management level or have sufficient professional experience.</li> <li>• No requirement that the compliance officer and relevant staff have access to appropriate CDD/KYC files and all necessary banking records.</li> <li>• Requirement to conduct on-going AML/CFT training for employees lacks specificity with regard to frequency or extent of employees that should receive such training.</li> <li>• No requirement for screening new employees to ensure high standards when hiring employees.</li> </ul>                                                                                                                                                                                                                                                |
| <b>R.16</b> | <b>NC</b> | <ul style="list-style-type: none"> <li>• No STRs/CTRs have been received by the MLRO from dealers in precious metals and stones.</li> <li>• Dealers in precious metals, stones and jewels have never been monitored or supervised for compliance with AML/CFT obligations.</li> <li>• Real estate agents, accountants, lawyers, notaries, other independent legal professionals and trust and company service providers are not subject to AML/CFT obligations.</li> <li>• There are no available AML/CFT statistics relating to DNFBBs.</li> <li>• Negligible ability to measure effectiveness.</li> </ul>                                                                                                                                                                                                                                                    |
| <b>R.17</b> | <b>PC</b> | <ul style="list-style-type: none"> <li>• Although available sanctions include imposition of monetary penalties, these are rarely used to address instances of non-compliance.</li> <li>• Monetary penalty provisions for non-compliance with AML/CFT requirements are insufficiently deterrent or effective with respect to financial institutions.</li> <li>• No civil, criminal sanctions or disciplinary have been imposed or enforced against a state-owned bank or any entity in the insurance or securities sectors for non-compliance with AML/CFT obligations.</li> <li>• Insufficient range of sanctions available in relation to natural persons who work for financial institutions, including directors and senior management, for AML/CFT violations.</li> <li>• Insufficient range of sanctions impedes effectiveness of enforcement.</li> </ul> |
| <b>R.18</b> | <b>PC</b> | <ul style="list-style-type: none"> <li>• There is no specific prohibition against shell banks operating in Iraq.</li> <li>• There is no prohibition against establishing correspondent banking relationships with shell banks.</li> <li>• There are no internal control provisions requiring financial institutions to ensure the banks with which they are establish correspondent relations are not shell banks.</li> <li>• Ineffective penalty provisions for engaging in unlicensed financial activities.</li> </ul>                                                                                                                                                                                                                                                                                                                                       |
| <b>R.19</b> | <b>C</b>  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |

| <b>Rec.</b> | <b>Rating</b> | <b>Summary of factors underlying rating</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
|-------------|---------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>R.20</b> | <b>PC</b>     | <ul style="list-style-type: none"> <li>• Businesses and professions other than DNFBPs vulnerable to ML or TF are not yet subject to AML/CFT obligations.</li> <li>• Although Iraq has been developing measures to use modern secure technologies for conducting transactions that are less vulnerable to money laundering, informal transactions in the form of cash are still prevalent and represent ML/TF risks.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| <b>R.21</b> | <b>NC</b>     | <ul style="list-style-type: none"> <li>• No requirement that attention be paid to business relationships and transactions with persons from or in countries which do not or insufficiently apply the FATF Recommendations.</li> <li>• No laws or regulations authorize authorities to issue orders to apply countermeasures to designated countries that inadequately comply with FATF's Recommendations, and no such countermeasures have ever been ordered or implemented.</li> <li>• No laws, regulations, or other enforceable means require the examination of transactions with no apparent economic, lawful purpose from such countries.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                    |
| <b>R.22</b> | <b>NC</b>     | <ul style="list-style-type: none"> <li>• No legal obligation to apply the higher standards of AML/CFT obligations in cases where the home and host country differ.</li> <li>• No legal obligation to inform home country supervisor when foreign branch or subsidiary is prevented from implementing mandatory Iraqi AML/CFT requirements due to conflict with local requirements.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| <b>R.23</b> | <b>PC</b>     | <ul style="list-style-type: none"> <li>• Supervision and compliance monitoring of AML/CFT obligations in state-owned banks, as well as the entire insurance and securities sectors has not yet commenced.</li> <li>• Laws regulating the insurance and securities sectors are unclear as to the role of these respective supervisory authorities in regards to AML/CFT supervision.</li> <li>• Current laws and regulations are ineffective in preventing criminals and associates from holding or being beneficial owner of or holding a controlling interest in or holding a management functions in financial institutions.</li> <li>• Implementation of recognized Core Principles of financial institutions in relation to AML/CFT controls needs improvement in the banking sector and is non-existent in the insurance and securities sectors.</li> <li>• Although CBI licenses and supervises money transmitters and exchange houses, the quality of AML/CFT compliance monitoring is lacking which harms effectiveness of implementation and enforcement.</li> </ul> |
| <b>R.24</b> | <b>NC</b>     | <ul style="list-style-type: none"> <li>• AML supervision of the DNFBP sector has not commenced.</li> <li>• The designated authority responsible for monitoring compliance of DNFBPs with AML/CFT requirements lacks sufficient human, technical and other resources to carry out this function.</li> <li>• There are no effective systems for monitoring and ensuring compliance with AML/CFT requirements</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| <b>R.25</b> | <b>NC</b>     | <ul style="list-style-type: none"> <li>• There has only been 1 STR received by the FIU since the AML Law took effect (2004) and no apparent efforts by the FIU/CBI to provide feedback or guidance to improve implementation or compliance with STR reporting requirements.</li> <li>• AML/CFT Guidelines have not been issued to assist entities in the insurance and securities sectors comply with applicable AML/CFT obligations.</li> <li>• Guidelines issued by the CBI for banks, money exchanges and remitters are insufficient and ineffective to assist these entities to understand and implement effective AML/CFT controls.</li> <li>• The MLRO has not issued sector-specific AML/CFT regulations or guidance to the DNFBP sector.</li> <li>• No outreach has been done in respect of any DNFBP sectors.</li> </ul>                                                                                                                                                                                                                                             |

| Rec.        | Rating    | Summary of factors underlying rating                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
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| <b>R.26</b> | <b>NC</b> | <ul style="list-style-type: none"> <li>• The MLRO/FIU is not a national centre for receiving, analyzing, and disseminating disclosures of STR and other relevant information concerning suspected ML/TF activities.</li> <li>• The MLRO/FIU does not have sufficient operational independence and autonomy.</li> <li>• The MLRO/FIU is not adequately structured, funded, staffed, and provided with sufficient technical and other resources to fully and effectively perform its functions.</li> <li>• The MLRO/FIU staff is not appropriately skilled and provided with adequate and relevant AML/CFT training.</li> <li>• The MLRO/FIU does not have access, directly or indirectly, on a timely basis to the financial, administrative and law enforcement information that it requires to properly undertake its functions, including the analysis of STR, without the consent of the CBI.</li> <li>• The MLRO/FIU is not making use of its authority to obtain from reporting parties additional information needed to properly undertake its functions in a more frequent and efficient way.</li> <li>• Information held by the MLRO/FIU is not securely protected.</li> <li>• Some financial institutions (i.e. insurance companies) and all DNFBPS have not been provided with guidance regarding the manner of reporting, including the specification of reporting forms, and the procedures that should be followed when reporting.</li> <li>• The MLRO/FIU does not publicly release periodic reports which include statistics, typologies and trends in Iraq, as well as information regarding its activities.</li> </ul> |
| <b>R.27</b> | <b>PC</b> | <ul style="list-style-type: none"> <li>• Although the LEAs appear to have designated bodies for ML/TF cases, their priority is the investigation of the underlying predicate crime and not of money laundering or terrorist financing.</li> <li>• There is overlap and no clear demarcation as to designated responsibilities for: (1) MOI Economic Crime Unit on money laundering; (ii) the MOI Counter Terrorism Unit on terrorist financing; and (iii) the CTS for terrorist financing.</li> <li>• While the Counter Terrorism Service and the Commission on Integrity both have Investigating Judges assigned to them, these Judges lack specialized training in ML and TF and focus principally on the underlying predicate crimes.</li> <li>• ML and TF are not investigated as stand-alone offences.</li> <li>• Although the Judiciary has legal authority to postpone or waive arrests in appropriate cases, yet this rarely done in cases involving any form of funds.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| <b>R.28</b> | <b>PC</b> | <ul style="list-style-type: none"> <li>• Although the Judiciary has full legal powers to compel, search and seize all and any documents (including banking etc) and take witness statements, these powers are not a priority in ML and TF cases, and thus are rarely used.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| <b>R.29</b> | <b>NC</b> | <ul style="list-style-type: none"> <li>• Although the CBI has wide-ranging supervisory and oversight authority to monitor AML/CFT compliance by conducting on-site inspections, reviewing policies, procedures, books, files, documents, and compelling production of documents, these activities have not yet commenced with respect to state-owned banks, or any entities in the insurance or securities sectors.</li> <li>• The AML/CFT supervisory functions of the insurance and securities supervisors are unclear, and as a result they play no role in implementation, supervision or compliance monitoring in their respective sectors.</li> <li>• The Insurance Supervisor lacks legal authority to conduct on-site inspections to monitor compliance with prudential requirements</li> <li>• Use by CBI of its powers of enforcement to ensure compliance of AML/CFT obligations by financial institutions as well as their directors and senior management is very weak.</li> <li>• The authority under the AML Law given to the CBI to invoice financial institutions for direct costs of supervisory inspections – including AML/CFT compliance inspections – is of serious concern due to lack of safeguards to deter corruption.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                             |



