



ASIA/PACIFIC GROUP ON MONEY  
LAUNDERING



FINANCIAL ACTION TASK FORCE

# Mutual Evaluation Report

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

# KOREA

26 June 2009

Korea is a member of the Asia/Pacific Group on Money Laundering (APG) and an observer member of the Financial Action Task Force (FATF). This evaluation was conducted by the FATF and the APG and was adopted as a 3rd mutual evaluation by the FATF Plenary on 26 June 2009 and endorsed by the APG during its annual meeting on 10 July 2009.

© 2009 FATF/OECD and APG. All rights reserved.

No reproduction or translation of this publication may be made without prior written permission. Requests for permission to further disseminate, reproduce or translate all or part of this publication should be obtained from the FATF Secretariat, 2 rue André Pascal, 75775 Paris Cedex 16, France (fax: +33 4 44 30 61 37 or e-mail [Contact@fatf-gafi.org](mailto:Contact@fatf-gafi.org)).

## TABLE OF CONTENTS

|                                                                                                                                                                                      |     |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|
| PREFACE .....                                                                                                                                                                        | 5   |
| EXECUTIVE SUMMARY .....                                                                                                                                                              | 6   |
| 1. GENERAL .....                                                                                                                                                                     | 14  |
| 1.1 General Information on Korea .....                                                                                                                                               | 14  |
| 1.2 General Situation of Money Laundering and Financing of Terrorism.....                                                                                                            | 16  |
| 1.3 Overview of the Financial Sector and DNFBPs .....                                                                                                                                | 19  |
| 1.4 Overview of Commercial Laws and Mechanisms Governing Legal Persons and Arrangements ..                                                                                           | 25  |
| 1.5 Overview of Strategy to Prevent Money Laundering and Terrorist Financing.....                                                                                                    | 25  |
| 2. LEGAL SYSTEM AND RELATED INSTITUTIONAL MEASURES.....                                                                                                                              | 32  |
| 2.1 Criminalisation of Money Laundering (R.1 & R.2).....                                                                                                                             | 32  |
| 2.2 Criminalisation of Terrorist Financing (SR.II) .....                                                                                                                             | 41  |
| 2.3 Confiscation, Freezing and Seizing of Proceeds of Crime (R.3) .....                                                                                                              | 44  |
| 2.4 Freezing of Funds Used for Terrorist Financing (SR.III) .....                                                                                                                    | 49  |
| 2.5 The Financial Intelligence Unit and its Functions (R.26) .....                                                                                                                   | 55  |
| 2.6 Law Enforcement, Prosecution and Other Competent Authorities – the Framework for<br>Investigation and Prosecution of Offences and for Confiscation and Freezing (R.27 & 28)..... | 65  |
| 2.7 Cross-border Declaration or Disclosure (SR.IX) .....                                                                                                                             | 74  |
| 3. PREVENTIVE MEASURES: FINANCIAL INSTITUTIONS .....                                                                                                                                 | 82  |
| 3.1 Risk of Money Laundering or Terrorist Financing.....                                                                                                                             | 89  |
| 3.2 Customer Due Diligence, Including Enhanced or Reduced Measures (R.5 to 8) .....                                                                                                  | 89  |
| 3.3 Third parties and Introduced Business (R.9).....                                                                                                                                 | 107 |
| 3.4 Financial Institution Secrecy or Confidentiality (R.4).....                                                                                                                      | 110 |
| 3.5 Record keeping and Wire Transfer Rules (R.10 & SR.VII) .....                                                                                                                     | 111 |
| 3.6 Monitoring of Transactions and Relationships (R.11 & 21).....                                                                                                                    | 115 |
| 3.7 Suspicious Transaction Reports and Other Reporting (R.13-14, 19, 25 & SR.IV).....                                                                                                | 118 |
| 3.8 Internal Controls, Compliance, Audit and Foreign Branches (R.15 & 22).....                                                                                                       | 126 |
| 3.9 Shell Banks (R.18) .....                                                                                                                                                         | 131 |
| 3.10 The Supervisory and Oversight System: Competent Authorities and SROs. Role, Functions,<br>Duties and Powers (Including Sanctions) (R.23, 29, 17 & 25).....                      | 135 |
| 3.11 Money or Value Transfer Services (SR.VI).....                                                                                                                                   | 156 |
| 4. PREVENTIVE MEASURES – DESIGNATED NON-FINANCIAL BUSINESSES AND<br>PROFESSIONS.....                                                                                                 | 158 |
| 4.1 Customer Due Diligence and Record-keeping (R.12, applying R.5, 6, and 8 to 11) .....                                                                                             | 158 |
| 4.2 Monitoring Transactions and Other Issues (R.16, applying R.13-15, 17 & 21) .....                                                                                                 | 160 |
| 4.3 Regulation, Supervision and Monitoring (R.24, R.25) .....                                                                                                                        | 162 |
| 4.4 Other Non-financial Businesses and Professions – Modern Secure Transaction Techniques<br>(R.20) .....                                                                            | 164 |

|     |                                                                                          |     |
|-----|------------------------------------------------------------------------------------------|-----|
| 5.  | LEGAL PERSONS AND ARRANGEMENTS & NON-PROFIT ORGANISATIONS.....                           | 166 |
| 5.1 | Legal Persons – Access to Beneficial Ownership and Control Information (R.33).....       | 166 |
| 5.2 | Legal Arrangements – Access to Beneficial Ownership and Control Information (R.34) ..... | 170 |
| 5.3 | Non-profit Organisations (SR.VIII) .....                                                 | 172 |
| 6.  | NATIONAL AND INTERNATIONAL CO-OPERATION.....                                             | 179 |
| 6.1 | National Co-operation and Co-ordination (R.31 and R.32) .....                            | 179 |
| 6.2 | The Conventions and UN Special Resolutions (R.35 & SR.I).....                            | 183 |
| 6.3 | Mutual Legal Assistance (R.36-38, SR.V).....                                             | 184 |
| 6.4 | Extradition (R.37, 39, SR.V).....                                                        | 191 |
| 6.5 | Other Forms of International Co-operation (R.40 & SR.V) .....                            | 194 |
| 7.  | OTHER ISSUES .....                                                                       | 204 |
| 7.1 | Resources and Statistics (R.30 & R.32) .....                                             | 204 |
| 7.2 | Other Relevant AML/CFT Measures or Issues.....                                           | 204 |
| 7.3 | General Framework for AML/CFT System (see also s.1.1) .....                              | 204 |
|     | TABLES .....                                                                             | 205 |
|     | Table 1. Ratings of Compliance with FATF Recommendations.....                            | 205 |
|     | Table 2. Recommended Action Plan to Improve the AML/CFT System.....                      | 214 |
|     | Table 3: Authorities’ Response to the Evaluation .....                                   | 223 |
|     | ANNEXES .....                                                                            | 224 |
|     | ANNEX 1: Abbreviations .....                                                             | 225 |
|     | ANNEX 2: All Bodies Met During the On-site Visit.....                                    | 227 |
|     | ANNEX 3: Provisions of Key Laws, Regulations and Other Measures .....                    | 228 |
|     | ANNEX 4: All Laws, Regulations and Other Material Received .....                         | 258 |

## PREFACE

### Information and methodology used for the evaluation of the Republic of Korea

1. The evaluation of the anti-money laundering (AML) and combating the financing of terrorism (CFT) regime of the Republic of Korea (hereinafter ‘Korea’) was based on the *Forty Recommendations 2003* and the *Nine Special Recommendations on Terrorist Financing 2001* of the Financial Action Task Force (FATF), and was prepared using the *Methodology for Assessing Compliance with the FATF 40 Recommendations and the FATF 9 Special Recommendations*, 27 February 2004 (updated as of October 2008). As Korea is an FATF observer and a member of the Asia/Pacific Group on Money Laundering (APG), this evaluation was conducted jointly by both bodies. The evaluation was based on the laws, regulations and other materials supplied by Korea, and information obtained by the evaluation team during its on-site visit to Korea from 3 to 15 November 2008 inclusive, and subsequently. During the on-site visit the evaluation team met with officials and representatives of all relevant Korean government agencies and the private sector. A list of the bodies met is set out in Annex 2 to this mutual evaluation report.

2. The evaluation was conducted by a team comprised of experts in criminal law, law enforcement and regulatory issues as well as members of the FATF Secretariat and the APG Secretariat: Mr. Hiroyuki Kondo, Japan Financial Intelligence Centre, Japan, law enforcement expert; Mr. Gavin Shiu, Department of Justice, Hong Kong, China, legal expert; Mr. Jorge Fernández Ordás, Ministry of Economy and Finance, Spain, financial expert; Ms. Deborah Man Seong Ng, Financial Intelligence Office, Macao, China, financial expert; Ms. Anne Shere Wallwork, Department of the Treasury, United States, financial expert; Ms. Rachelle Boyle of the FATF Secretariat; and, Dr Gordon Hook of the APG Secretariat. The evaluation team reviewed the institutional framework, the relevant AML/CFT laws, regulations, guidelines and other requirements, and the regulatory and other systems in place to deter money laundering (ML) and terrorist financing (TF) through financial institutions and designated non-financial businesses and professions (DNFBPs), and examined the capacity, implementation and effectiveness of all these systems.

3. This report provides a summary of the AML/CFT measures in place in Korea as at the date of the on-site visit or immediately thereafter. It describes and analyses those measures, sets out Korea’s levels of compliance with the *FATF 40+9 Recommendations* (see Table 1), and provides recommendations on how certain aspects of the system could be strengthened (see Table 2).

## EXECUTIVE SUMMARY

### 1. Key Findings

#### 1. The key findings of this evaluation are:

- Korea has demonstrated political commitment, and commitment by government agencies and the private sector, to anti-money laundering (AML) efforts since the mid 1990s. It has participated actively within the Asia/Pacific Group on Money Laundering and the Egmont Group of Financial Intelligence Units. Korea's counter-terrorist financing (CFT) system is new, coming into effect in December 2008, and it could be further strengthened.
- Korea does not have structured organised crime syndicates, but rather has 'brotherhoods' which are primarily involved in online gambling, loan-sharking, extortion and prostitution. The most prevalent offences in Korea are fraud; theft; forgery; and, copyright and trademark violations. The most common money laundering (ML) techniques involve cash transactions and accounts in other persons' names. Given the prevalence of cash transactions in ML activities, in 2006 the government implemented a cash transaction reporting system.
- There have been no confirmed cases of terrorist financing (TF) in Korea to date. However, authorities recognise that Korea might be attractive to persons wishing to move funds or goods through Korea in order to make them appear legitimate.
- The ML offences are largely in line with international requirements but penalties available and applied are not sufficiently effective, proportionate or dissuasive and there is a lack of focus on ML investigations. The confiscation regime is sound and it applies to all crimes but, given the size of the economy and the risk of money being laundered in Korea, the number of confiscations each year and the value confiscated is low.
- The Korea Financial Intelligence Unit (KoFIU), is Korea's financial intelligence unit (FIU) and the lead agency in Korea for AML/CFT matters. The Korean AML/CFT system is heavily reliant on KoFIU's work on financial intelligence, AML/CFT supervision, training of obliged entities, policy, reform, national co-ordination and international co-operation.
- Customer identification and verification represents a strength in the Korean preventive measures but issues such as beneficial ownership, politically exposed persons and correspondent banking have yet to be addressed. In addition, the obligation to file suspicious transaction reports (STRs) only applies to transactions over KRW 20 million (USD 17 227).
- The level of sanctions available for breaches of AML/CFT obligations is low and sanctions are not often applied by supervisory authorities. However the compliance culture within Korean financial institutions is very strong.
- Key recommendations made to Korea include: continue building the CFT system; bring designated non-financial businesses and professions (DNFBPs) into the AML/CFT system; more

actively inspect institutions' compliance with AML/CFT obligations; focus more investigations on cases of ML and TF; strengthen legal and administrative penalties and sanctions available and applied to persons and entities which commit ML or fail to comply with AML/CFT obligations; and strengthen information sharing amongst relevant authorities.