| <b>Rec.</b> | <b>Rating</b> | <b>Summary of factors underlying rating</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
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| <b>R.30</b> | <b>NC</b>     | <ul style="list-style-type: none"> <li>• The FIU, law enforcement and prosecution authorities, supervisors and other authorities involved in combating ML/TF are not adequately structured, funded or staffed, nor provided with technical and other resources to fully and effectively perform their functions.</li> <li>• Adequate training has not been provided to competent authorities to enable the relevant authorities to effectively carry out their functions.</li> </ul>                                                                                                                                                           |
| <b>R.31</b> | <b>NC</b>     | <ul style="list-style-type: none"> <li>• Iraq has never had an AML/CFT policy making body to look at co-ordination or co-operation.</li> <li>• There is no AML/CFT co-ordination and co-operation between the Iraqi Governorates and Kurdish Governorates.</li> <li>• More effective co-operation and co-ordination is necessary across domestic judicial (geographical) boundaries.</li> <li>• LEAs tend to work in isolation from each other and not to share AML/CFT data between different agencies.</li> </ul>                                                                                                                            |
| <b>R.32</b> | <b>NC</b>     | <ul style="list-style-type: none"> <li>• There is an overall lack of meaningful statistics available or collected, with no systems or procedures in place to commence collection of necessary statistics to support operational or policy related AML/CFT activities in Iraq.</li> </ul>                                                                                                                                                                                                                                                                                                                                                       |
| <b>R.33</b> | <b>PC</b>     | <ul style="list-style-type: none"> <li>• The registration system does not sufficiently cover the beneficial ownership and control of legal persons.</li> <li>• The current company registration system is not sufficiently effective to prevent the unlawful use of legal persons for purposes of money laundering or terrorist financing.</li> <li>• Lack of provisions to mitigate the risks of misuse of bearer shares.</li> </ul>                                                                                                                                                                                                          |
| <b>R.34</b> | <b>N/A</b>    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| <b>R.35</b> | <b>PC</b>     | <ul style="list-style-type: none"> <li>• There are shortcomings in the implementation of the Vienna and Palermo Conventions (i.e. the criminalization of ML).</li> <li>• The TF Convention is not ratified, and there are shortcomings in the implementation (i.e. the criminalization of TF).</li> </ul>                                                                                                                                                                                                                                                                                                                                      |
| <b>R.36</b> | <b>PC</b>     | <ul style="list-style-type: none"> <li>• Shortcomings relating to R.1, 2, 3, and SR.II have a negative impact on this Recommendation.</li> <li>• Effectiveness could not be assessed due to the lack of statistics and information on practical cases being available.</li> </ul>                                                                                                                                                                                                                                                                                                                                                              |
| <b>R.37</b> | <b>PC</b>     | <ul style="list-style-type: none"> <li>• Iraq does not render MLA in the absence of dual criminality, not even for less intrusive and non compulsory measures.</li> <li>• Effectiveness could not be assessed due to the lack of statistics and information on practical cases being available.</li> </ul>                                                                                                                                                                                                                                                                                                                                     |
| <b>R.38</b> | <b>NC</b>     | <ul style="list-style-type: none"> <li>• Shortcomings relating to R.1, 2, 3, and SR.II have a negative impact on this Rec.</li> <li>• MLA requests relating to property of corresponding value cannot be executed in Iraq.</li> <li>• Iraq has no legal basis to coordinate confiscation actions with other countries.</li> <li>• Iraq has not considered setting up an asset forfeiture fund.</li> <li>• Iraq has not considered authorizing the sharing of confiscated assets with other county.</li> <li>• Effectiveness could not be assessed due to the lack of statistics and information on practical cases being available.</li> </ul> |
| <b>R.39</b> | <b>LC</b>     | <ul style="list-style-type: none"> <li>• Shortcomings relating to R.1, 2 &amp; SR.II have a negative impact on this Rec.</li> <li>• No legal provisions providing that, in case the extradition is ruled out on the grounds of nationality, the case should be submitted for prosecution.</li> <li>• Effectiveness could not be fully assessed due to limited statistics and information on practical cases being available.</li> </ul>                                                                                                                                                                                                        |

| Rec.          | Rating    | Summary of factors underlying rating                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
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| <b>R.40</b>   | <b>NC</b> | <ul style="list-style-type: none"> <li>Competent authorities are not able to provide the widest range of international cooperation to their foreign counterparts</li> <li>Co-operation generally relies upon Bilateral and Mutual legal assistance, so is slow and unduly restrictive</li> <li>There are no clear and effective gateways out the use of Bilateral and Mutual legal assistance</li> <li>The above restrictive practices prevent ‘spontaneous’ sharing</li> <li>LEA (Investigating Judges) can provide assistance to other authorities but only invoke these powers through Bilateral and Mutual legal assistance.</li> </ul>                                                                                                                                                                                                                                       |
| <b>SR.I</b>   | <b>NC</b> | <ul style="list-style-type: none"> <li>The TF Convention is not ratified, and there are shortcomings in the implementation.</li> <li>Very limited implementation of UNSCR 1267.</li> <li>Lack of implementation of UNSCR 1373.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| <b>SR.II</b>  | <b>NC</b> | <ul style="list-style-type: none"> <li>TF definition does not cover the financing of an individual terrorist.</li> <li>TF definition does not cover all the acts which constitute an offence within the scope of and as defined in the treaties listed in the annex of the UN TFC.</li> <li>The KRG-ATL generic definition of act of terrorism is not consistent with the definition of Article 2.1 (b) of the UN TFC.</li> <li>There is no definition for TF related funds in Kurdistan Region.</li> <li>TF sanctions on natural and legal persons are not effective, proportionate and dissuasive in most of TF offences.</li> <li>Lack of investigations and convictions for TF compared to the high number and risk of terrorist activities in Iraq.</li> </ul>                                                                                                               |
| <b>SR.III</b> | <b>NC</b> | <ul style="list-style-type: none"> <li>No laws or procedures in place to implement UNSCR 1267 and successor resolutions.</li> <li>No laws or procedures in place to implement UNSCR 1373.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| <b>SR.IV</b>  | <b>NC</b> | <ul style="list-style-type: none"> <li>Financial institutions are not required to file an STR as soon as it suspects or has reasonable grounds to suspect that funds are the proceeds of a criminal activity.</li> <li>Financial institutions are not required to report attempted transactions which are suspicious.</li> <li>The suspicious transaction reporting obligation is subject to a reporting threshold.</li> <li>Lack of effectiveness of the reporting process.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                           |
| <b>SR.V</b>   | <b>NC</b> | <ul style="list-style-type: none"> <li>Shortcomings relating to R.36, 37, 38, 39, 40 have a negative impact on this Rec.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| <b>SR.VI</b>  | <b>NC</b> | <ul style="list-style-type: none"> <li>Licensing criteria and procedures for MVTSSs are not clear.</li> <li>Neither the CBI nor MLRO are conducting AML/CFT compliance monitoring of the MVTSS sector on a systematic basis, and very few monetary penalties have been imposed for non-compliance with AML/CFT obligations.</li> <li>No STRs or CTRs have been received by the MLRO from MVTSS operators.</li> <li>No enforceable regulations or guidelines have been issued by authorities regarding application of internal AML/CFT controls to the MVTSS sector.</li> <li>No requirements for MVTSS providers to maintain a current list of agents.</li> </ul>                                                                                                                                                                                                                 |
| <b>SR.VII</b> | <b>NC</b> | <ul style="list-style-type: none"> <li>There is no provision in Iraqi laws, regulations, or other enforceable means that requires inclusion of originators account number (or unique identifier) in all segments of wire transfers.</li> <li>It is not clear that obligations to include full originator and beneficiary information in wire transfers are being monitored for compliance.</li> <li>No provisions in the AML Law or other relevant laws set forth procedures for financial institutions to follow when full originator or beneficiary information is not included in wire transfers.</li> <li>Although there are wire transfer provisions contained in the AML Law, these obligations are not being effectively implemented by all financial institutions, assessed for compliance during inspections, or appropriately sanctioned for non-compliance.</li> </ul> |

| Rec.    | Rating | Summary of factors underlying rating                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
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| SR.VIII | PC     | <ul style="list-style-type: none"> <li>• No review of the adequacy of existing laws and regulations regarding the exploitation or abuse of NPOs by terrorists or terrorist organizations.</li> <li>• No effective monitoring mechanism to ensure that information required by the NPO registration process stays accurate and is available in a timely manner to competent authorities.</li> <li>• No proportionate or dissuasive sanctions are in place to penalize NPOs for violating the NGO Law.</li> <li>• No outreach or awareness raising has been undertaken with the NPO and public sectors.</li> <li>• No demonstrated mechanism for international cooperation regarding TF in the NPO sector.</li> <li>• No mechanism that requires NPOs to have publicly available information about its activities and senior officials.</li> </ul> |
| SR.IX   | NC     | <ul style="list-style-type: none"> <li>• The legal basis for reporting cross-border movements of currency and monetary instruments is lacking.</li> <li>• CBI Circulars attempting to implement cross-border reporting lack necessary process, procedures and penalties.</li> <li>• Where, in limited cases, cross-border cases have been brought before the court the court has declined jurisdiction.</li> <li>• Procedures that are invoked in cases of cross-border movements do not cover monetary instruments.</li> <li>• Operational procedures have only been invoked at two major airports.</li> </ul>                                                                                                                                                                                                                                  |

**Table 2: Recommended Action Plan to Improve the AML/CFT System AML/CFT System**

|                                                                   | <b>Recommended Action (listed in order of priority)</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
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| <b>1. General</b>                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| <b>2. Legal System and Related Institutional Measures</b>         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| 2.1 Criminalization of Money Laundering (R.1 & 2)                 | <ul style="list-style-type: none"> <li>• Ensure that “the concealment or disguising of crime proceeds” is covered by either the ML offense or by more general offenses such as “concealment of goods or assets acquired as a result of an offense.”</li> <li>• Extend the material element of the ML offence by cancelling the special motive requirement.</li> <li>• Criminalize self laundering.</li> <li>• Ensure the criminalization of ML, in line with the international standards, in all Iraqi Regions.</li> <li>• Strengthen the ML sanctions against natural and legal persons in order to be effective, proportionate and dissuasive.</li> <li>• Greatly enhance the number of ML cases handled by law enforcement authorities and the courts to insure the effectiveness of the ML criminalization.</li> </ul>                              |
| 2.2 Criminalization of Terrorist Financing (SR.II)                | <ul style="list-style-type: none"> <li>• Broaden the definition of TF to cover the financing of an individual terrorist.</li> <li>• Broaden the definition of TF to cover all the acts which constitute an offence within the scope of and as defined in the treaties listed in the annex of the UN TFC.</li> <li>• Ensure the criminalization of TF, in line with the international standards, in all Iraqi Regions.</li> <li>• Ensure that the definition of TF related funds is in line with the international standards in all Iraqi Regions.</li> <li>• Strengthen all TF sanctions on natural and legal persons in order to be effective, proportionate and dissuasive.</li> <li>• Greatly enhance the number of TF cases handled by law enforcement authorities and the courts to insure the effectiveness of the TF criminalization.</li> </ul> |
| 2.3 Confiscation, freezing and seizing of proceeds of crime (R.3) | <ul style="list-style-type: none"> <li>• Rectify the shortcomings identified in R1, R2 and SR.II.</li> <li>• Provide for the confiscation of property of corresponding value.</li> <li>• Enact provisional measures that are applicable to ML offences, to the TF offences and the predicate offences that do not qualify as felonies. Such measures should cover instrumentalities, property of corresponding value and property owned by third parties.</li> <li>• Enhance the use of the confiscation and provisional measures framework to achieve effectiveness in this area.</li> </ul>                                                                                                                                                                                                                                                           |
| 2.4 Freezing of funds used for terrorist financing (SR.III)       | <ul style="list-style-type: none"> <li>• Have effective laws and procedures in place to fully implement SRIII regarding UNSCR 1267.</li> <li>• Have effective laws and procedures in place to implement SRIII regarding UNSCR 1373.</li> <li>• Have effective laws and procedures in place to examine and give effect to actions initiated under the freezing mechanisms of other jurisdictions.</li> <li>• Amend the shortcomings in the criminalization of TF.</li> <li>• Have effective systems in place to immediately (without delay) communicate freezing actions.</li> <li>• Provide guidance to FIs and other persons or entities that may be holding targeted funds or other assets concerning their obligations in taking action</li> </ul>                                                                                                   |