- Since November 2008, Korea has amended two laws in order to strengthen its AML/CFT system and has made a clear commitment to take further action to address deficiencies identified in this evaluation report.

## **2. Legal System and Related Institutional Measures**

2. Two statutes criminalise money laundering: the 1995 *Act on Special Cases Concerning the Prevention of Illegal Trafficking in Narcotics, Psychotropic Substances and Hemp* (ASPIT); and the 2001 *Proceeds of Crime Act* (POCA). Korea has a list approach to predicate offences, which, while broad, does not include terrorism and TF<sup>1</sup>; and, environmental crime. Moreover, there is an insufficient range of copyright and fraud offences which constitute predicates to ML. The punishment of legal persons for ML offences is available although closely linked to the punishment of the natural person who perpetrated the ML offence. Legal persons are subject to modest financial penalties only. The maximum penalties for the ML offences are adequate though the number of convictions for ML is modest considering the size of Korea's population and economy: in 2007, there were 71 ML cases, with 55 convictions for ML.

3. The *Prohibition of Financing for Offences of Public Intimidation Act* (PFOPIA), which came into force 22 December 2008, introduced two TF offences. In addition, the *Punishment of Violences Act* contains provisions against organisations or groups that use or have the aim to use violence, collectively or habitually, with or without deadly weapons or other dangerous articles. The PFOPIA is a well intentioned piece of legislation but needs to be strengthened by addition of provisions which make it clear that it applies to the funding of terrorist organisations and individual terrorists even when those funds or assets, or the intention of the provider of those funds or assets, cannot be linked to a terrorist act. Application of the PFOPIA also needs to be broadened, to ensure it encapsulates the provision/collection of funds for an individual terrorist or terrorist organisation. Korea has had no TF prosecutions or convictions to date.

4. The confiscation regime established under the *Criminal Act* applies to all crimes in Korea, though confiscation powers are not available for ML (under the POCA) where the predicate offences were terrorism, including TF, or environmental crime. Given the size of the economy and the risk of money being laundered in Korea, the number of confiscations each year and the value confiscated is low.

5. Since the PFOPIA came into force, Korea has had two parallel regimes for restricting the financial activities of listed entities. The measures in the *Foreign Exchange Transactions Act* for implementation of S/RES/1267(1999) do not establish a freezing mechanism for terrorist assets or funds; rather, they provide for a restriction on foreign exchange transactions and related transactions by or with non-residents or in connection with foreign entities. To date, 508 transactions have been restricted in accordance with that legislation. Korea has a mechanism to designate terrorists and terrorist entities in accordance with S/RES/1373(2001), but it relies on KoFIU's initial screening and thereafter there is no explicit mechanism for the ultimate determination of designation.

---

<sup>1</sup> Amendments to POCA, which include addition of the terrorist financing offences to the list of predicates, were passed by the National Assembly on 2 March 2009. In addition, offences in the *Copyright Act* and in the *Computer Programs Protection Act* were included as predicate offences, effective 20 March 2009. As these amendments occurred outside the period of time considered by this evaluation, they have not been taken into account in this report.

6. The Korea Financial Intelligence Unit (KoFIU) is Korea's financial intelligence unit (FIU) and the lead agency in Korea for AML/CFT matters. Under the *Financial Transaction Reports Act*, KoFIU's mission is the collection, analysis and dissemination of STRs, CTRs and information on foreign exchange transactions. KoFIU is also responsible for supervision and inspection of financial institutions' AML/CFT activities, actions to comply with the PFOPIA, research on ML and TF trends and preventive measures, provision of AML training and consultation to financial institutions on AML/CFT and, domestic and international ML and TF co-operation and information exchange. While KoFIU has access to information held by government entities, it can take up to three weeks to receive responses and this may be leading to some delays in STR analysis and dissemination of information to law enforcement agencies. In 2007, KoFIU received more than 50 000 STRs. While IT developments have been important for the efficiency of KoFIU's operations, an increase in human resources is warranted for effective analysis of STR information.

7. In Korea, investigations of ML and TF offences are conducted by the Ministry of Justice, Public Prosecutors' Office (PPO), National Police Agency (NPA), Korea Customs Service (KCS), National Tax Service (NTS), National Election Commission (NEC) and the Financial Services Commission (FSC). Law enforcement authorities (LEAs) have a broad range of investigative powers, including special investigative techniques. Other than for the NTS and the NEC, powers to compel production of documents and for search and seizure depend on obtaining a warrant which can take time and be difficult to obtain with respect to ML investigations. While LEAs are designated with ML and TF investigative authority and are well resourced and trained, there is a lack of focus on ML investigations: there were only 120 ML investigations in 2007 and most of these were conducted in conjunction with investigations of predicate crimes. There have been no TF investigations to date.

8. Korea has nine international airports, 20 seaports and shares a land border with North Korea, along which there are two border checkpoints. There is a declaration system in place for cross border movement of currency and bearer negotiable instruments (BNI). Any resident or non-resident who intends to export or import means of payment exceeding USD 10 000 or the equivalent is required to report this to KCS (under the *Foreign Exchange Transactions Act*, its enforcement decree and regulations). The KCS has adequate powers to stop or restrain currency and BNI where no declaration or a false declaration is made, or in case of suspicion of ML or TF. However, the only sanctions imposed over three and a half years to June 2008, for export/import of means of payment without declaration or with submission of a false declaration, have been fines and these average USD 6 280, which is not considered to be sufficiently dissuasive.

### **3. Preventive Measures – Financial Institutions**

9. Traditionally, Korea has seen a high reliance on cash but this is decreasing at a rate of approximately 10% per year thanks in part to the government not issuing large denomination notes and various measures implemented to encourage use of secure electronic transactions. Korea effectively addresses the risk of the electronic banking and other new non-face-to-face technologies.

10. In Korea, financial institutions are required to conduct customer due diligence (CDD) under the 1993 *Act on Real Name Financial Transactions and Guarantee of Secrecy* (*Real Name Financial Transactions Act*) and the 2006 *Financial Transaction Reports Act* (FTRA). The *Real Name Financial Transactions Act* effectively prohibits anonymous accounts and accounts in obviously fictitious names and requires financial institutions to identify and verify the identity of their customers, while the FTRA requires financial institutions to conduct CDD in some, but not all, of the circumstances specified by the FATF Recommendations.

11. In September 2008 KoFIU produced the *AML Enforcement Guidelines* and Korean authorities and financial institutions consider this document constitutes 'other enforceable means'. Because of the

stated purpose of the *AML Enforcement Guidelines*, the ambiguous nature of the language employed, the absence of a clear link between the *AML Enforcement Guidelines* and any sanctions, and the absence of effective, proportionate and dissuasive sanctions for non-compliance, this document does not however constitute 'other enforceable means' for the purposes of the *FATF Methodology*. As Korea relies on this document for its implementation of a number of important AML/CFT measures, it is recommended that either its provisions be transplanted into one or more laws/regulations/decrees, or, provisions be enacted in law clearly making the guideline enforceable and sanctionable. The *AML Enforcement Guidelines* are not sector-specific and focus mainly on issues for banking institutions. KoFIU also acknowledges receipt of reports from reporting entities and provides institutions with information and guidance on its website and via the reporting entities' council. Other publications of use for reporting entities include the *KoFIU Annual Report* and the *Suspicious Transaction Reference Book and Casebook of Analysis*.

12. The FTRA and its enforcement decree provide for some entities to be exempt from some AML/CFT obligations. Complete and partial exemptions from CDD obligations have been granted to some institutions which do not take deposits or give loans, do not conduct any financial transactions with customers, or otherwise present a low risk of ML/TF because of the nature of the business or its products. In addition, the *Enforcement Regulation of the FTRA* exempts a very limited number of particular types of transactions from CDD requirements. While there has not been a robust assessment underpinning the exemptions, and it is recommended that this be conducted, information is available indicating that the exempted institutions and types of transactions are probably low risk for ML/TF.

13. Customer identification and verification represents a strength in Korea's AML/CFT system. Nevertheless, the reliability of the CDD process could be further strengthened by requiring secondary verification of customer identification information. In addition, there is no provision in law or regulation requiring CDD in cases where several transactions below the designated threshold appear to be linked. With very limited exceptions<sup>2</sup>, the *Real Name Financial Transactions Act* requires financial institutions to conduct transactions in customers' real names. The CDD requirements with respect to legal persons are weak however. Similarly, measures with respect to monitoring business relationships and ongoing due diligence and measures concerning existing customers could be introduced. There are no provisions requiring enhanced CDD on high risk customers, business relationships or transactions and Korea has little in the way of measures concerning politically exposed persons and correspondent banking. While reliance on third parties to perform some elements of the CDD process is possible in practice, there are no provisions dealing with the situations such reliance on third parties is permitted.

14. Overall, Korea has a strong legal framework which ensures that no financial institution secrecy law inhibits implementation of the *FATF Recommendations*. Record keeping obligations exist in several laws, and are being implemented effectively. There is however a limitation on the sharing of customer identification information between financial institutions which should be removed. There is no explicit requirement that institutions keep transaction records sufficient to permit reconstruction of individual transactions so as to provide, if necessary, evidence for prosecution of criminal activity. Nor is there an explicit requirement that institutions provide information to authorities 'on a timely basis'. Some limited obligations are in place in Korea with respect to wire transfers.

15. There is no explicit requirement for financial institutions to pay special attention to all complex, unusual large transactions, or unusual patterns of transactions, that have no apparent or visible economic or lawful purpose. There is no requirement for financial institutions to pay special attention to business relationships and transactions with persons from countries which do not or insufficiently apply the *FATF*

---

<sup>2</sup> Transactions not subject to real name identification and verification include continued transactions by accounts in which the real names of the persons concerned are verified and receipt of various kinds of public imposts (*Enforcement Decree of the Real Name Financial Transactions Act* Article 4(1)).

*Recommendations.* Financial institutions are, however, required to establish and implement their own risk management systems for AML/CTF and these systems should include procedures for assessing ML and TF risks of other countries.

16. Korea has a well-implemented STR system. However, the STR reporting threshold – which was lowered in January 2004 from KRW 50 million (USD 43 067) to KRW 20 million (USD 17 227) – significantly undermines the STR reporting obligation, particularly with respect to STR reporting related to suspicions of TF. In addition, deficiencies in the list of predicate offences and in the TF offence impact on the scope of the suspicious transaction reporting requirement. As the STR obligation with respect to TF only came into force in December 2008 it is too soon to determine the effectiveness of this obligation. Provisions are in place which protect those who have reported suspicions in good faith from liability and which prohibit tipping off of third parties when an STR is being made or has been made. In addition to the STR reporting, a cash transaction reports (CTR) system was implemented in 2006. In January 2008 the initial threshold of KRW 50 million was lowered to KRW 30 million (USD 25 836) and this will be lowered further to KRW 20 million in January 2010.

17. Key pieces of legislation require financial sector organisations to establish and maintain internal procedures policies and controls and for the operations of their compliance officers and audit committees, however these are not sufficiently specific. They are complemented by provisions in the FTRA which deal with some matters concerning internal controls, though the interplay between the requirements in that act and in the other laws regulating the financial sector is unclear. Further, the obligation for institutions to have AML/CFT training for employees is very general and not well implemented in practice and there are no screening requirements for employees of financial institutions. Korean financial institutions are required to ensure that their foreign branches observe the AML/CFT measures in the FTRA and its enforcement decree consistent with home country requirements but no such provision exists for foreign branches. In addition, there is no requirement that institutions pay particular attention that AML/CFT measures are applied in overseas branches and subsidiaries located in jurisdictions which insufficiently apply the *FATF Recommendations* and there is no requirement that where the home and host country requirements differ, the higher of the two standards be applied wherever possible.

18. Shell banks cannot legally operate in Korea. There is no prohibition however on domestic institutions entering into or continuing correspondent banking relationships with shell banks. Further, there is no requirement that financial institutions satisfy themselves that respondent financial institutions in foreign countries do not permit their accounts to be used by shell banks.

19. KoFIU is the primary authority responsible for supervision of financial institutions' compliance with AML/CFT obligations. The Commissioner of KoFIU has entrusted the Financial Supervisory Service (FSS), the Bank of Korea and some other authorities and self-regulatory organisations to carry out the AML/CFT supervision. All financial institutions in Korea are subject to AML/CFT obligations and supervision. While banks, securities companies and insurance companies which are under the prudential supervision of the FSS are subject to relatively frequent and in depth AML/CFT inspections, other types of financial institutions which are smaller in size and considered to present lower risks are only regulated with minimum measures by their supervisory authorities. The measures currently in place are generally adequate to prevent criminals or their associates for holding or being beneficial owner of a significant or controlling interest or holding or management functions.

20. The FSS adopts the Core Principles in their on-going supervision of banks, insurance and securities companies. However, many of the important prudential management measures are recommended in the *AML Enforcement Guidelines* but have not been implemented in law, regulation or other enforceable means. The FSS mainly performs its AML/CFT supervision through having an AML/CFT component, focusing on compliance with the FTRA, incorporated in consolidated inspections. To date these on-site

inspections have had a relatively narrow focus, looking into compliance with STR and CTR obligations, the appointment of reporting officers and the establishment of internal and external reporting systems. With the exception of the FSS, the entrusted supervisory authorities and the self-regulatory organisations which have supervision roles lack the resources to perform AML/CFT supervision effectively for their sectors. Currency changers are only subject to on-site inspection once every six years and the scope of these inspections is relatively narrow, as for the inspections conducted by the FSS.

21. Authorities have sufficient powers to carry out their inspection role. However, none of them have the power to sanction the full range of breaches. The sanctions available to deal with natural and legal persons who fail to comply with their AML/CFT obligations are not proportionate and the sanctions applied in practice are almost invariably at the lower end of the spectrum.

#### **4. Preventive Measures – Designated Non-Financial Businesses and Professions**

22. Casinos – when they provide currency exchange services and exchange betting chips – are the only DNFBP in Korea to have AML/CFT obligations. While no AML/CFT obligations apply to trust and company service providers, trust companies are considered to be financial institutions and are thus subject to licensing requirements and supervision by the FSS. Korean authorities are considering imposing AML/CFT obligation on all DNFBPs. The Korean government has considered applying AML/CFT obligations to gambling associated with horse racing. No DNFBPs are required to pay special attention to business relationships and transactions with persons from or in jurisdictions which insufficiently apply the *FATF Recommendations*.

23. Casinos are subject to suspicious transaction reporting obligations and to requirements with respect to internal procedures, policies and controls. The obligations imposed on casinos are identical to those in place for financial institutions but were established so recently that it is too early to judge their effectiveness. Similarly, as AML/CFT supervision for casinos was established only very recently, it is too early to judge the effectiveness of these measures.

#### **5. Legal Persons and Arrangements & Non-Profit Organisations**

24. Korea's general corporate registry and information collection system does not focus on obtaining information relating to the beneficial ownership or control of companies in Korea. The current powers of competent authorities are hampered to the extent that the repositories of information from which the authorities could obtain beneficial ownership information do not maintain beneficial ownership information. And for the NTS, there are statutory barriers (tax secrecy laws) to the sharing of the information with other agencies including law enforcement or other competent authorities. The *Commercial Act* allows for the ownership of companies through the use of bearer shares yet there are no measures in place to ensure disclosure of beneficial owners of bearer shares and to deal with the ML/TF risk they pose.

25. Trust companies are regulated by the FSS under the *Trust Business Act* and are subject to AML/CFT obligations. They are required to identify their customer, including the truster and beneficiaries of trusts. But deficiencies in Korea's CDD obligations with respect to identification of beneficial owners limit transparency concerning beneficial ownership and control of trusts. LEAs have the authority to obtain or access available information on beneficial ownership on trusts in these trust companies only in case of criminal investigations or pursuant to a court order.

26. There were more than 37 000 NPOs in Korea in 2004. Korea conducted reviews its NPO sector in 2006 and in 2007 but there has not been outreach to the sector with respect to TF. Legal persons (domestic or foreign) must apply for permission to operate. NPOs must keep records, including financial

records, and competent authorities may, if deemed necessary for off-site or on-site inspection and supervision of an NPO's business, order that NPO to submit relevant documents, accounting books or other reference materials in order to inspect the business and operations of that entity. Some inspections have been conducted by the Ministry of Health and Welfare but more inspection activity across the whole sector is needed. There is no co-ordination mechanism in Korea to effectively manage the 28 administrative authorities in the NPO sector and sharing of information among NPOs is not co-ordinated effectively. There is no mechanism in place (formal or informal) for the prompt sharing of information among relevant competent authorities. Further, points of contact have not been identified to respond to international requests for information regarding NPOs.

## **6. National and International Co-operation**

27. KoFIU is the primary organisation responsible for AML/CTF policy formulation and implementation and in that role consults and co-ordinates national AML/CTF efforts. Korea ratified the *Vienna Convention* in December 1998 but has not implemented certain provisions of that convention. Korea signed the *Palermo Convention* in 2000 including the Trafficking in Persons Protocol and the Migrants Protocol, but has not yet ratified them. Korea ratified the *Terrorist Financing Convention* on 17 February 2004 and the PFOPIA implements some of the obligations of the Convention. Little is in place to implement relevant Security Council resolutions.

28. Korea provides mutual legal assistance (MLA) under bilateral and multilateral treaties and under the *Act on International Judicial Mutual Assistance in Criminal Matters*. As at 1 October 2008, MLA treaties had been concluded by Korea with 29 countries and jurisdictions. The ASPIT and POCA, in conjunction with the *Act on International Judicial Mutual Assistance in Criminal Matters* (IJMACM), govern MLA in relation to confiscation, preservation, collection, and recovery of criminal proceeds in Korea. It should be noted that, even if there is no MLAT with a country, if it promises to provide reciprocity for any assistance it receives to Korea, the lack of an MLAT is not an impediment to assistance.

29. The IJMACM provides for a broad scope of mutual assistance and ASPIT allows for a full range of mutual co-operation to be provided in relation to confiscation preservation and collection of criminal proceeds. Many of the treaties Korea has entered into provide for MLA in an even more flexible and broader manner than that under these acts. Assistance is provided in a reasonably constructive manner. All powers available to authorities in domestic matters can be used in respect of MLA. Statistics demonstrate a steady increase in requests from overseas and requests are returned in a timely manner and without undue delay (bearing in mind complexity issues and translation requirements).

30. Dual criminality is required in the Korean MLA system. However, few requests have been refused by Korea on the sole basis that the lack of dual criminality prevents assistance and none of the refusals relate to ML or TF cases. Further, Korea's MLA treaties often include provisions which dispense entirely with the dual criminality requirement. Thus, while Korean law establishes a dual criminality requirement, this is rarely adhered to in practice. The IJMACM does not contain any mandatory grounds for refusal of MLA and the optional grounds are not interpreted strictly. It is provided by the IJMACM, that a request for MLA should not be refused on the sole ground that the offence is also considered to involve fiscal matters. Nor can an MLA request be refused on confidentiality or secrecy grounds.

31. There are no mechanisms in place to determine the best venue for prosecutions involving more than one jurisdiction in the interests of justice. These were decided on an *ad hoc* basis with the jurisdictions concerned. Arrangements for co-ordinating seizure and confiscation actions with other countries are considered on a case by case basis through consultation with the countries concerned. Korea has considered establishing an asset forfeiture fund and has considered authorising the sharing of some kinds of confiscated assets.

## **7. Resources and Statistics**

32. In terms of resources, KoFIU has insufficient human resources for effective analysis when the large volume of STRs is considered. In addition, supervisory authorities, other than the FSS and FSC, and relevant self-regulatory organisations do not have sufficient resources to conduct their AML/CFT supervision roles. Enforcement agencies have received limited training with respect to terrorist financing.

33. The statistics kept and maintained are variable. There are no centralised statistics on the number of AML/CFT inspections carried out on different financial sectors, deficiencies and violations found, actions taken by entrusted agencies and sanctions by KoFIU. Statistics are not available on the outcomes of matters presented to the courts. And, it is not possible to properly determine effectiveness of MLA related to money laundering due to the limited statistics available.