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|                                                                                         | <p>under freezing mechanisms.</p> <ul style="list-style-type: none"> <li>• Have effective and publicly-known procedures for considering de-listing requests and for unfreezing the funds or other assets of de-listed persons or entities in a timely manner consistent with international obligations.</li> <li>• Have effective and publicly-known procedures for unfreezing, in a timely manner, the funds or other assets of persons or entities inadvertently affected by a freezing.</li> <li>• Have appropriate measures for authorizing access to funds or other assets that were frozen.</li> <li>• Establish appropriate procedures through which a person or entity whose funds or other assets have been frozen can challenge that measures with a view to having it reviewed by a court.</li> <li>• Address the shortcomings identified in relation to R3 and R17.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| <p>2.5 The Financial Intelligence Unit and its functions (R.26)</p>                     | <ul style="list-style-type: none"> <li>• Review the legal framework in order to establish a Financial Intelligence Unit that serves as a national centre for receiving, analyzing, and disseminating disclosures of STR and other relevant information concerning suspected ML/TF activities.</li> <li>• Review the legal framework and ensure that the MLRO/FIU has sufficient operational independence and autonomy and that it's free from undue influence or interference.</li> <li>• Ensure that this MLRO/FIU is adequately structured, funded, staffed, and provided with sufficient technical and other resources to fully and effectively perform its functions.</li> <li>• Staff of the MLRO/FIU should be appropriately skilled and provided with adequate and relevant AML/CFT training.</li> <li>• The MLRO/FIU should be empowered to have access, directly or indirectly, on a timely basis to the financial, administrative and law enforcement information that it requires to properly undertake its functions, including the analysis of STR, without needing the prior authorization from the CBI or from any other authority.</li> <li>• The MLRO/FIU should: <ul style="list-style-type: none"> <li>○ make more frequent use of its authority to obtain from reporting parties additional information needed to properly undertake its functions in a more efficient way;</li> <li>○ take the appropriate measures to ensure that information held by the MLRO is securely protected;</li> <li>○ provide remaining financial institutions (i.e. Insurance Companies) and all DNFBS with guidance regarding the manner of reporting, including the specification of reporting forms, and the procedures that should be followed when reporting; and</li> <li>○ Publicly release periodic reports which include statistics, typologies and trends in Iraq, as well as information regarding its activities.</li> </ul> </li> </ul> |
| <p>2.6 Law enforcement, prosecution and other competent authorities (R.27 &amp; 28)</p> | <ul style="list-style-type: none"> <li>• Consider a national AML/CFT policy and strategy, in particular here, bringing together and setting priorities for the various LEAS currently charged with investigation and prosecution of ML and FT.</li> <li>• The policy should also identify and designating 'lead agencies' status to particular agencies and or departments across ML and TF cases taking into account certain cases will cross over different predicate crimes.</li> <li>• LEAs must prioritize ML and TF investigation and intelligence gathering capability and see them as: (i) stand-alone crimes to be investigated in their own right, (ii) tools that aid the investigation of predicate crime and (iii) tools to assist the court in identification of illicit assets for confiscation and or forfeiture.</li> <li>• Consider a national AML/CFT training policy that is domestically (Iraqi)</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |

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|                                                                                      | <p>owned and run. The current ad-hoc approach to training lacks sustainability.</p> <ul style="list-style-type: none"> <li>• Consideration should be given to special training and thereby the appointment of specialist Investigating Judges to LEA units charged with in responsibility of M/L or T/F.</li> <li>• Increasing both manpower and technical resources to units charged with the investigation and prosecution of ML and TF offences.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| <p>2.7 Cross Border Declaration &amp; Disclosure</p>                                 | <ul style="list-style-type: none"> <li>• To implement cross-border controls regarding cash and monetary instruments (in accordance with SR IX) an underpinning law is necessary. This must clearly layout process, procedures, juridical oversight and penalties for all the relevant authorities. Customs Service only covers the controlled entry points, powers and provisions should also be granted to other enforcement bodies.</li> <li>• Training in cross-cross border currency and monetary instrument controls and investigative techniques is necessary for all controlled entry points (Customs) as it is with non-controlled borders (MOI; General Police and Border Police).</li> <li>• Customs and other border agencies should review the adequacy and amount of technical equipment needed to support such cross-border controls on a needs basis that will equip (and train them in the use of) them accordingly.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| <p><b>3. Preventive Measures – Financial Institutions</b></p>                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| <p>3.1 Risk of money laundering or terrorist financing</p>                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| <p>3.2 Customer due diligence, including enhanced or reduced measures (R.5 to 8)</p> | <ul style="list-style-type: none"> <li>• c. 5.1* Anonymous accounts: The CDD Regulation which prohibits the opening of anonymous, fictitious or numbered accounts should expressly prohibit the maintenance of such accounts which may have existed prior to the regulation, and should apply to all financial institutions, rather than only to banks and remittance companies.</li> <li>• c. 5.2*/5.3* When CDD required and source documents: The provisions specifying when CDD measures are required, and extent to when collection of CDD documentation is mandatory needs clarification, as provisions appear to give vague and unrestricted discretion to financial institutions in implementing these requirements.</li> <li>• c. 5.4/5.5* Acting on behalf of others and beneficial ownership: This provision should be drafted in a way that puts the burden on the financial institution to seek sufficient information from clients to determine whether the client is acting on behalf of another, or a beneficial owner of the funds. Financial institutions should be clearly obligated to obtain all identity details on both the principal and agent when a person is representing another, as well as verify the legal form of client. The transaction threshold below which this information need not be collected should be eliminated. Financial institutions should be required to understand the legal form of legal entities, their ownership and control structure(s), as well as obtain identity details of the natural persons who ultimately own, control or exercise ultimate effective control over the legal person/arrangement, the assets in the account and/or the customer. The requirement to implement “escalation protocols to resolve discrepancies” should be clarified by further details as to what exactly is expected of financial institutions in this regard.</li> <li>• c. 5.6 Purpose and nature of relationship: The CDD requirement that financial institutions obtain information on the purpose and nature of the business relationship should be applicable to all account relationships,</li> </ul> |

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|                                                        | <p>before a suspicion is detected, rather than after.</p> <ul style="list-style-type: none"> <li>• c. 5.7* On-going due diligence: Enforceable legal provisions must obligate financial institutions to conduct on-going due diligence and actively obtain from clients information about changes in their business profile, purpose and/or nature of account relationship, or regular sources of funds.</li> <li>• c. 5.8 Risk: Financial institutions should be obligated to identify classes and categories of clients that represent higher risk factors so that enhanced due diligence measures and monitoring procedures can be applied in cases of higher risk accounts. Appropriate supervisory authorities and other officials with AML/CFT responsibilities should obligate financial institutions and other AML/CFT reporting entities and professionals to classify as higher risk, certain categories of clients and accounts and identify enhanced due diligence measures to mitigate ML/TF risks.</li> <li>• c. 5.9 - 5.12 Lower risk, simplified CDD: Specific guidance on application of discretion in implementation of simplified due diligence procedures should be issued by a supervisory authority along with clear limits within which the discretion is permitted. Further, when such discretion is permitted, the measures should indicate which minimum CDD standards must be met in all cases so obligations on financial institutions are clearer and supervisory authorities can objectively assess compliance.</li> <li>• c. 5.17 Existing customers: Supervisory authorities need to provide clearer guidance related to a risk-based approach in respect of application of CDD/KYC requirements to pre-existing clients. Unfettered discretion will inhibit compliance as well as objective compliance monitoring.</li> <li>• c. 5.18: A clear and mandatory obligation should require reporting entities to eliminate anonymous, fictitious, or numbered accounts that may have been established prior to enactment of the AML/CFT law.</li> <li>• PEPs (R.6): A clear and mandatory obligation for financial institutions should require classification of accounts of PEPs as high risk, and apply enhanced due diligence measures.</li> <li>• There should be a clear and mandatory obligation for financial institutions to obtain management approval to open or continue account relationships with PEPs, and assess the source or wealth of funds.</li> <li>• Correspondent banking (R.7): There should be clear obligations for financial institutions to ensure that correspondent institutions with which they have relations perform due diligence procedures to ensure such institutions implement adequate AML/CFT procedures.</li> <li>• New Technologies/Non-Face-To-Face Business (R. 8): There should be obligations requiring financial institutions to pay special attention to money laundering or terrorist financing threats that may arise from new or developing technologies that may favor anonymity or risks associated with non-face-to-face transactions.</li> </ul> |
| <p>3.3 Third parties and introduced business (R.9)</p> | <ul style="list-style-type: none"> <li>• Iraq should make a policy decision on whether or not to allow financial institutions or others to rely on CDD/KYC procedures undertaken by intermediaries or 3rd parties. If such reliance is prohibited, such decision might be clearly spelled out through enforceable means so obligations regarding CDD/KYC are clear to all who must implement them as well as supervisory officials.</li> <li>• If it is decided to allow a degree of reliance on CDD/KYC conducted by intermediaries or 3rd parties, obligations should specify exactly to what degree such reliance is permitted, as well as the obligation to implement</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |

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|                                                                              | effective systems for obtaining access to all relevant CDD/KYC documentation and information upon request and in a timely manner.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| 3.4 Financial institution secrecy or confidentiality (R.4)                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| 3.5 Record keeping and wire transfer rules (R.10 & SR.VII)                   | <ul style="list-style-type: none"> <li>• The AML Law’s recordkeeping requirements should be implemented by all financial institutions, since it is not clear that these obligations are being effectively implemented in each sector.</li> <li>• Supervisory authorities should ensure that recordkeeping requirements are included in compliance inspections for all sectors, and that sanctions are imposed when instances of non-compliance is identified.</li> <li>• Relevant laws should be amended to require that the account number of the originator (or unique reference number if no account number) is included in wire transfers at all stages of the payment chain.</li> <li>• Supervisory authorities should ensure that compliance with the obligation to include full originator and beneficiary information in wire transfers is included in all compliance monitoring inspections for all sectors, and instances of non-compliance are appropriately sanctioned.</li> <li>• Authorities should consider drafting obligatory procedures for reporting entities to follow when they receive wire transfers with incomplete originator and beneficiary information.</li> <li>• Authorities should consider whether it would be appropriate to distinguish requirements for full originator and beneficiary information in respect of wire transfers on the basis of whether they are internal (domestic) or cross-border transfers.</li> </ul>                                                                                                                                                  |
| 3.6 Monitoring of transactions and relationships (R.11 & 21)                 | <p><i>Recommendation 11</i></p> <ul style="list-style-type: none"> <li>• Obligate reporting entities to pay special attention to transactions that are unusually large and/or complex, and where unusually patterns of transactions are detected, as well as transactions that appear to have no legal or economic purpose.</li> <li>• Require that when reporting entities detect any such transactions, they inquire into the background details and purpose of the transaction by obtaining further facts and documentation. Require that reporting entities document these findings in appropriate files and maintain this documentation for a minimum of 5 years after the client has ceased relations with the financial institution.</li> </ul> <p><i>Recommendation 21</i></p> <ul style="list-style-type: none"> <li>• Ensure appropriate laws or regulations authorize competent authorities, when appropriate, to issue orders that require reporting entities to apply counter-measures to persons and transactions related to countries which authorities determine do not comply with FATF’s Recommendations.</li> <li>• Require reporting entities to implement orders from competent authorities to comply with requirements regarding application of counter-measures to clients or transactions related to designated countries that do not comply with FATF’s Recommendations.</li> <li>• Ensure that compliance with obligations to apply counter-measures is assessed and monitored by authorized supervisory bodies, and incidents of non-compliance appropriately sanctioned.</li> </ul> |
| 3.7 Suspicious transaction reports and other reporting (R.13-14, 19 & SR.IV) | <p><i>Recommendation 13 and SR.IV</i></p> <ul style="list-style-type: none"> <li>• Financial institutions should be required to report STR when they suspect or have reasonable grounds to suspect that funds are the proceeds of a criminal activity, and not after 14 days.</li> <li>• Financial institutions should be required to report attempted transactions.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |



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|                                                                                      | <ul style="list-style-type: none"> <li>• Reporting obligations for suspicious transactions should not be subject to a reporting threshold.</li> <li>• Authorities need to take greater efforts to increase awareness among the private sector on the potential ML/TF threats.</li> </ul> <p><i>Recommendation 19</i></p> <ul style="list-style-type: none"> <li>• The exemptions for cash transaction reporting obligations regarding any transactions between banks and any government entity or authority should be amended to ensure that such exemption does not cover cash transactions in relation to state-owned banks.</li> <li>• The exemption for cash transactions between any bank and any other person designated by the CBI in its sole discretion should be amended to remove the “sole discretion” of the CBI and raise that discretionary level to the authority of a Money Laundering Committee or similar high level multi-agency policy body.</li> </ul> <p><i>Recommendation 25</i></p> <ul style="list-style-type: none"> <li>• There are no procedures followed by the FIU or CBI in responding to inquiries of financial institutions or providing guidance in respect of STR submissions, as there has only been 1 STR.</li> <li>• The AML Law has been in effect for several years and no action has been taken by the FIU or CBI to improve the effectiveness of financial institutions in identifying and reporting suspicious transactions by providing adequate guidance or training to improve skills of FIs in implementation or compliance with reporting obligations.</li> <li>• The FIU/CBI should consider providing training programs to reporting institutions on identification and reporting of suspicious transactions. However, it is necessary to clarify the definition of what constitutes a suspicious transaction, so that staffs of reporting institutions know what they are looking for.</li> </ul> |
| <p>3.8 Internal controls, compliance, audit and foreign branches (R.15 &amp; 22)</p> | <ul style="list-style-type: none"> <li>• AML/CFT control requirements should be tailored specifically to the different operational nature of the non-banking sectors so they can be more appropriately implemented and enable these sections to have a clearer idea of what constitutes full compliance with internal control obligations. This will also make compliance monitoring more effective and objective.</li> <li>• The requirement to designate an AML/CFT Compliance Officer should specify that the AML/CFT Compliance officer should have an appropriate level of educational and professional experience, and be of management level. Either further specificity in this regulation or in guidance should elaborate specific factors for fulfilling these requirements in the Iraqi context.</li> <li>• AML/CFT compliance personnel and other relevant staff should be enquired to have access to relevant banking documents, in particular CDD/KYC information.</li> <li>• The requirements for internal AML/CFT training of staff should contain sufficient detail regarding implementation to enable compliance monitoring and sanctioning of non-compliance.</li> <li>• There should be a clear requirement that financial institutions screen employees as part of hiring procedures to ensure a high level of staff integrity.</li> <li>• When branches and subsidiaries of Iraqi banks located abroad are confronted with differing standards of mandatory AML/CFT requirements between the home country and host country, they should be required to apply the higher (stricter) of the two standards. Iraqi</li> </ul>                                                                                                                                                                                                                                                                                                       |

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|                                                                                                                                                                     | <p>subsidiaries and branches located abroad, as well as branches and subsidiaries of foreign banks located in Iraq should be required inform relevant supervisory authorities in the event of any direct conflict of AML/CFT requirements of home and host country which may prevent the institution from fulfilling mandatory AML/CFT implementation obligations of one of the countries.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| <p>3.9 Shell banks (R.18)</p>                                                                                                                                       | <ul style="list-style-type: none"> <li>• Legal provisions should specifically prohibit financial institutions from establishing any relations, including correspondent relations, with a shell bank. Such requirement should be monitored regularly during compliance inspections.</li> <li>• The penalty provisions for engaging in financial activities without a license could be made more effective if it included more serious penalties for failure to comply with an order to cease financial activities when operating without a license.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| <p>3.10 The supervisory and oversight system - competent authorities and SROs. Role, functions, duties and powers (including sanctions) (R.23, 29, 17 &amp; 25)</p> | <ul style="list-style-type: none"> <li>• Consider whether adequate safeguards exist in respect of the current scheme which authorizes the CBI to fund costs of AML/CFT compliance monitoring and inspections by directly seeking reimbursement for such costs from the supervised entities (Art. 11 of the AML law) to ensure against corruption and other risks that may undermine effectiveness of supervisory inspections.</li> <li>• Seek AML/CFT technical training, improve capacity building programs and dedicate additional resources to AML/CFT supervision of all financial sector entities.</li> <li>• Experience and more detailed procedures to assess ownership and control structures in screening of license applicants for financial sector entities is needed, particularly in view of the anticipated economic growth and foreign investment that is likely.</li> <li>• Improve effectiveness of implementation of recognized Core Principles of financial institutions as mandatory and enforceable regulations to ensure they apply for AML/CFT purposes and to ensure sufficient screening of fitness, propriety and integrity with respect to all license applicants and holders.</li> <li>• Improve effectiveness of implementation of recognized Core Principles of financial institutions as mandatory and enforceable regulations to ensure they apply for AML/CFT purposes and to ensure sufficient screening of fitness, propriety and integrity with respect to all license applicants and holders.</li> <li>• Fully implement feasible, practical and legally enforceable frameworks for AML/CFT supervision and compliance monitoring of all financial sector entities, including state-owned banks, as well as all entities in the insurance and securities sectors.</li> <li>• Remove or more rationally limit (based on an appropriate risk-based approach that meets international standards) broad legal authority for supervisory exemption of entities subject to supervision from AML/CFT obligations.</li> <li>• Ensure that all designated supervisory bodies have effective powers to monitor compliance, conduct on-site inspections, review policies, procedures, books, records and undertake sample testing to evaluate effectiveness of compliance, and compel production of documents and information.</li> <li>• The range, scope and levels of monetary penalties in regard to AML/CFT sanctions should be re-considered in terms of proportionality, dissuasiveness and effectiveness. The range of sanctions that can be imposed against individuals employed by or representing financial</li> </ul> |

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|                                                                          | <p>institutions should be expanded.</p> <ul style="list-style-type: none"> <li>• Appropriate supervisory authorities should issue clear and effective guidance, tailored to specific sectors, to enhance the ability of the various financial sectors to understand and implement AML/CFT obligations.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| 3.11 Money value transfer services (SR.VI)                               | <ul style="list-style-type: none"> <li>• The CBI or MLRO should be allocated sufficient resources or another competent authority with sufficient resources should supervise and monitor the MVTS sector.</li> <li>• Appropriate authorities should create a reasonable strategy to commence AML/CFT awareness-raising, outreach as well as training on compliance with AML/CFT requirements in this sector, and then commence a regular program of AML/CFT compliance monitoring.</li> <li>• The CBI/MLRO should ensure that background checks have been undertaken on individuals who hold licenses to operate money transmitter companies and exchanges.</li> <li>• The CBI/MLRO should issue regulations and guidance to the MVTS sector on implementation of AML/CFT controls specifically in the MVTS sector (which in some ways differs from banking institutions).</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| <b>4. Preventive Measures – Non-Financial Businesses and Professions</b> |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| 4.1 Customer due diligence and record-keeping (R.12)                     | <ul style="list-style-type: none"> <li>• Amend and harmonize relevant laws to ensure AML/CFT obligations are mandatory to all necessary categories of DNFBPs: real estate agents, lawyers, accountants, notaries, and trust and company service providers. Where necessary, amend supervisory laws to extend supervisory authority to these additional sectors.</li> <li>• Create an inter-agency policy level AML/CFT Coordinating Committee to identify and lead implementation of AML/CFT controls in various sectors, including DNFBP sectors.</li> <li>• Conduct an effective AML/CFT risk assessment which identifies specific risks in each DNFBP sector and create AML/CFT compliance programs which correspond to those risks.</li> <li>• Once identified and adequately resourced, supervisory authorities should issue guidance specifically tailored to DNFBPs and provide feedback on implementation issues.</li> <li>• DNFBP training and outreach should occur to raise awareness about the ML/TF risks in the DNFBP sectors and about the implementation of applicable AML/CFT obligations.</li> </ul> <p>For the precious metals, stones and jewels sectors:</p> <ul style="list-style-type: none"> <li>• An adequately resourced supervisory authority should be designated and tasked with AML/CFT supervision of the precious metals, stones and jewels sector.</li> <li>• Enforceable AML/CFT obligations as well as guidance, specifically applicable to dealers in precious metals, stones and jewels should ensure that applicable AML/CFT obligations are clear to dealers in the sector as well as the designated supervisory authority.</li> </ul> |
| 4.2 Suspicious transaction reporting (R.16)                              | <ul style="list-style-type: none"> <li>• DNFBPs should be made aware of their obligations under the AML Law and supported in implementing those provisions by the MLRO.</li> <li>• An adequately resourced supervisory authority (or authorities) should be designated responsible for AML/CFT supervision in respective DNFBP sectors.</li> <li>• Amend the AML Law to ensure all required categories of DNFBPs are subject to AML/CFT obligations (real estate agents, accountants, lawyers, notaries, other independent legal professionals and trust and company service providers).</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |

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| 4.3 Regulation, supervision and monitoring (R.24-25)                                   | <ul style="list-style-type: none"> <li>• An inter-agency policy level task force should adopt and implement an AML/CFT strategy that covers all required DNFBP sectors, and addresses supervisory resource issues. The strategy should include a plan for outreach to the various sectors, issuing of sector-specific AML/CFT obligations, and a plan for compliance monitoring.</li> <li>• Officials should dedicate sufficient human, technical and financial resources to make tangible improvements in the legal framework, supervision, regulation, and compliance monitoring of DNFBPs. The legal framework needs improvement to enable supervisory enforcement of AML/CFT obligations throughout DNFBP sectors and the ability to monitor compliance and enforce penalties in instances of non-compliance.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| 4.4 Other non-financial businesses and professions (R.20)                              | <ul style="list-style-type: none"> <li>• Iraq should consider what types of companies should be identified as high risk due to weak oversight and supervisory systems, including of state-owned companies, as well as high risk sectors, such as the construction, oil and antiquities sectors.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| <b>5. Legal Persons and Arrangements &amp; Non-Profit Organizations</b>                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| 5.1 Legal Persons – Access to beneficial ownership and control information (R.33)      | <ul style="list-style-type: none"> <li>• Even though the registered information that is in Registrar should cover sufficient data, it does not sufficiently cover the beneficial ownership and control of legal persons. In order to comply with R.33, the authorities should either require legal entities to provide accurate information on beneficial owner and control structure of legal persons; or</li> <li>• Use their powers under the CPL to obtain information on beneficial owner and control structure of legal persons.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| 5.2 Legal Arrangements – Access to beneficial ownership and control information (R.34) | <ul style="list-style-type: none"> <li>• While the Iraqi legal system does not provide for the creation of trusts, it may be useful for Iraq to consider examining the issue of trusts and other legal arrangements established abroad. After such an examination it might then consider developing awareness raising exercises or recommendations for Iraqi financial institutions or investigative authorities that may in the future come into contact with such arrangements either as part of commercial transactions or through a law enforcement investigations.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| 5.3 Non-profit Organizations (SR.VIII)                                                 | <ul style="list-style-type: none"> <li>• Increase the staff and resources of the NGO Department to facilitate thorough application review, sufficient background checks, and sharply increase application approval and renewal response times. The NGO registry should be accurate and updated, so competent authorities can access information in a timely manner. A 12+ month application approval and renewal processing time would hinder ML or TF investigations.</li> <li>• Review the adequacy of existing NGO laws and regulations to identify gaps that do not address the abuse of terrorism and terrorist financing in the sector;</li> <li>• Undertake a domestic sector review to determine which NGOs are at risk of being misused for terrorist financing;</li> <li>• Develop a NPO and public sector awareness raising campaign about the risks of TF and ML and the need for mechanisms that create transparency and accountability in the NPO sector;</li> <li>• Identify international counterparts to investigate or verify the financial activities of NPOs in other jurisdictions and to establish points of contact to effectively address NPO-related TF/ML issues that may arise;</li> <li>• Work with international counterparts to learn best practices and share experiences on regulating NGOs and creating public awareness campaigns;</li> <li>• The NGO Department should identify other government agencies that</li> </ul> |

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|                                                                         | <p>have or do not have access to the NGO registry and work toward developing a mechanism to coordinate and share information;</p> <ul style="list-style-type: none"> <li>• Once established, the NGO Department should participate in policy committees on AML/CFT issues;</li> <li>• Amend the NGO Law or issue regulations to allow the BSA to perform audits without prior notice, especially if terrorist financing is suspected;</li> <li>• Amend the NGO Law or issue regulations to include criminal background checks on foreigners; and</li> <li>• Require NGOs to ensure that accurate information is publicly available, i.e., such as through a website, about its objectives, activities, audits, names and titles of senior officials, including board members.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| <b>6. National and International Co-operation</b>                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| <p>6.1 National co-operation and coordination (R.31)</p>                | <ul style="list-style-type: none"> <li>• The lack of a national policy body overseeing implementation strategy and co-ordination has resulted in poor implementation of Iraq’s fight against M/L and T/F. Iraq would benefit from a high level, multi-agency committee that oversees such a strategy. It should also oversee successful implementation and effectiveness of the other recommendations listed below, and as necessary, the existence of a parallel committee within KRG.</li> <li>• The lack of effective procedures for judicial co-operation between Iraqi Governorates and the Kurdish Governorates seriously effects cross jurisdictional investigation. This is a factor often exploited by criminals and criminal groups. Consider requiring the Supreme Judicial Councils in both Iraq and KRG, negotiate formal and effective procedures allowing for speedy and effective co-operation.</li> <li>• AML/CFT co-operation needs to be improved generally across Governorate’s at the judicial level to ensure speedy and effective co-operation that reflect the speed in which money (or criminals themselves) moves through the financial sector.</li> <li>• Judicial and LEA should review and better understand the difference levels of co-operation: evidence, intelligence and information sharing, necessary to implement good and effective AML/CFT system.</li> <li>• LEAs tend to operate in isolation from each other. The fight against M/L and T/F requires a more multi-agency and systematic approach to co-operation. It is recommended that MoUs or other process be drawn up between key agencies to allow the sharing of operational and intelligence data- where and when it is operationally necessary.</li> <li>• Consider more clearly defining the functionality and scope of committees formed or existing, to reduce overlap and increase effectiveness of all members and other relevant bodies working together. The so called “105 Committee” would benefit from such an approach.</li> </ul> |
| <p>6.2 The Conventions and UN Special Resolutions (R.35 &amp; SR.I)</p> | <ul style="list-style-type: none"> <li>• Ratify the TF Convention.</li> <li>• Implement UNSCR 1267 and successor resolutions, and UNSCR 1373.</li> <li>• Take the necessary action in order to cover the shortcomings related to the implementation of the Vienna Convention, the Palermo Convention and the TF Convention.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| <p>6.3 Mutual Legal Assistance (R.36-38 &amp; SR.V)</p>                 | <ul style="list-style-type: none"> <li>• In the absence of any related statistics, the assessment team was unable to fully evaluate the effectiveness of the system.</li> <li>• On the legal side, the description above shows clearly that Iraq cannot responds positively to all MLA request especially with the shortcomings regarding the criminalization of ML/TF and to the confiscation and provisional measures framework. Iraq should take the necessary action in order to cover these shortcomings.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |

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|                                               | <ul style="list-style-type: none"> <li>• Iraq should also review its legal framework to allow for the MLA to be rendered for less intrusive and non compulsory measures even in the absence of dual criminality. Specifically in relation to R38, Iraq should establish a legal basis to coordinate confiscation actions with other countries, consider setting up an asset forfeiture fund and considered authorizing the sharing of confiscated assets with other countries.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| 6.4 Extradition (R.39, 37 & SR.V)             | <ul style="list-style-type: none"> <li>• In order to comply with R39, Iraq should review its legal system to clearly provide that, in case the extradition is ruled out on the grounds of nationality, at the request of the country seeking extradition, the case should be submitted without undue delay to its competent authorities for the purpose of prosecution of the offences set forth in the request.</li> <li>• It should be noted however, that the deficiencies in the ML offense described under R1 and R2 and in TF offence described under SR11 may impact on Iraq's extradition ability since dual criminality is a precondition. Iraq should take the necessary action in order to cover these shortcomings.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| 6.5 Other Forms of Co-operation (R.40 & SR.V) | <ul style="list-style-type: none"> <li>• A formal process based on law needs to be established that permits (and encourages) international co-operation outside the use or need for Bilateral and Mutual Legal Assistance.</li> <li>• Agencies and the Judiciary need awareness raising and training in these areas of co-operation and their value in conducting cross border crimes.</li> <li>• Amend relevant laws to clarify to all authorities that terrorist financing matters fall within the scope of official competency of the FIU, both domestically and internationally.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| <b>7. Other Issues</b>                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| 7.1 Resources and statistics (R. 30 & 32)     | <ul style="list-style-type: none"> <li>• Authorities should consider undertaking a national AML/CFT risk assessment with the aim of setting forth a national AML/CFT strategy.</li> <li>• Once a strategy is determined, responsibilities and duties of all authorities must be clarified, and a multi-agency task force with clear objectives should be authorized to take a leadership role in implementation, and held accountable for following up on achieving the objectives.</li> <li>• Legislation is in need of improvement to clarify roles and responsibilities of authorities in the AML/CFT system. Authority delegated by legislation needs to be elaborated in an away that is clearer and more precise, and eliminate overbroad discretion of authorities to exempt from the coverage of the law entities and persons that should be subject to AML/CFT obligations.</li> <li>• The National AML/CFT Strategy should set forth policies and procedures to begin to collect relevant statistics which can be analyzed by policy officials so that strategies and policies can monitored for effectiveness and adjusted accordingly to improve effectiveness of implementation, identify and close gaps in the AML/CFT system, and avoid duplication and waste of resources and efforts.</li> </ul> |
| 7.2 Other relevant AML/CFT measures or issues | See 7.1 above.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| 7.3 General framework – structural issues     | See 7.1 above.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |

## ANNEX 1: LIST OF ALL LAWS, REGULATIONS, AND OTHER MATERIAL RECEIVED

### COALITION PROVISIONAL AUTHORITY ORDER NUMBER 93 ANTI-MONEY LAUNDERING ACT OF 2004

#### Section 1: General Provisions

##### Article 1: Declaration of Purpose

This Anti-Money Laundering Law of 2004 (the "Law") governs financial institutions in connection with: money laundering; financing crime, financing terrorism; and the vigilance required of financial institutions in regard to financial transactions. The Law also makes it a crime to launder money, finance crime, finance terrorism, and structure transactions.