## **1. GENERAL**

### **1.1 General Information on Korea**

4. The territory of the Republic of Korea (hereinafter 'Korea'), located in the southern part of the Korean Peninsula, covers an area of 99 585 km<sup>2</sup> on the Korean peninsula, and its adjacent islands, situated between China and Japan. It has maintained its language and cultural independence for thousands of years. At the end of the World War II in 1945, Korea was divided into two separate states on the Korean peninsula, with the United States' (US) troops in the south and the Soviet Union's troops in the north. North Korea refused to participate in a United Nations-supervised election held in the south in 1948, thus leading to the establishment of two separate governments in the North and South. An armistice agreement was signed in 1953.

5. Korea has a population of 48.6 million as at 2008, plus approximately 1 million foreigners (2.1% of the total population), including 300 000 from China and 180 000 from other Southeast Asian countries and approximately 230 000 illegal immigrants.

#### ***Economy***

6. Since 1953, the Korean market economy has grown rapidly. In 2007, Korea's GDP was KRW 901 trillion (Korea Won), or USD 776.7 billion (United States Dollar)<sup>3</sup>, making it the 13<sup>th</sup> largest economy behind Brazil and Russia. Korea's nominal per capita income was KRW 23 430 831 (USD 20 081) in 2007. Since the early 1970s, the steel, electronics, shipbuilding and automobile industries have developed dramatically. As a result, in 1980 Korea was referred to as one of the "Four Asian Dragons" (along with Chinese Taipei, Hong Kong, China and Singapore) which had achieved rapid economic development. In 1997, excessive investment and limited financial supervision contributed to the Asian economic crisis and Korea resorted to a bailout from the International Monetary Fund (IMF). Behind the rapid growth of the Korean economy had been Chaebol, a Korean form of family owned and managed business conglomerates. These Korean conglomerates had grown quickly under special protection and support from the government. However, the 1997 financial crisis prompted an overhaul of the Korean standards for business accounting in line with global standards. Consequently, the transparency of Korean business has significantly improved. There were also great changes in the Chaebol corporate governance with many conglomerates, including LG Electronics and SK Corporation, ending or significantly reducing their family ownership structures and business management. More recently, the Chairman of Samsung Group was charged with tax evasion relating to inheritance of the group by his offspring. Since 2000, the administration has focused substantial efforts on eradicating corruption, particularly politicians' receipt of illegal political funds.

7. Korea has an export-oriented economy, importing raw materials from other countries, processing them to make finished products and exporting them. Korea's major trading partners include the People's Republic of China, Japan, the US, Saudi Arabia, Germany, the United Arab Emirates, Singapore and Australia. Since 2000, the Korean economy has increasingly become service-centred and knowledge-based.

---

<sup>3</sup> All currency conversions in this report use the rate of 1 160 KRW = 1 USD, which was the rate applicable as at 16 September 2008.

The financial market now accounts for about 7.5% of Korea's total GDP. Korea is also active in opening its doors to foreign countries, and free trade agreements (FTAs) with Chile, Singapore and the European Free Trade Association (EFTA), have boosted trade. In April 2007, Korea concluded the Korea-US FTA, which is now awaiting ratification by the Korea National Assembly. In addition, some Korean companies, especially small and medium-sized companies, have moved their businesses into the Gaeseong Industrial Complex in North Korea<sup>4</sup>.

### **Government**

8. The *Constitution of the Republic of Korea* was first enacted on 17 July 1948 and its government was established on 15 August of the same year. Korea has a presidential system with some elements of a parliamentary system. The *Constitution* was revised in 1987 and is often referred to as the 'Constitution for the 6th Republic of Korea'. Based on a separation of powers, Korea has an executive, legislature and judiciary. The President of Korea serves a single five-year term. The current President, Lee Myung-bak, was elected in December 2007. He is the fifth President since the direct presidential election system was reintroduced in Korea. The executive branch is led by the Prime Minister. The President appoints the Prime Minister with consent of the National Assembly. The Prime Minister nominates Ministers and Cabinet members and leads the Cabinet. Korea has a unicameral legislature of 299 members. The National Assembly passes legislation, inspects government offices, appoints heads of government organisations stipulated in the *Constitution* and ratifies treaties. National Assembly members hold office for four years. During that time they have immunity from arrest for any action taken during the Assembly session.

### **Legal system and hierarchy of laws**

9. The Korean legal system is a hybrid of continental civil law and Anglo-American law. Historically, the Korean system was modelled on that of Japan, which in turn had modelled its legal system on German civil law. After World II, the Korean Government adopted many elements of the American legal system, including: the principle of due process; the Miranda rule and requirement for warrants to enter premises; the right to remain silent; presumption of innocence; freedom of the press; the right to assembly and association; freedom from torture; and, the right to a fair trial. Trials are open to the public in principle.

10. The Korean judiciary has a four-tiered system. The highest court is the Supreme Court, followed by the High Court, District Courts and Branch Courts. In addition, there are three specialists courts; the Administrative Court, Family Court and Patent Court. There is also a Constitutional Court that examines the constitutionality of laws and conducts proceedings relating to impeachment of the President and others, dissolution of political parties, disputes over competence between government organisations, and constitutional law cases.

11. The independence of Judges and their decision-making is enshrined in the *Constitution*. No Judge may be removed from office except by impeachment or a sentence of imprisonment. The Chief Justice of the Supreme Court is appointed by the President with the consent of the National Assembly. The Chief Justice nominates the Supreme Court Judges and appointments are made by the President after consent from the National Assembly. Appointments of other Judges are made by the Chief Justice after consent of the conference of the Supreme Court Justices.

---

<sup>4</sup> Kaesŏng Industrial Region is a special administrative industrial region being developed jointly by South and North Korea which is ten kilometers north of the Korean Demilitarized Zone and an hour's drive from Seoul. The industrial park opened in December 2004 and is expected to be complete in 2012, covering 65km<sup>2</sup> and employing 700 000 people.

### ***Transparency, political system, ethics, and anti-corruption system***

12. Since the financial crisis in 1997, Korea has seen enhanced transparency and reduced corruption in the private and public sectors. In 2001, the *Anti-Corruption Act* was enacted and the Korea Independent Commission Against Corruption (currently, the Anti-Corruption and Civil Rights Commission) was established. The 2004 revision of the *Political Funds Law* led to improved transparency in political funds flow and establishment of an environment where candidates do not directly need much money for elections. In addition, transparency of business management, accounting and corporate governance has been improved. The *Ethical Code of the Public Servant* and the *Public Service Ethics Act* have become more strict and legislation concerning information disclosure by public organisations has been put in place. In February 2008, the National Assembly completed ratification of the *UN Convention Against Corruption* and the *Act on Special Cases Concerning Confiscation and Recovery of Stolen Assets* was passed in April 2008 to implement the Convention.

13. Civil society and Transparency International Korea have played an important role in the fight against corruption. TI Korea helped to build the civil ombudsman network to expand the scope of the general public's participation in the public sector and enhance transparency in administrative affairs. In 2005, the public sector, the private sector, politicians and civil society signed the *Social Pact on Anti-Corruption and Transparency*, which was recognised by Transparency International as a role-model for the fight against corruption. Despite these achievements, Korea still faces challenges in this area. Korea's Corruption Perceptions Index (CPI) has improved from 3.8 in 1999 to 5.1 in 2007, giving it a ranking of 43<sup>rd</sup> of the 180 countries on the index.

### ***Identity registration system***

14. Pursuant to the 1962 *Resident Registration Act*, all residents of Korea receive a resident registration number. Upon registration of their birth, a unique real name registration number is issued for each resident. Any person with an address or residence in Korea who intends to reside there for 30 days or more must register with the head of the District within 14 days. At the age of 17, all residents must apply for a resident registration card and these cards must be carried at all times. It is on these registration numbers and registration cards that CDD for natural persons relies.

## **1.2 General Situation of Money Laundering and Financing of Terrorism**

### ***Predicate offences***

15. Korean Police and Prosecutors informed the evaluation team that Korea does not have organised crime syndicates akin to the mafia or yakuza, but does have some loosely-connected 'brotherhoods' which commit crimes, primarily those related to online gambling, loan-sharking, extortion and prostitution. With regard to the drug crime, they noted that Korea has little in the way of a drug problem and the brotherhoods do not normally engage in drug trafficking<sup>5</sup>. It is likely however that Korea is used as a trans-shipment point for drug trafficking due to its reputation for not having a drug abuse problem and due to it having one of the 'largest ports in the region.

16. Forty kinds of serious crimes constitute predicate offences in Korea (38 kinds of crimes under *Proceeds of Crime Act* and two crimes under the *Act on Special Cases Concerning the Prevention of Illegal Trafficking in Narcotics*). In addition, the concealment and disguise of property owned legally for

---

<sup>5</sup> In the 2008 *World Drug Report* issued by United Nations Office on Drugs and Crime, Korea is described as "a low-level consumer nation". Similarly, the 2008 *International Narcotics Control Strategy Report Volume I Drug and Chemical Control*, issued by United States Department of State, Bureau for International Narcotics and Law Enforcement Affairs, concludes that "narcotics production and abuse is not a major problem in the Republic of Korea (ROK)".

the purpose of tax evasion, illegal refunds, customs evasion or smuggling is considered to be money laundering (ML) for the purposes of reporting of suspicious transaction reports (STRs) to the Korean Financial Intelligence Unit (KoFIU).

17. The Public Prosecutors' Office (PPO) publishes an annual *Analytical Report on Crimes*. According to this report, the most prevalent offences in Korea are fraud (43.7%), theft (41.0%), forgery (4.8%), copyright violations (2.8%) and trademark violations (1.4%).