##### Article 2: Definitions

As used in this Act, unless otherwise indicated:

1. "Money laundering" refers to the acts described in Article 3.
2. "Financing of crime" refers to the acts described in Article 4.1.
3. "Terrorist financing" refers to the acts described in Article 4.2
4. "Structure a transaction" means to conduct or attempt to conduct a financial transaction with the intent to avoid a reporting requirement under this law or established pursuant to the provisions of Article 20 or 21.
5. "Financial institution" shall include the following:
  - a. banks;
  - b. the managers of investment funds;
  - c. insurance institutions, if they carry on direct life assurance business or offer or distribute shares in investment funds;
  - d. persons who trade in securities;
  - e. money transmitters, direct and indirect, and formal and informal, including persons who provide services related to payments, including but not limited to electronic transfers on behalf of third parties, and persons who issue or manage means of payment, such as credit cards and travelers checks, or persons who undertake hawala transactions;
  - f. foreign currency exchange houses, or any other entity that effects foreign exchange transactions on a regular basis above 15 million Iraqi dinar per week.
6. "Financial institution" shall also refer to persons who, on a professional basis, accept, keep on deposit, invest or transfer, or assist in the investment or transfer, of financial assets belonging to others. Such persons shall include, but not be limited to, those who:
  - a. undertake credit transactions (including consumer credit or mortgages, factoring, financing of commercial transactions or financial leasing);

- b. trade, on their own account or for others, in bank notes or cash, money market instruments, currency, precious metals, raw materials for use in production of other items, commodities, or securities (bearer or other), and derivatives of any such tradable items;
- c. offer or distribute shares in funds, in the capacity of distributor of a domestic or foreign investment fund, or in the capacity of representative of a foreign investment fund;
- d. undertake asset management;
- e. make investments as investment adviser;
- f. keep or manage securities; and
- g. deal in precious metals, stones, or jewels.

The CBI may, by regulation, determine that the definition of financial institution applies only to entities above a specified size and designate other persons who shall also be considered financial institutions for purposes of this Act.

- 7. "Person" means a natural person or a juridical person.
- 8. "Customer" means a person to whom a financial institution provides a product or service, and includes a person who either holds or opens an account, as well as a person who receives a product or service from a financial institution that does not involve an account, such as cashing a check, sending a wire transfer, or selling a check or money order.
- 9. "Suspicious transaction" refers to a transaction, including but not limited to the opening of an account, if the financial institution knows, suspects, or has reason to suspect that:
  - a. the transaction involves funds derived from illegal activities or money laundering or the transaction is intended or conducted in order to evade any law or regulation or to avoid any transaction reporting requirement under any law or regulation, including but not limited to the requirements of Article 20 of this Act;
  - b. the transaction involves funds intended for financing of crime, including, but not limited to, terrorism;
  - c. the transaction involves funds or assets over which a criminal organization has power of disposal;
  - d. the transaction is designed to evade any requirements of this Law or any regulations or orders issued under the authority of this Act; or
  - e. the transaction has no apparent business or other lawful purpose or is not the sort in which the particular customer would normally be expected to engage, and the bank knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction.
- 10. "Insurance institution" refers to an institution that underwrites or brokers insurance, or otherwise participates in the provision of insurance policies to any person.
- 11. "Insurance" refers to an agreement that requires one party to indemnify another against loss in return for premiums paid, whether or not the agreement also regards an investment by the insured related to but in addition to the indemnification specified.
- 12. "CBI" refers to the Central Bank of Iraq.
- 13. "Reporting Office" and "MLRO" refer to the Money Laundering Reporting Office.
- 14. "Beneficial owner" means a person, whether or not named as the owner, who can effectively manage or direct the use of the funds in an account.



15. "Non-public," for the purpose of Article 14, means information or documents disclosed to or gathered by a body of the Government of Iraq, which information or documents is or are not commonly available or widely known in the public.
16. "Monetary instrument" means both Iraqi and foreign currency, bank notes, checks, promissory notes or other evidence of indebtedness, loans, traveler's checks, wire transfers, all negotiable instruments in such form that title passes upon delivery, all incomplete instruments signed but with the payee's name omitted, and securities or stock in bearer form or otherwise in such form that title passes upon delivery and any other items that the CBI may deem appropriate.
17. "1267 Committee" means the United Nations Security Council Committee established pursuant to paragraph 6 of United Nations Security Council Resolution 1267 (1999), which oversees the implementation by States of the sanctions imposed by the Security Council on individuals and entities belonging or related to the Taliban, Usama Bin Laden and the Al-Qaida organization and maintains a list of individuals and entities for this purpose.
18. "Former Iraqi Regime" means the Saddam Hussein regime that governed Iraq until on or about April 9, 2003.
19. "Development Fund for Iraq" means the fund established on or about May 21, 2003 on the books of the Central Bank of Iraq and all accounts held for the fund or for the Central Bank of Iraq in the name of the fund.
20. "Iraqi person" means any Iraqi citizen or any juridical person organized under the laws of Iraq.
10. "Foreign person" means a natural or juridical person that is not an Iraqi person.
11. "Other senior official" means an individual who had a position in a ministry, armed forces, governmental entity or semi-governmental entity during the time that the former regime was in power at the minister level or director general of a ministry level or the rank of at least brigadier general, or equivalent civilian or military position, and who was a full member of the Ba`ath Party holding the rank of 'Udw Qutriyya (Regional Command Member), 'Udw Far' (Branch Member), 'Udw Shu`bah (Section Member), or 'Udw Firqah (Group Member).
12. "Immediate family member" means spouse, father, mother, brother, sister, son, or daughter.

## **Section 2: Penalties**

### **Article 3: Money Laundering**

Whoever conducts or attempts to conduct a financial transaction that involves the proceeds of some form of unlawful activity knowing that the property involved is the proceeds of some form of unlawful activity, or

Whoever transports, transmits, or transfers a monetary instrument or funds that represent the proceeds of some form of unlawful activity knowing that the monetary instrument or funds that represent the proceeds of some form of unlawful activity knowing that the monetary instrument or funds represent the proceeds of some form of unlawful activity-

- (a) With the intent to promote the carrying on of unlawful activity, to benefit from unlawful activity, or to protect from prosecution those who have engaged in unlawful activity; and
- (b) Knowing that the transaction is designed in whole or in part-

- (i) To conceal or disguise the nature, location, source, ownership, or control of the proceeds of the unlawful activity; or
- (ii) To avoid a transaction or other reporting requirement,

Shall be sentenced to a fine of not more than 40 million Iraqi dinar, or twice the value of the property involved in the transaction, whichever is greater, or imprisonment for not more than 4 years, or both.

**Article 4: Financing of Crime and Terrorist Financing**

1. Financing of Crime: Whoever provides property, or conceals or disguises the nature, location, source, or ownership of property, knowing or intending that such property is to be used in the preparation for, or in the carrying out, a violation of law, or in preparation for, or in carrying out, the concealing of an escape from commission of any such violation, or attempts or conspires to do such an act, shall be fined not more than 20 million Iraqi dinar, or imprisoned for not more than 2 years, or both.
2. Terrorist Financing: Whoever provides, or invites another person to provide, property, support, or financial support, or financial or other related services intending that it be used, or knowing that it will likely be used, in whole or in part, to carry out
  - a. An act or omission that provides a benefit to a terrorist group, or
  - b. Any other act or omission intended to cause death or serious bodily harm to a civilian or any other person not taking an active part in the hostilities in a situation of armed conflict, if the purpose of the act or omission is to intimidate the public or to compel the government or an international organization to do or refrain from an act,
  - c. shall be fined not more than 20 million Iraqi dinar, or imprisoned for not more than 2 years or both.
3. "Property" for the purposes of this Article includes but is not limited to currency, monetary instruments, and financial securities.

**Article 5: Structuring Transactions**

Whoever-

- a. Causes or attempts to cause a financial institution, as that term is used for purposes of that Act, to fail to file a report required under Article 20; or
- b. Structures or assists in structuring, or attempts to structure or assist in structuring, any transaction with one or more financial institutions, Shall be fined not more than 10 million Iraqi dinar, or imprisoned for not more than 2 years, or both.

**Article 6: Property forfeiture**

1. "Property" for the purposes of this Article includes but is not limited to currency, monetary instruments, and financial securities.
2. Criminal Finance Any court, in imposing sentence on a person convicted of an offense in violation of Articles 3, 4, 5, Article 19.4, or Article 20.5 of this Act, if the violation was committed intending to, or knowing that the likely result would be to, aid another person in the commission of a crime, or aid another person in the evasion of prosecution for a crime already committed, shall order the person to be sentenced to forfeit to the Government of Iraq any property, real or personal, including but not

limited to funds, involved in the offense, or any property traceable to the property, or any property gained as a result of the offense, without prejudicing the rights of bona fide third parties.

### 3. Blocked Property

- a. Funds or other financial assets or economic resources (excluding real property, a claim for which falls within the jurisdiction of the Iraqi Property Claims Commission pursuant to CPA Regulation Number 8) that have been either removed from Iraq, or acquired, by Saddam Hussein or other senior officials of the former Iraqi regime and their immediate family members, including entities owned or controlled, directly or indirectly, by them or by persons acting on their behalf ("Ba'ath Party persons") or at their direction that are within or hereafter come within Iraq, are blocked. Property that is blocked may not be transferred, paid, exported, withdrawn, or otherwise dealt in. The Minister of Finance, with the approval of the Council of Ministers, is authorized to confiscate property that is blocked pursuant to this Article 6.2 subject to a prior judicial, administrative, or arbitral lien or judgment issued by a court of competent jurisdiction, and subject to such rights of appeal as may be provided by law. All right, title, and interest in such confiscated blocked property shall promptly be transferred to the Development Fund for Iraq (DFI) or the successor to the DFI, if any. Should there be no successor to the DFI, such confiscated blocked property shall be transferred to the Ministry of Finance. Upon transfer to the DFI, its successor, or the Ministry of Finance (as appropriate), such confiscated blocked property shall be unblocked. Any transaction by an Iraqi or foreign person within Iraq that evades or avoids, has the purpose of evading or avoiding, or attempts to violate any of the prohibitions of this Article 6.2 is prohibited and shall constitute a money laundering violation under Article 3 of this Law. A person whose property is blocked pursuant to this Article 6.2 may appeal the action taken to the Financial Services Tribunal under Section 12 of the Central Bank of Iraq law.
- b. For purposes of this Article, a person is considered to be "acting on behalf of" another to the extent that the person is authorized by formal or informal contract to take significant actions for the other or, whether there is an agreement or not, the person takes significant actions for the benefit of the other as if they were the agent or the other. This Article 6.2 applies to funds, financial assets, or other economic resources that between July 17, 1968 and April 16, 2003 were:

confiscated, seized, or expropriated by the Ba'athist Government of Iraq or Ba'ath Party persons for reasons other than legitimate governmental purposes such as taxation, customs, anti-narcotics activities or enforcement of criminal penalties; or expropriated as a result of opposition to the Ba'athist Government of Iraq, or as a result of ethnicity, religion, sect of the owners, or for purposes of ethnic cleansing. Property owned by the Government of Iraq and/or occupied by acting government ministers or other acting government officials pursuant to a transaction that is lawful and has a legitimate governmental purpose (including reasonable compensation of governmental officials) shall not be subject to this Article 6.2.