**Incidence of predicate offences designated by the FATF Recommendations**

|                                       | OFFENCES                                                                      | 2002    | 2003    | 2004    | 2005    | 2006    | 2007    | PROPORTION (2007) |
|---------------------------------------|-------------------------------------------------------------------------------|---------|---------|---------|---------|---------|---------|-------------------|
| <b>Fraud</b>                          | Racketeering                                                                  | 195 914 | 240 359 | 246 204 | 203 697 | 203 346 | 186 115 | 43.7%             |
| <b>Robbery, Theft</b>                 | Robbery                                                                       | 5 953   | 7 327   | 5 762   | 5 266   | 4 684   | 4 470   | 1.0%              |
|                                       | Theft                                                                         | 179 208 | 187 871 | 154 850 | 191 114 | 190 745 | 212 530 | 41.0%             |
| <b>Forgery</b>                        | Document forgery                                                              | 19 618  | 17 669  | 18 891  | 19 847  | 22 472  | 19 210  | 4.8%              |
| <b>Violation of Copyright</b>         | Violation of <i>Copyright Act</i>                                             | 7 878   | 8 197   | 10 275  | 11 182  | 13 045  | 20 558  | 2.8%              |
| <b>Forging goods</b>                  | Violation of <i>Trademarks Act</i>                                            | 7 355   | 5 409   | 6 869   | 3 486   | 6 562   | 3 844   | 1.4%              |
| <b>Extortion</b>                      | Intimidation                                                                  | 2 100   | 2 093   | 2 333   | 2 499   | 2 920   | 3 243   | 0.6%              |
|                                       | Racketeering                                                                  | 1 774   | 2 461   | 2 271   | 1 967   | 2 876   | 3 328   | 0.6%              |
| <b>Environmental crime</b>            | Violation of <i>Clean Air Conservation Act</i>                                | 5 497   | 3 933   | 3 799   | 3 418   | 2 387   | 1 921   | 0.5%              |
|                                       | Violation of <i>Prevention of Marine Pollution Act</i>                        | 1 160   | 999     | 874     | 982     | 2 152   | 2 106   | 0.5%              |
| <b>Counterfeiting bills</b>           | Counterfeiting currency                                                       | 342     | 456     | 570     | 1 448   | 3 047   | 3 616   | 0.7%              |
| <b>Sale of stolen goods</b>           | Stolen goods                                                                  | 1 418   | 1 145   | 1 581   | 3 547   | 2 432   | 3 050   | 0.5%              |
| <b>Drug trafficking</b>               | Manufacturing, smuggling, and illegal inflow/outflow of drugs between borders | 1 968   | 1 969   | 2 150   | 2 039   | 2 386   | 2 844   | 0.5%              |
| <b>Child sexual exploitation</b>      | Violation of <i>Juvenile Sex Protection Act</i>                               | 2 253   | 2 119   | 2 863   | 1 874   | 1 584   | 1 752   | 0.3%              |
| <b>Smuggling</b>                      | Violation of <i>Customs Act</i>                                               | 1 193   | 1 117   | 1 315   | 1 114   | 1 310   | 926     | 0.3%              |
| <b>Murder, grievous bodily injury</b> | Murder                                                                        | 983     | 1 011   | 1 082   | 1 091   | 1 064   | 1 124   | 0.2%              |
| <b>Corruption,</b>                    | Public servant related offences                                               | 1 599   | 1 146   | 1 319   | 1 203   | 990     | 1 013   | 0.2%              |

|                                                         | OFFENCES                                                        | 2002           | 2003           | 2004           | 2005           | 2006           | 2007           | PROPORTION (2007) |
|---------------------------------------------------------|-----------------------------------------------------------------|----------------|----------------|----------------|----------------|----------------|----------------|-------------------|
| <b>bribery</b>                                          | (abuse of authority, taking bribery, giving bribery)            |                |                |                |                |                |                |                   |
| <b>Kidnapping, illegal restraint and hostage-taking</b> | Kidnapping and Inducement                                       | 240            | 401            | 377            | 149            | 171            | 170            | 0.0%              |
|                                                         | Arrest and Detention                                            | 420            | 359            | 435            | 378            | 615            | 739            | 0.1%              |
| <b>Weapons trafficking</b>                              | Violation of <i>Control on Firearms, Swords, Explosives Act</i> | 747            | 1 168          | 671            | 495            | 384            | 637            | 0.1%              |
| <b>People smuggling</b>                                 | Violation of <i>Stowaways Control Act</i>                       | 114            | 92             | 148            | 168            | 252            | 272            | 0.1%              |
| <b>Organised crime</b>                                  | Organisation of crime group                                     | 17             | 40             | 647            | 370            | 170            | 201            | 0.0%              |
| <b>Insider trading / market manipulation</b>            | Violation of <i>Securities and Exchange Act</i>                 | 241            | 191            | 156            | 153            | 155            | 121            | 0.0%              |
| <b>TOTAL</b>                                            |                                                                 | <b>437 992</b> | <b>487 532</b> | <b>515 442</b> | <b>457 487</b> | <b>465 749</b> | <b>473 790</b> | <b>100.0%</b>     |

18. The most common predicate offences could also be determined by reference to the suspected predicate offences in information disseminated from KoFIU to law enforcement agencies. In 2007, 1 312 disseminations were made, containing information from 2 293 STRs. The largest proportion (98%) related to fraud, embezzlement, smuggling, forgery and market manipulation.

**Predicate offences suspected in STRs disseminated to law enforcement agencies, 2007\***

| PREDICATE OFFENCES                              | NO. OF STRs | PREDICATE OFFENCES                                            | NO. OF STRs |
|-------------------------------------------------|-------------|---------------------------------------------------------------|-------------|
| Fraud, Embezzlement                             | 539         | Illegal tax refund                                            | 454         |
| Violation of <i>Customs Act</i> (Smuggling)     | 452         | Violation of <i>Foreign Trade Act</i>                         | 256         |
| Forgery                                         | 235         | Illegal flight, disguise and disposition of domestic property | 199         |
| Habitual gambling, opening gambling house       | 131         | Crimes related with credit, work, auction                     | 110         |
| Special embezzlement by executives              | 74          | Violation of <i>Specialized Credit Financial Business Act</i> | 61          |
| Crimes related with disc, video, games          | 53          | Customs evasion                                               | 46          |
| Violation of <i>Securities and Exchange Act</i> | 43          | Fraudulent payment for share capital                          | 31          |
| Bribery                                         | 15          | Racketeering                                                  | 10          |
| Illegal drug trade                              | 6           | Stolen goods                                                  | 6           |
| Theft                                           | 3           | Violation of <i>Trademarks Act</i>                            | 2           |
| Organised crime                                 | 1           | Other                                                         | 102         |

\* Note: Some disseminations, and some STRs, are linked to suspicion of more than one offence. In addition, these figures do not include 278 disseminations where the nature of the predicate offence could not be accurately classified.

19. In terms of organised crime, Korea has loosely-connected networks which focus their criminal activities on online gambling, loan-sharking, extortion and prostitution. Korea has a relatively limited drug trafficking problem, with little in the way of confiscation or seizure of drugs.

### ***Money laundering***

20. In 2007, there were 71 ML cases, with 55 convictions for ML.

21. No detailed research has been done on ML methods used in Korea. Two of the most common techniques, derived from KoFIU's analysis of suspicious transaction reports, are:

- Cash transactions: Cash transactions are the most frequent form of financial transaction involved in ML in Korea. Money launderers take advantage of the difficulties in tracing cash. The KoFIU *Examples of Suspicious Transactions* encourages obliged entities to define frequent large cash deposits and withdrawals without justifiable reasons as suspicious and to closely examine those transactions.
- Use of accounts in other persons' names: ML often involves use of bank accounts in the names of other legal or natural persons. Most cases of embezzlement or malfeasance of corporate property involve use of accounts in the names of executives and/or employees within the corporation or accounts in the names of their relatives.

### ***Terrorist financing***

22. There have been no confirmed cases of terrorist financing (TF) or intended terrorist acts in Korea to date. However, since 2003 more than 70 people suspected of having ties to international terrorist networks have been detained or deported. In addition, approximately 10 abductions by terrorist groups of Korean businessmen residing or travelling overseas occur per year. In terms of TF, authorities recognise that Korea's reputation as relatively safe from terrorist activities has the potential to make it more attractive to persons wishing to move funds or goods through Korea in order to make them appear legitimate.

23. Korea has had presidential orders for prevention of terrorism since 1982. The *National Anti-Terror Action Directive* created a counter-terrorism committee which is composed of the Prime Minister and the heads of 16 relevant authorities. The purpose of this committee is to determine national anti-terror policy, establish counter-terrorism measures, and implement relevant orders from the President. The *Prohibition of Financing for Offences of Public Intimidation Act* was enacted on 21 December 2007 and came into effect on 22 December 2008, after a one year preparation period for implementation.

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

### ***The financial sector***

24. The financial sector accounts for 7.5% of Korea's total GDP (using 2006 data). The financial sector has approximately 821 000 employees, which represents about 3.5% of the total work force (using 2008 data). After the Asian financial crisis in 1997, the Korean government promoted globalisation of the financial sector, intensified prudential regulation and strengthened the accounting standards and disclosure system to improve transparency. Since 2006, the government has also focused on advancement of the capital market, resulting in passage of the *Capital Market Consolidation Act*, which will come into effect in February 2009. It is expected that implementation of this act will bring about dramatic changes in the capital market and financial investment sectors, with securities businesses, asset management, futures

businesses, and trust businesses, which are currently regulated as separate sectors, consolidated as financial investment companies.

25. The Korean financial sector comprises:

- Banks.
- Non-bank deposit institutions that provide deposit and lending services on a smaller scale than the banks (mutual savings banks, community credit co-operatives and credit co-operatives).
- Securities companies, asset management companies, trust companies, futures companies and investment banks which trade marketable securities in the direct financial market.
- Insurance companies.
- Institutions which specialise in credit finance services such as credit cards, instalment financing, leasing and venture capital.

26. Banks represent the largest group of financial institutions, accounting for 66.2% of financial sector assets, followed by life insurance companies, credit co-operatives and securities companies. It is expected that implementation of the *Capital Market Consolidation Act* in February 2009 will lead to an increase in the proportion of financial investment companies.

**The financial sector, March 2008**

|                                            |                                | # OF<br>COMPANIES | %          | # OF<br>BRANCH<br>OFFICES | %          | ASSETS<br>(KRW 1<br>BILLION) | %          |
|--------------------------------------------|--------------------------------|-------------------|------------|---------------------------|------------|------------------------------|------------|
| <b>Banks,<br/>Deposit<br/>Institutions</b> | Banks                          | 57                | 1.4        | 7 470                     | 28.4       | 1 860 413                    | 66.2       |
|                                            | Credit Co-operatives           | 1 196             | 29.0       | 4 249                     | 16.2       | 190 696                      | 6.8        |
|                                            | Community Credit Co-operatives | 1 527             | 37.1       | 3 088                     | 11.7       | 62 355                       | 2.2        |
|                                            | Mutual Savings Banks           | 108               | 2.6        | 281                       | 1.1        | 61 147                       | 2.2        |
|                                            | Credit Unions                  | 1 004             | 24.4       | 1 545                     | 5.9        | 28 238                       | 1.0        |
| <b>Securities,<br/>Capital<br/>Market</b>  | Life Insurance                 | 22                | 0.5        | 4 644                     | 17.7       | 305 400                      | 10.9       |
|                                            | Securities Companies           | 54                | 1.3        | 1 792                     | 6.8        | 130 867                      | 4.7        |
|                                            | Asset Management Companies     | 51                | 1.2        | 51                        | 0.2        | 2 668                        | 0.1        |
|                                            | Investment Banks               | 2                 | 0.0        | 5                         | 0.0        | 2 366                        | 0.1        |
|                                            | Futures Companies              | 14                | 0.3        | 14                        | 0.1        | 2 150                        | 0.1        |
| <b>Insurance,<br/>Credit<br/>Finance</b>   | Credit Finance                 | 55                | 1.3        | 547                       | 2.1        | 96 189                       | 3.4        |
|                                            | Non-life Insurance             | 29                | 0.7        | 2 596                     | 9.9        | 66 018                       | 2.4        |
| <b>TOTAL</b>                               |                                | <b>4 119</b>      | <b>100</b> | <b>26 282</b>             | <b>100</b> | <b>2 808 509</b>             | <b>100</b> |

Data source: Financial Supervisory Service *Financial Statistics Monthly* and Bank of Korea *The Korean Financial System*.