### **Section 3: Supervision**

#### **Article 7: Duties**

1. With respect to this Act, the Central Bank of Iraq (the "CBI") shall perform the following duties:
  - a. The CBI shall supervise compliance of financial institutions with their obligations under Section 5.
  - b. The CBI shall inform the financial institutions it supervises of their obligations under Section 5, and may issue regulations directing how they must comply. The regulations shall require all financial institutions to establish internal policies, procedures, and controls adequate for the

institutions' businesses, and adequate employee training programs, and shall require banks and those other financial institutions that the CBI designates, to designate a compliance officer and an independent audit function to test the institution's AML program.

- c. The CBI shall issue and periodically update a list of financial activities which may constitute "suspicious transactions" for the purposes of this Act, including money laundering, financing crime, financing terrorism, transactions involving funds over which a criminal organization has a right of disposal, or transactions designed to evade reporting, recording, or other legal requirements. The CBI shall publish the list for the benefit of financial institutions.
  - d. The CBI shall have the authority to delegate its supervisory powers to other supervisory authorities set up by other Acts, in which case the CBI shall supervise the activities of those authorities, while retaining the authority, in the CBI's sole discretion, to act regarding any financial institution's obligations under Section 5. Any such authorities shall ensure that regulatory provisions applicable in their respective fields are substantively equivalent.
  - e. The CBI shall either perform on-site examinations of financial institutions for which it has direct responsibility, or, in the alternative, instruct an auditing body that the CBI designates to perform examinations and forward any reports of such examinations directly to the CBI.
  - f. The CBI shall compile and provide to financial institutions a list of individuals and institutions whose transactions the financial institutions are to report to the relevant body of the Government of Iraq upon discovery. The list shall include, but not be limited to, the New Consolidated List of Individuals and Entities Belonging to or Associated with the Taliban and Al-Qaida Organization as Established and Maintained by the 1267 Committee.
2. The CBI is authorized to create offices to execute any of its responsibilities as designated in this Act, and to promulgate regulations governing the manner in which those responsibilities are executed.

#### **Article 8: Right to Information**

The CBI is authorized to require financial institutions it supervises and the institutions' auditing bodies to provide to the CBI all information and documents needed for the performance of the CBI's duties.

#### **Article 9: Regulatory Enforcement**

1. If the CBI determines that a financial institution it supervises has violated this Law it may take appropriate enforcement measures. In particular, the CBI may:
  - a. issue an order to cease the activity resulting in the violation;
  - b. assess a monetary penalty under the provisions of the Central Bank of Iraq Law to the violating institution, or any person engaged in or participating in activity violating this Act;
  - c. publish the results of any enforcement action, including the name(s) of any persons involved;
  - d. issue an order that a person found to have violated this Law or participated in a violation of this Law shall not be permitted to be involved in the affairs of a financial institution either permanently or temporarily;
  - e. withdraw authorization to act as financial institutions, if the institutions themselves or persons responsible for administering or managing their business are found to have seriously or repeatedly violated their obligations under this Act.
2. A person subject to an enforcement measure described in Article 9.1 may appeal the action taken to the Financial Services Tribunal under Section 12 of the Central Bank of Iraq law.

**Article 10: Other powers**

The CBI shall retain all other powers granted it under other Acts.

**Article 11: Funding**

The CBI may require payment or reimbursement from a financial institution it supervises for the cost of the CBI's supervisory activity under this Law (including the cost of legal, accounting, and auditing fees).

**Article 12: Money Laundering Reporting Office**

1. The CBI shall establish the Money Laundering Reporting Office, which shall be administratively subordinate to the CBI but shall retain operational independence. The Reporting Office shall:
  - a. collect, process, analyze, and disseminate information on financial transactions subject to financial monitoring and reporting;
  - b. participate in implementing Iraqi policy on preventing money laundering, financing of crime, and financing of terrorism;
  - c. cooperate and interact with and exchange information with Iraqi state authorities, competent bodies of other countries and international organizations on money laundering, financing of crime, and financing of terrorism;
  - d. represent Iraq, according to the established procedure, in international organizations dealing with preventing money laundering, financing of crime, and financing of terrorism.
2. The Reporting Office shall be staffed and funded separately from the CBI, but shall be administratively subordinate to the Governor of the CBI.
3. The Reporting Office shall verify information reported to it, and shall take such steps, and shall have the authority to take such steps, including but not limited to the promulgation of regulations by the CBI as are necessary in order to fulfill its duties under this Act.
4. If the MLRO reasonably suspects that a transaction, conducted or attempted, involves funds derived from illegal activities, money laundering, funds to be used in the financing of crime, funds that a criminal organization has a right of disposal over, terrorist financing, or that the transaction is otherwise in furtherance of an illegal purpose, it shall immediately notify the competent prosecuting and investigative authority.
5. The Reporting Office shall respond to any inquiry by a financial institution under Article 18 paragraph 2, within one week of the inquiry, by providing guidance to that institution as to how that institution should proceed. Guidance may include: informing the competent prosecutor's office, performing further research on the issues causing the financial institution's concern, filing a formal report of a suspicious transaction with the MLRO, or taking no action other than completing the transaction as requested by the customer. The guidance shall be binding upon the financial institution and all other affected parties.
6. No officer or employee of the CBI who learns of a suspicious transaction that has been reported may disclose to any person involved in the transaction that the transaction has been reported, other than as necessary to fulfill the official duties of the officer or employee.

## **Section 4: Mutual Administrative Assistance**

### **Article 13: In General**

1. The CBI and the Money Laundering Reporting Office may, in the CBI's discretion, provide information and documents to Iraqi governmental ministries, authorities, and agencies concerning matters governed by this Law and may request from Iraqi governmental ministries, authorities and agencies any information and documents the CBI believes may be useful or necessary to carry out the CBI's and MLRO's responsibilities under this Act
2. The prosecuting authorities shall notify the Reporting Office of all pending procedures relevant to this Law and of judgments and cases dismissed.
3. The Reporting Office shall inform the CBI of decisions by prosecuting authorities.

### **Article 14: Central Bank of Iraq and Money Laundering Reporting Office**

The CBI and the Reporting Office may request foreign authorities responsible for supervision of financial institutions or markets, foreign financial intelligence units, or criminal or judicial prosecution authorities, to provide them with information and documents required for the performance of their duties. The CBI and the Reporting Office may share with such foreign authorities as are prepared to provide reciprocal services to the CBI and Reporting Office, information and documents, including non-public information and documents, within their discretion, related to or gathered pursuant to this Act, for the purpose of preventing money laundering or the commission of crime, including but not limited to terrorist financing.

## **Section 5: Obligations of Financial Institutions**

### **Article 15: Verification of the Identity of the Customer**

1. Upon opening an account for a customer for any amount, or performing a transaction or series of potentially related transactions whose value is equal to or greater than 5 million Iraqi dinars for a non account holder, whether an individual or legal person, the financial institution involved should obtain and record the customer's: legal name and any other names used; correct permanent address including the full street address; telephone number, fax number, and e-mail address; date and place of birth; for a legal person, charter or other establishing document; nationality; occupation, public position held and/or name of employer; an official personal identification number or other unique identifier contained in an unexpired official document (e.g. passport, identification card, residence permit, driving license) that bears a photograph of the individual customer; type of account and nature of the banking relationship; and signature. The financial institution may determine the extent it uses these measures on a risk sensitive basis depending on the type of customer, business relationship or transaction, but shall verify all information collected.
2. Where a financial institution is performing a transaction for a non account holder and the total value of the transaction or series of possibly related transactions is less than 5 million Iraqi dinars, the financial institution need only collect and verify the customer's name and address.
3. A financial institution that has reason to know of a suspicious transaction must collect the information described in paragraph 1 even if the amount involved does not exceed the threshold amount.

4. The institution shall check the name of the customer against the list compiled by the CBI under Article 7.1.b of this law of individuals and institutions designated by the CBI for reporting to the Government of Iraq, and shall immediately report any matches to the relevant government body.
5. A financial institution shall take the action required by this article in retrospect, regarding any account established prior to the effective date of this Act, unless the financial institution reasonably believes that it knows the true identity of the customer.

**Article 16: Identification of the Beneficial Owner of Funds**

1. The financial institution shall require the customer to provide a written declaration of the owner of funds, if:
  - a. the customer is clearly not the owner or, in the opinion of the financial institution and at its discretion, the ownership of funds is subject to doubt; or
  - b. a cash transaction is effected for a sum greater than 10 million Iraqi dinars.
2. The financial institution shall verify the identification information provided under this Article.

**Article 17: Further Verification of Identity**

1. When, in the course of conducting business, the financial institution has reason to doubt the identity of the customer or the beneficial owner of the funds, the financial institution shall take steps to further verify identity. The financial institution shall undertake such verification as is necessary in order to form a reasonable belief that it knows the true identity of its customer and/or any beneficial owner of the funds involved. The financial institution must have in place procedures, including escalation protocols, to resolve discrepancies and to decline or cease to do business with a customer when it cannot form a reasonable belief as to the customer or beneficial owner's true identity, and shall report any suspicious transactions to the Money Laundering Reporting Office.
2. If an insurance company refunds a premium or distributes or transfers a benefit, the insurance company shall verify the identification of the beneficial owner if the beneficial owner is not the person designated as beneficial owner when the contract was entered into.