27. In addition to the institutions described above, there are other entities that provide financial services such as post offices, currency exchangers and registered private lenders.

28. Post offices: The Post Offices provide savings services ancillary to their postal services and also provide small-scale insurance products. Branches located throughout the country take household deposits,

primarily of small amounts, from people residing in rural areas. Post Offices had KRW 38 trillion in deposits as at June 2005.

29. Money changers: As at June 2008, there were 1 166 registered money changers, of which approximately 300 were stand-alone businesses and the rest are services operated by hotels, agricultural co-operatives or fisheries co-operatives. Money changers can buy foreign currencies from Korean nationals and foreigners and may only sell foreign currency in small amounts to foreigners. Their registrations can be revoked and they can be subject to criminal penalties under the *Foreign Exchange Transactions Act*.

30. Registered private lenders: Registered private lenders raise funds through loans and they provide cash loans to customers for high interest rates, mostly over 50% per annum (with a ceiling set by law of 66% interest per annum). Their customers are primarily small-scale sole proprietors or workers who cannot get loans from financial institutions. As at the end of 2006, there were 17 210 registered private lenders, 64 of which are classified as large scale lenders and subject therefore to external audit. These larger lenders are mostly affiliated with foreign lenders and they account for about 64% of market share. Private lenders must register with the head of the municipal or provincial government where they operate their business.

**Institutions conducting financial activities outlined in the glossary to the 40 Recommendations**

| TYPE OF FINANCIAL ACTIVITY                                                                                                                                          | FINANCIAL INSTITUTIONS AUTHORISED TO PERFORM THIS ACTIVITY IN KOREA                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>A.</b> Acceptance of deposits and other repayable funds from the public (including private banking).                                                             | <ul style="list-style-type: none"> <li>• Korea Development Bank, Industrial Bank of Korea, and other banks governed by the <i>Banking Act</i>.</li> <li>• Agricultural co-operatives and the National Agricultural Co-operatives Federation governed by the <i>Agricultural Cooperatives Act</i>.</li> <li>• Fisheries co-operatives and the National Federation of Fisheries Co-operatives governed by the <i>Fisheries Cooperatives Act</i>.</li> <li>• Mutual savings banks and Korea Federation of Savings Banks governed by the <i>Mutual Savings Banks Act</i>.</li> <li>• Credit co-operatives and the Central Credit Co-operative Association governed by the <i>Credit Cooperatives Act</i>.</li> <li>• Community credit co-operatives and the Korean Federation of Community Credit Co-operatives governed by the <i>Saemaul Savings Depository Act</i>.</li> <li>• Post offices governed by the <i>Postal Savings and Insurance Act</i>.</li> </ul> |
| <b>B.</b> Lending (including consumer credit; mortgage credit; factoring, with or without recourse; and finance of commercial transactions (including forfeiting)). | <ul style="list-style-type: none"> <li>• Banks, including the Korea Development Bank, Export-Import Bank of Korea and the Industrial Bank of Korea.</li> <li>• Agricultural co-operatives and the National Agricultural Co-operatives Federation.</li> <li>• Fisheries cooperatives and the National Federation of Fisheries Cooperatives.</li> <li>• Mutual savings banks and Korea Federation of Savings Banks.</li> <li>• Credit co-operatives and the Central Credit Co-operative Association.</li> <li>• Community credit co-operatives and the Korean Federation of Community Credit Co-operatives.</li> <li>• Specialised credit financial companies governed by the <i>Specialized Credit Financial Business Act</i>.</li> <li>• Merchant banks governed by the <i>Merchant Banks Act</i>.</li> <li>• Insurance companies governed by the <i>Insurance Business Act</i>.</li> <li>• Korea Housing Finance Corporation.</li> </ul>                      |
| <b>C.</b> Financial leasing (other than financial leasing arrangements in relation to consumer products).                                                           | <ul style="list-style-type: none"> <li>• Specialised credit financial companies.</li> <li>• Merchant banks.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |

| TYPE OF FINANCIAL ACTIVITY                                                                                                                                                                                                                                                                                    | FINANCIAL INSTITUTIONS AUTHORISED TO PERFORM THIS ACTIVITY IN KOREA                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>D.</b> The transfer of money or value (including financial activity in both the formal or informal sector (e.g. alternative remittance activity), but not including any natural or legal person that provides financial institutions solely with message or other support systems for transmitting funds). | <ul style="list-style-type: none"> <li>• Banks, including the Korea Development Bank and the Industrial Bank of Korea.</li> <li>• Agricultural co-operatives and the National Agricultural Co-operatives Federation.</li> <li>• Fisheries co-operatives and the National Federation of Fisheries Co-operatives.</li> <li>• Mutual savings banks and Korea Federation of Savings Banks.</li> <li>• Credit co-operatives and the Central Credit Co-operative Association.</li> <li>• Community credit cooperatives and the Korean Federation of Community Credit Co-operatives.</li> <li>• Post offices.</li> </ul>                                                             |
| <b>E.</b> Issuing and managing means of payment (e.g. credit and debit cards, cheques, traveller's cheques, money orders and banker's drafts, electronic money).                                                                                                                                              | <ul style="list-style-type: none"> <li>• Banks, including the Korea Development Bank, Export-Import Bank of Korea and the Industrial Bank of Korea.</li> <li>• Specialised credit financial companies.</li> <li>• Agricultural co-operatives and the National Agricultural Co-operatives Federation.</li> <li>• Fisheries co-operatives and the National Federation of Fisheries Co-operatives.</li> <li>• Mutual savings banks and the Korea Federation of Savings Banks (partly perform, debit cards, banks' draft, electronic money).</li> </ul>                                                                                                                           |
| <b>F.</b> Financial guarantees and commitments.                                                                                                                                                                                                                                                               | <ul style="list-style-type: none"> <li>• Banks, including the Korea Development Bank, Export-Import Bank of Korea and the Industrial Bank of Korea.</li> <li>• Agricultural cooperatives and the National Agricultural Cooperatives Federation governed by the Agricultural Cooperatives Act;</li> <li>• Agricultural co-operatives and the National Agricultural Co-operatives Federation.</li> <li>• Merchant banks.</li> <li>• Credit guarantee funds governed by the <i>Credit Guarantee Fund Act</i>.</li> <li>• Technology credit guarantee funds governed by the <i>Technology Credit Guarantee Fund Act</i>.</li> <li>• Korea Housing Finance Corporation.</li> </ul> |
| <b>G.</b> Trading in:<br>(a) money market instruments (cheques, bills, CDs, derivatives etc.).<br>(b) foreign exchange.<br>(c) exchange, interest rate and index instruments.<br>(d) transferable securities.<br>(e) commodity futures trading.                                                               | <ul style="list-style-type: none"> <li>• Banks, including the Korea Development Bank, Export-Import Bank of Korea and the Industrial Bank of Korea.</li> <li>• Futures companies governed by the <i>Futures Trading Act</i>.</li> <li>• Securities companies governed by the <i>Securities Transactions Act</i>.</li> <li>• Insurance companies.</li> </ul>                                                                                                                                                                                                                                                                                                                   |
| <b>H.</b> Participation in securities issues and the provision of financial services related to such issues.                                                                                                                                                                                                  | <ul style="list-style-type: none"> <li>• Securities companies.</li> <li>• Merchant banks.</li> <li>• Korea Development Bank.</li> <li>• Korea Housing Finance Corporation.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| <b>I.</b> Individual and collective portfolio management.                                                                                                                                                                                                                                                     | <ul style="list-style-type: none"> <li>• Banks, including the Korea Development Bank, Export-Import Bank of Korea and the Industrial Bank of Korea.</li> <li>• Agricultural co-operatives and the National Agricultural Co-operatives Federation.</li> <li>• Fisheries co-operatives and the National Federation of Fisheries Co-</li> </ul>                                                                                                                                                                                                                                                                                                                                  |

| TYPE OF FINANCIAL ACTIVITY                                                                                                                                                          | FINANCIAL INSTITUTIONS AUTHORISED TO PERFORM THIS ACTIVITY IN KOREA                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                                                                                                                                                     | <p>operatives.</p> <ul style="list-style-type: none"> <li>• Securities companies governed by the <i>Securities Transactions Act</i> and asset management companies governed by the <i>Securities Investment Companies Act</i>.</li> <li>• Insurance companies.</li> <li>• Trust companies governed by the <i>Trust Business Act</i>.</li> <li>• Companies investing in small and medium enterprises governed by the <i>Support for Small and Medium Enterprise Establishment Act</i>.</li> <li>• Specialised corporate restructuring companies governed by the <i>Industry Development Act</i>.</li> </ul>                                                                                                                                                       |
| <b>J.</b> Safekeeping and administration of cash or liquid securities on behalf of other persons.                                                                                   | <ul style="list-style-type: none"> <li>• Banks, including the Korea Development Bank, Export-Import Bank of Korea and the Industrial Bank of Korea.</li> <li>• Securities companies.</li> <li>• Merchant banks.</li> <li>• Insurance companies.</li> <li>• Trust companies.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| <b>K.</b> Otherwise investing, administering or managing funds or money on behalf of other persons.                                                                                 | <ul style="list-style-type: none"> <li>• Banks, including the Korea Development Bank and the Industrial Bank of Korea.</li> <li>• Agricultural co-operatives and the National Agricultural Co-operatives Federation.</li> <li>• Fisheries co-operatives and the National Federation of Fisheries Co-operatives.</li> <li>• Merchant banks.</li> <li>• Insurance companies.</li> <li>• Small and medium enterprises establishment co-operatives governed by the <i>Support for Small and Medium Enterprise Establishment Act</i>.</li> <li>• Corporate restructuring co-operatives governed by the <i>Industry Development Act</i>.</li> <li>• New technology investment association governed by the <i>Specialized Credit Financial Business Act</i>.</li> </ul> |
| <b>L.</b> Underwriting and placement of life insurance and other investment related insurance (including insurance undertakings and insurance intermediaries (agents and brokers)). | <ul style="list-style-type: none"> <li>• Insurance companies.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| <b>M.</b> Money and currency changing.                                                                                                                                              | <ul style="list-style-type: none"> <li>• Banks, including the Korea Development Bank and the Industrial Bank of Korea.</li> <li>• Agricultural co-operatives and the National Agricultural Co-operatives Federation.</li> <li>• Fisheries co-operatives and the National Federation of Fisheries Co-operatives.</li> <li>• Authorised money changes governed by Article 8 Paragraph 4 of the <i>Foreign Exchange Transactions Act</i>.</li> </ul>                                                                                                                                                                                                                                                                                                                |

### ***Designated non-financial businesses and professions***

31. Casinos: Opening a casino in Korea requires a license and it is prohibited by law to operate casinos without a physical business facility. As at December 2007, there were 17 casinos in Korea, 16 located in hotels and open only to foreigners. One casino (Gangwon Land), which is about four hours

drive from Seoul, is open to both foreigners and Korean nationals. In 2007, a total of 1 176 000 foreigners visited the 16 hotel casinos and 2 482 587 people (2 452 000 Korean nationals and 30 587 foreign nationals) visited Gangwon Land. The average amount of money gambled by a foreigner was KRW 521 000 (USD 449) and for a Korean national was KRW 273 000 (USD 235). Casinos are the only category of designated non-financial businesses and profession (DNFBP) in Korea which must comply with AML/CFT obligations.

32. Real estate agents: In Korea, certified real estate agents, real estate agents (not certified) and corporations may operate real estate brokerage business. The real estate agent certification system commenced in 1985, and persons operating real estate brokerage businesses at and since that time can register as real estate agents. As at December 2006, there were 66 276 certified real estate agents, 11 910 real estate agents (not certified) and 425 real estate business operated by corporations. Real estate brokerage business involves brokerage of sale of real estate, sale of new houses and leasing. Brokerage fees are 0.2% to 0.9% of the sale price or 0.2% to 0.8% of the lease price.

33. Dealers in precious metals and stones: Korea imports most of the precious metals and stones sold in the country. There were 13 383 dealers in precious metals and stones in Korea as at the end of 2006. These dealers must be registered. Certification also exists for precious stones processing and precious stones appraisal. Most of the dealers in precious metals and stones are located in large cities such as Seoul, Pusan, or Kyunggi Province and 75% of the wholesalers are located in Seoul.

34. Lawyers: Korea has a qualification system for lawyers with a national bar examination. Lawyers provide services such as legal representation, advice and consultancy, drafting of contracts and dispute resolution. Lawyers may practice as sole proprietorships, joint law offices (partnerships) and corporations (formed with at least five lawyers with a minimum 10 years of professional experience providing services in the name of the corporation). As at July 2008, there were 11 642 lawyers practicing in Korea, 77% of whom were sole practitioners. About 73% of the lawyers are in Seoul. The Korean Bar Association is the self regulatory organisation for lawyers. Its *Code of Ethics* addresses matters related to the duties and remuneration of lawyers. The Korean Bar Association has a Sanctions Committee, Investigation Committee, Ethics Committee, and inspectors to help ensure effective compliance with the *Code of Ethics* by the members. The Bar Association also has a Dispute Resolution Committee responsible for arbitration of disputes among lawyers.

35. Notaries public: Notaries public prepare deeds and attest documents signed by private persons. Only persons appointed as notaries public by the Minister of Justice or legal service corporations established with the approval by the Minister of Justice can provide notary services. Authorised law firms may also provide notary services. The term of office for notaries public is five years and they may be reappointed for up to three years. A notary public cannot concurrently serve in a public office or engage in a commercial business or become the representative or an employee of a commercial company or a profit-making corporation. Notaries in Korea do not perform financial business.

36. Certified public accountants: Certified public accountants (CPAs) provide audit, tax advisory and business management advisory services. They also provide advice with respect to establishment of companies. Only 4.5% of the CPAs in Korea have their own individual offices, with a great majority either belonging to an accounting firm (80.6%) or registered as 'audit teams' composed of three or more CPAs for independent audit. Currently, CPAs do not carry out company service provision business and they do not carry out financial transactions, open bank accounts or keep cash for their customers.

37. Trust and company service providers: Trust and company services are often provided in Korea by lawyers. In addition, real estate trust institutions were introduced in the early 1990s. In Korea most trust business is conducted through trust companies. As of the end of 2007, there were 42 trust companies (33

companies conducting trust business along with other business and 9 solely focusing on real estate trust business). Four more companies have applied for licenses to conduct real estate trust business. The nine real estate trust businesses manage assets of around KRW 80 to 90 trillion (USD 69 million to USD 77.6 million).

#### **1.4 Overview of Commercial Laws and Mechanisms Governing Legal Persons and Arrangements**

38. As at August 2008, there were 714 255 registered companies in Korea. According to the *Commercial Act*, there are four types of companies; partnership companies, limited partnership companies, stock companies and limited liability companies.

- Partnership company: consists of partners with unlimited liability for direct, joint and unlimited repayment to company creditors.
- Limited partnership company: consists of some partners with unlimited liability and others with limited liability. Partners with unlimited liability are responsible for business management and partners with limited liability provide capital and share in the company's profits.
- Stock company: consists of members or stockholders who invested in the company. Stockholders are liable for debts to the value of their sticks.
- Limited liability company: consists of members or stockholders who have limited liability for the actions and debts of the company.

39. Listed companies finance their business by selling securities such as stocks and bonds. There are currently more than 1 790 companies trading securities at the Korea Exchange. The *Securities Exchange Act* imposes registration and disclosure obligations on companies which intend to finance their business by issuing securities.

40. Korea has two trust-related laws, the *Trust Act* and the *Trust Business Act*, both of which were enacted in 1961. The *Trust Act* governs personal trusts while the *Trust Business Act* regulates business trusts. Anyone who intends to engage in trust business in Korea should obtain authorisation from the Financial Services Commission (FSC), which has the power to supervise trust companies. Real estate trust companies have been subject to some AML obligations since 2001 and to a much broader range of obligations since December 2008. The real estate trust businesses association is currently developing AML/CFT guidelines for these businesses.

#### **1.5 Overview of Strategy to Prevent Money Laundering and Terrorist Financing**

##### **a. AML/CFT Strategies and Priorities**

41. The primary focus of Korea's AML/CFT approach is to ensure each party faithfully plays its role as mandated by the law, thereby enhancing the effectiveness of the AML/CFT measures. Close co-ordination and co-operation among government agencies and the financial institutions is considered important for effective implementation of this strategy.

42. Establishment of a legal basis: Additional legislative measures came into effect in December 2008, including; enhanced customer due diligence (CDD), criminalisation of TF, STR obligations regarding TF, and AML/CFT obligations for casinos. These measures were subject to thorough discussion at the National Assembly for over a year. Substantial planning has been undertaken for these measures and

the associated presidential enforcement decrees, supervisory regulations and guidelines are in place to enable their effective implementation.

43. Reporting of suspicious transactions: When AML/CFT measures were first introduced in Korea in 2001, financial institutions were unfamiliar with an STR reporting system. In traditional Korean culture exposing and reporting others' wrongdoings is regarded as doing harm to others rather than as correcting wrongs. Therefore, the government conducted an extensive campaign to raise awareness, educate and promote more active reporting by financial institutions of suspicious transactions. Such efforts produced great success and the number of STR filings has increased from 275 in 2002 to 52 474 in 2007.

44. Law enforcement: KoFIU analyses STRs and disseminates reports to the relevant law enforcement agency according to the type of the predicate offence. Law enforcement agencies provide feedback to KoFIU regarding the results of the investigation and other action taken. Approximately 41% of STRs disseminated to enforcement agencies result in prosecution or collection of additional taxes. In 2004, there were 62 ML investigations conducted in Korea. By 2007 this had increased to 120 ML investigations.

45. Supervision: KoFIU assigns the AML/CFT inspection responsibilities to various agencies and often conducts joint inspections with other agencies when necessary. Moreover, the Board of Audit and Inspection and other superior agencies conduct audits of agencies' inspection programs, which helps ensure the effectiveness of the AML/CFT inspections.

46. International co-operation: Government agencies such as KoFIU, the PPO, the National Police Agency (NPA), Korea Customs Service (KCS), and the National Tax Service (NTS) have signed various agreements with their counterparts for exchange of information and intelligence and for extradition of criminals and other mutual legal assistance (MLA). Korea is also actively participating in the activities of international organisations. Korea was a Co-chair of the APG from 2002 to 2004 and hosted the APG Annual Meeting in 2004. It also hosted the Egmont Group's Plenary in May 2008.

47. Participation by the public: The Korean government has placed great importance on public campaigns as part of implementation of the AML/CFT measures. Examples of such public campaigns include the public contest for AML slogans. Moreover, policy white papers, public relations video clips on AML issues, posters and press articles are used to explain to the public the importance and necessity of the AML/CFT systems. November 28, which is the anniversary of the establishment of KoFIU, has been designated as the 'Anti-Money Laundering Day' to raise public awareness on the importance of AML/CFT systems.

## **b. The Institutional Framework for Combating Money Laundering and Terrorist Financing**

### ***Central agencies***

48. Financial Service Bureau of the Financial Services Commission: The Financial Service Bureau of the FSC is responsible for various laws and regulations regarding prevention of establishment of shell banks, identification/verification of corporate beneficial owners and other matters related to AML/CFT. Korea's financial intelligence unit (FIU) – KoFIU – sits within the FSC.

49. Ministry of Justice (International Criminal Affairs Division): The Ministry of Justice's scope of responsibility regarding AML/CFT includes: criminalisation of ML; seizure; freezing; and confiscation of proceeds of crime; regulations regarding corporate beneficial owners and persons who exercise control over corporate bodies; supervision of non-profit organisations; implementation of relevant United Nations (UN) resolutions; MLA; and, extradition treaties.

50. Ministry of Strategy and Finance (Foreign Exchange Policy Division): The Foreign Exchange Policy Division of the Ministry of Strategy and Finance is responsible for regulations regarding cross-border financial transactions such as regulations on freezing of terrorist assets and on cross-border remittance.

### ***Law enforcement agencies***

51. Financial Services Commission: The Fair Market Division of the FSC has investigation authority with respect to market manipulation or insider trading, and ML related to these offences, pursuant to Article 81-2 of the *Futures Trading Act* and Article 206-3 of the *Securities Trade Act*.

52. Korea Customs Service: The KCS has the authority to investigate offences related to smuggling; false export/import reporting for the purpose of flight of capital; violations of trademark or exclusive license related to export/import products; smuggling or evasion of customs duties that are subject to aggravated punishment; hiding of assets overseas; and, ML related to any of those categories of offences.

53. Korea Financial Intelligence Unit: KoFIU was established in 2001 pursuant to Article 3 Paragraph 1 of the *Financial Transaction Reports Act* (FTRA) and Article 5 of the *Presidential Enforcement Decree of the FTRA* in order to effectively implement the AML/CFT system. KoFIU was originally within the Ministry of Finance and Economy (MOFE), but as a result of the government reorganisation in February 2008, has been transferred to the FSC. KoFIU comprises AML/CFT experts from the FSC, Ministry of Justice, NPA, NTS, KCS and Financial Supervisory Service (FSS). The independence and autonomy of KoFIU is guaranteed by law. KoFIU analyses STRs and disseminates the STRs to law enforcement agencies. It conducts supervision, inspection and education, and public relations regarding financial institutions' AML/CFT obligations and exchanges information with foreign FIUs. KoFIU also provides guidance on STR reporting and supports financial institutions' AML training and education.