**Article 18: Further Verification of Purpose and Nature of Transactions**

1. The financial institution shall immediately verify the source of funds, and the purpose and intended nature of a transaction or business relationship, when there is reason to suspect that assets are the proceeds of a crime, that they may be intended for the financing of crime or terrorist financing, or that a criminal organization has power of disposal over them.
2. A financial institution that has reason to know that a proposed transaction or series of transactions is/are suspicious transactions shall immediately report to and seek guidance and direction from the Money Laundering Reporting Office. Any financial institution or other person making such a report shall be entitled to the protection of Article 22 paragraph 1 of this Act.
3. If the financial institution makes full disclosure of the facts and circumstances to the Reporting Office, and follows the guidance of the Reporting Office, neither the institution nor any director, officer, employee, or agent of the financial institution, shall be liable to any person under any law or regulation of Iraq, any constitution, law, or regulation of any political subdivision of Iraq, or under any contract or other legally enforceable agreement, including any arbitration agreement, for acting in accordance

with the direction of the MLRO, or for any failure to provide notice of such action to any person involved or affected.

4. A financial institution seeking verification under paragraph 1 or making a report to the Money Laundering Reporting Office under paragraph 2 shall immediately freeze the relevant assets until the financial institution receives any necessary verification and/or any necessary guidance from the Money Laundering Reporting Office.
5. An institution acting under this Article shall not reveal to the customer, or a third party other than the Money Laundering Reporting Office or an Iraqi government office, that verification is being or has been sought for the purpose of ascertaining an illegal purpose or connection to a transaction, that guidance is being or has been sought, or that assets are or have been blocked, except that the institution shall, in response to a request by the customer to use blocked assets, explain that the assets have been blocked and refer the customer to the Reporting Office.

#### **Article 19: Reporting Obligation**

1. A financial institution that has reason to know that a suspicious transaction has occurred, whether effected by a customer or other person, where the total value of the transaction or series of potentially related transactions is equal to or greater than 4 million Iraqi dinars or, in the case of suspected structuring transactions to evade reporting requirements, regardless of the amount, shall notify the Money Laundering Reporting Office of the transaction, including all facts and circumstances. Such a report shall be made as soon as is reasonably possible, but in no case later than 14 days after the occurrence of the event causing suspicion or giving reason for suspicion. An institution making a report under this paragraph shall not reveal that fact to a customer or other third party.
2. A financial institution may report a transaction or transactions to the Money Laundering Reporting Office under this Article, if the financial institution believes that the transaction or transactions are relevant to a possible violation of any law or regulation, even if the report is not required under this Act.
3. Financial institutions shall keep separate files containing all documents related to reporting pursuant to this Article. Financial institutions shall only transmit data in such files to the CBI, the Money Laundering Reporting Office and the prosecuting authorities. Such records must be retained for at least five years after the reporting of information to the Money Laundering Reporting Office. In the event that the financial institution is thus notified by the CBI or MLRO, such records must be maintained indefinitely until otherwise directed by the CBI or MLRO.
4. A person who willfully violates the provisions of paragraph 1 shall be fined not more than 10 million Iraqi dinars, or imprisoned for not more than 1 year, or both.

#### **Article 20: Cash Transaction Reports**

1. The CBI may by regulation require each financial institution to file a report with the MLRO of each deposit, withdrawal, exchange of currency or other payment or transfer, by, through, or to such financial institution which involves a transaction in currency or other monetary instrument of more than 15 million Iraqi dinars, except as otherwise provided in this Article. In the case of suspected structuring transactions to evade reporting requirements, the financial institution shall file a report of the transaction or transactions regardless of amount involved.



2. "Financial institution" for purposes of this Article, includes all of its domestic branch offices, and any recordkeeping facility, wherever located, that contains records relating to the transactions of the institution's domestic offices. \
3. For purposes of this Article, multiple currency transactions shall be treated as a single transaction if the financial institution has knowledge that they are by or on behalf of any person and result in either cash in or cash out totaling more than 15 million Iraqi dinars during any one business day. Deposits made at night or over a weekend or holiday shall be treated as if received on the next business day following the deposit.
4. No bank is required to file a report under this Article with respect to any transaction in currency between the bank and:
  - a. Another bank to the extent of the bank's domestic operations;
  - b. A department or agency of the Government of Iraq, or any political subdivision of Iraq;
  - c. Any entity established under the laws of Iraq or a political subdivision thereof, that exercises governmental authority on behalf of the Government of Iraq or such political subdivision; or
  - d. Any other person so designated by the CBI, in the CBI's sole discretion.
5. A person who willfully violates any reporting requirement under paragraph 1 shall be fined not more than 10 million Iraqi dinars or imprisoned for not more than 1 year, or both.

**Article 21: Cross-Border Currency Reporting Requirement**

1. The Central Bank of Iraq is authorized to require all persons to submit a report of currency and monetary instruments with the Money Laundering Reporting Office and/or the Iraq Customs Service when transporting currency or other monetary instruments greater than 15 million Iraqi dinar from a place within Iraq to a place outside Iraq, or from a place outside Iraq to a place within Iraq.
2. A report under this article shall be filed at the time and place the MLRO prescribes. The report shall contain the following information to the extent the MLRO prescribes:
  - a. the legal capacity in which the person filing the report is acting;
  - b. the origin, destination, and route of the currency and/or monetary instruments;
  - c. the amount and kind of monetary instruments and/or currency transported;
  - d. other additional information as required.

**Article 22: Obligation to Make and Retain Records**

1. A financial institution shall keep the records required to be made in this Act, and shall make and retain a record of each verification exercise or inquiry to the Money Laundering Reporting Office, for five years after the closing of an account or termination of a customer relationship; information collected only for the purpose of a transaction or series of transactions shall be kept for at least five years after the last such transaction.
2. Records shall be made of all transactions above 500,000 Iraqi dinars and retained for five years after the transactions involved.
3. A wire transfer (funds transfer) shall include the name and address of the originator and beneficiary. Originator and beneficiary name and address information shall remain with the wire from origination

of the wire transfer until disbursement of the proceeds to the beneficiary. Records of wire transfers shall be made and retained for five years by all financial institutions involved in the wire transfer.

4. Persons that provide a service for the transmission of money or value including through an informal money or value transfer system or network including a hawala shall retain records of all transactions above 500,000 Iraqi dinars including, but not necessarily limited to, originator and any originator's agent, ultimate beneficiary, all intermediaries, and dates, amounts, and forms of all transactions.
5. Records required to be made and retained under this Law shall be maintained in such a manner that knowledgeable third parties are able to assess transactions and business relationships and the institution's compliance with the provisions of this Act, and that subpoenas for such records by governmental authorities may be fulfilled within a reasonable period of time, not to exceed ten business days.

#### **Article 23 Exclusion of Liability and "Whistleblower" Protection**

1. A financial institution, or director, officer, employee, or agent of a financial institution, that reports a possible violation of law or regulation or a suspicious transaction, or information potentially relevant to such a violation, to the MLRO, or otherwise under the authority of this Act, shall not be liable under any law or regulation of Iraq, any constitution, law, or regulation of any political subdivision of Iraq, or under any contract or other legally enforceable agreement, including any arbitration agreement, for the disclosure or for any failure to provide notice of the disclosure to the person who is the subject of the disclosure or any other person identified in the disclosure.
2. No financial institution, supervisory authority, or government body may discriminate against any employee with respect to compensation, terms, conditions, or privileges of employment because the employee or any person acting pursuant to the request of the employee provided information to any supervisory authority, or government body regarding a possible violation of any provision of this Act, or any regulation promulgated there under, by the financial institution, supervisory authority, or government body. An aggrieved past or present employee may bring suit within 2 years of the alleged discrimination. A court may order any person who committed a violation to reinstate the employee to their former position, pay compensatory damages, or take other appropriate actions to remedy past discrimination. The protections of this paragraph shall not apply to any employee who deliberately causes or participates in the alleged violation of law or regulation, or knowingly or recklessly provides substantially false information to a supervisory authority, or government body.

#### **Section 6: Final Provisions**

##### **Article 24: Execution**

The CBI shall issue regulations as necessary for the implementation of this Law. The Law shall take effect on the date indicated in Article 26, but with a deferred implementation date of September 30, 2004, or such later date as may be specified in the regulations issued by the CBI.

##### **Article 25: Relationship to other laws of Iraq**

In case of inconsistency with a provision of any other law of Iraq, this Law shall prevail.

##### **Article 26: Entry into Force**

Subject to the provisions of Article 24, this Law shall enter into force on the same date that the Order authorizing this Law enters into force.

## **Executive Regulation 1: CDD/KYC (June 26, 2007)**

Applies to licensed banks & remittance companies

- Based on Art. 24 AML/CFT law
- Banks & remittance companies must follow these measures when executing banking or financial transactions

### 1. Customer Identification

- Proper regime to identify customer, legal status, financial status, beneficial owner, nature of relation with bank and conduct recordkeeping
- Natural persons
  - Name
  - Adder
  - Phone #
  - Work address
  - Date/place of birth
  - Passport or other ID
  - Signature
  - Copy of employment contract (for non-Iraqis)
- Legal Entities: make sure company exists and has legal status
  - Obtain info on nature of business
  - Docs certified by competent authority & company registry
  - Co should provide by-laws
- Financial institutions & remitters must decide whether it has obtained sufficient info to verify veracity of docs & info provided.
- Charities:
  - FIs must verify the legal status of charities
  - Don't open any acct until receiving certificate from competent authority on status, activity and PERMISSION allowing entity to open account
  - These docs should be obtained from client
- Account opening – should be based on forms 1, 2, 3 attached
  - Any modification on this info must be provided by the client to the bank
  - It is prohibited to open anonymous, fictitious or numbered account, clients must use correct name.

- Walk-in customers
  - Any opening of account or 1 transaction or multiple txns that total less than 5 million IDs (USD \$4,300), only need name, address of customer & verify it unless FI suspects suspicious txn, then gather all previous documentation.
- FIs should take the above measures with respect to a blacklisted client.
- All client accounts opened prior to the AML/CFT law should follow above measures, unless FIU believes it knows REAL identity of the related client
- FI should require from customer to provide statement of ownership when it is clear client is not BO, owner of the account, when txn is suspicious, or when cash txn is 10 million ID (USD \$8,600) or more
- FI must verify the ID of the person who is not a customer

Power of attorneys

- Verify veracity of power of attorneys regarding natural persons Keep copies of these ID records of both parties

## 2. Additional Identity Verification

When FI has doubt of identity of client, owner or BO, or has reason to doubt that funds are from legal sources and have goal to finance terrorism, crime or criminal organization, the FIU should report immediately with all provided docs to AMLO and file STR.

When FI reports STR, there is no liability on individuals in front of any official, legal or other authority

Upon reporting STR, FI should freeze all funds until further instructions from AMLO.

FI prohibited to inform client that funds are frozen, relation with customer should remain normal.

In case of necessity, FI may tell client that funds frozen & to contact AMLO