54. National Election Commission: The NEC's Political Funds Investigation Division was established in 2004 pursuant to Article 15 of the *Election Commission Act* in order to eradicate illegal political funds. KoFIU sends STRs that are related to illegal political funds to the Political Funds Investigation Division for action.

55. National Police Agency: The NPA is a designated enforcement agencies for investigation of ML. Intelligent Crime Investigation Division of the NPA distributes suspicious transaction information received from KoFIU to local police. In addition there is a special team at NPA headquarters which investigates national cases and cases directed by the President, which can include ML cases. The NPA also carries out international co-operation, such as exchange of information required for investigation and provides support for arrest of criminals.

56. National Tax Service: The NTS has the authority to investigate suspected tax evasion and ML related to tax evasion. The International Investigation Division of the NTS is responsible for analysis of information provided by KoFIU. If the Director of the International Investigation Division believes there is suspicion of tax evasion, s/he forwards the case to relevant divisions or local offices for further action.

57. Public Prosecutors' Office: The PPO directs and supervises AML/CFT investigations conducted by law enforcement agencies. In 2006, a Special Team for AML Investigation and Recovery of Proceeds of Crime was established within the High-tech and Financial Crime Investigation Division of the Supreme Public Prosecutors' Office. This special team facilitates AML investigations and applies orders for confiscation of proceeds of crime or confiscation of corresponding value.

### ***Inspection/supervision agencies***

58. KoFIU has an overarching responsibility for AML/CFT supervision. In practice, the Commissioner of KoFIU assigns AML/CFT inspections to the FSS, the Bank of Korea, the National Agricultural Co-operative Federation, the National Federation of Fisheries Co-operatives, the National Forestry Co-operatives Federation, the National Credit Union Federation of Korea, the Korea Federation of Community Credit Co-operatives, the Ministry of Knowledge Economy, and the Small and Medium Business Administration. These agencies report to the Commissioner of KoFIU on the result of the inspections. The various inspection agencies have the authority to execute reprimand or correction orders when necessary but levying and collection of administrative fines for violations detected through inspections is carried out by KoFIU. The types of institutions inspected by each authority are shown below.

- Financial Supervisory Service: Banks, securities companies, insurance companies, mutual savings banks, credit finance institutions.
- Bank of Korea: Money changers.
- National Agricultural Co-operative Federation: Agricultural co-operatives.
- National Federation of Fisheries Co-operatives: Fisheries co-operatives.
- National Forestry Co-operatives Federation: Forestry co-operatives.
- National Credit Union Federation of Korea: Credit unions.
- Korea Federation of Community Credit Co-operatives: Community credit co-operatives.
- Ministry of Knowledge Economy: Post offices and business restructuring co-operatives.
- Small and Medium Business Administration: Venture capital firms and corporate restructuring co-operatives.

### ***Self regulatory bodies***

59. The Korea Casino Association is the self regulatory body for casinos. It has established an *AML Business Manual* for casinos based on the KoFIU *AML Enforcement Guidelines*. KoFIU is responsible for AML/CFT supervision and inspection of casinos.

60. There are other self regulatory bodies for various sectors, such as the Korean Bar Association and the Korean Institute of Certified Public Accountants, however these sectors do not have AML/CFT obligations.

### **c. Approach Concerning Risk**

61. Korea has not applied a risk-based approach to countering ML and TF of the kind contemplated in the FATF Recommendations. However, enhanced CDD, applying a risk-based approach, was implemented in Korea in December 2008. Teams comprising staff from KoFIU, financial industry associations and financial institutions prepared detailed procedures in advance of this date. It is expected that the introduction of this risk-based CDD will significantly enhance the effectiveness of the AML/CFT system.

62. In addition, a number of aspects of the supervision system are grounded in a risk-based approach. KoFIU conducts assessment of entities that are subject to its AML/CFT supervision each year and awards the entities that show good implementation status. To date, inspections have focussed on detecting failures to file STRs but will shift to focus on AML/CFT systems more broadly. In the near future, KoFIU plans to structure its AML/CFT inspection program such that the frequency and intensiveness of inspections will be determined on a risk basis.

**d. Progress Made Since the Last Mutual Evaluation**

63. Korea underwent an APG mutual evaluation in August 2002 and an IMF / World Bank Financial Sector Assessment Program (FSAP) the same year. Since these evaluations, the Korean AML/CFT legal framework has been strengthened and there has been significant advancement in the way the AML/CFT system is actually implemented. Major achievements against the recommendations made in the 2003 APG mutual evaluation report are summarised below.

64. Legal:

- Establish civil confiscation laws and international asset sharing: While confiscation is only available under the criminal law (applying the criminal standard of proof), a conviction is not required for confiscation. The March 2008 *Act on the Recovery of Stolen Assets* established procedures for sharing confiscated assets from crimes of corruption.
- Reduce the STR threshold from USD 40 000 to USD 10 000: The STR reporting threshold was lowered in January 2004 from KRW 50 million (USD 43 067) to KRW 20 million (USD 17 227).

65. Financial:

- Stipulate the types of customer identification and verification documents required: Customer due diligence requirements were implemented in January 2006 and enhanced CDD requirements were implemented in December 2008. Article 3 of the *Enforcement Decree of the Act on Real Name Financial Transactions and Guarantee of Secrecy* specifies the documents to be used for identification of natural and legal persons.
- Establish procedures for verification of identification where there is no face-to-face contact: Under Article 3(1) of the *Act on Real Name Financial Transactions and Guarantee of Secrecy (Real Name Financial Transactions Act)*, financial institutions are obligated to identify and verify customers through face-to-face contact.
- Provide examples and guidance on STRs: KoFIU publishes a *Reference Book of Suspicious Transaction and Casebook of Analysis* to provide financial institutions with information on suspicious transactions, techniques, trends and patterns of ML. In addition, the *AML Enforcement Guidelines* provide instructions on the STR reporting process and information to be incorporated in STRs.
- Strengthen the fit and proper requirements for principal shareholders, senior management and beneficial owners of financial institutions and money-changing businesses: The appointment of officers and employees is subject to fit and proper test under provisions including Article 8 and 18 of the *Banking Act*, Article 13 of the *Insurance Business Act* and Article 33 of the *Securities and Exchange Act*. The FSS supervises financial institutions' license applications and fit and proper screening of senior management.

- Conduct joint-agency inspections of obliged entities: KoFIU is the primary competent authority responsible for AML/CFT supervision but entrusts the supervision to the FSS, Bank of Korea and some SROs. However, when the need arises, KoFIU's officials provide entrusted institutions with support for inspection (Article 15(5) of the *Presidential Enforcement Decree of the FTRA*).
- Allow supervisory authorities to have unrestricted access to customers' records: Provisions on confidentiality of customer information in the *Real Name Financial Transactions Act* and the *Use and Protection of Credit Information Act* note that information must be provided to supervisory authorities. In addition, Article 12 of the *FTRA* provides that AML/CFT obligations take precedence over the financial institutions' duty to protect customer information.
- Examine whether smaller financial institutions should remain partially exempted from establishing internal control systems: Complete exemptions (from establishing an internal reporting system, establishing and operating internal control guidelines, and providing employee education and training) are in place for numerous financial institutions, primarily on the grounds that they do not take deposits or give loans, do not conduct any financial transactions with customers, or otherwise present a low risk of ML/TF because of the nature of the business or its products. The fully exempt institutions include: the Korea Credit Guarantee Fund; the Technology Credit Guarantee Fund; investment advisory companies, the New Technology Investment Association; the National Forestry Co-operatives Federation; venture investment companies and the Venture Investment Association for small and medium businesses; companies specialising in corporate restructuring and the Corporate Restructuring Association; money changers; trust companies engaging only in real estate trust business; Community Credit Co-operatives and the National Credit Union Federation of Korea (but not local credit unions); insurers engaged mainly in guarantee insurance and reinsurance business; and the Mutual Savings Bank Federation. In addition, partial exemptions (requiring training/education, but not internal reporting system or control guidelines) are in place for specialised credit financial companies; small and medium enterprise start-up investment companies; and corporate restructuring investment companies.
- Enhance the FSS on-site inspection approach: From 2002 to 2007 the FSS inspected 398 branches of financial institutions (including some foreign branches), representing 87% of all branches of the institutions it supervises. In addition to the FSS's off-site surveillance and review of license applications, these on-site inspections focus on review of internal control and risk management systems.
- Require money-changers to retain customer transaction records for at least five years: Article 33 of the *Commercial Act* provides that all merchants (which includes money changers) must retain trade books and all important documents for ten years from the time the book is closed and must retain all slips or similar documents for five years.
- Increase inspections of money changers: The number of inspections of money changers has decreased from 115 in 2002 to 32 in 2007.

66. Law enforcement:

- Consider introducing a system for reporting of large cash transactions: A cash transaction reports (CTR) system was implemented on 18 January 2006. The initial threshold of KRW 50 million (USD 43 067) was lowered to KRW 30 million (USD 25 836) in January 2008 and will be lowered further to KRW 20 million (USD 17 224) in January 2010.

- Improve access by law enforcement agencies to STR information: The number of disseminations to enforcement agencies has increased significantly from 104 disseminations in 2002 to 2 293 in 2007. In addition, the secondees from enforcement agencies at KoFIU are involved in STR analysis and decisions on dissemination.
- Establish a national AML strategy, including an asset forfeiture strategy: Korea does not have an over-arching national AML strategy or a national asset forfeiture strategy.
- Establish an inter-agency STR review team: Secondees from enforcement agencies at KoFIU are involved in STR analysis and decisions on dissemination.

67. In addition, since the 2003 mutual evaluation the Korean authorities have taken the following notable steps to improve the AML/CFT systems:

- Counter-terrorist financing measures: The *Prohibition of Financing for Offence of Public Intimidation Act*, which was enacted on 21 November 2007, criminalises TF and establishes an STR reporting requirement with respect to TF. The FSC has the authority to designate natural persons, legal persons, or other groups as persons restricted for financial transactions and to make public notice of such designation. These measures came into effect in December 2008.
- AML/CFT obligation of casinos: Casinos are the first DNFBP to be included in the AML/CFT system. The legal basis for this was established in December 2007 and the obligations took effect in December 2008.
- Scope of information provided by KoFIU to the NTS: When the AML legislation was first introduced, KoFIU could only provide information to the NTS derived from foreign exchange transactions. The relevant laws were amended in December 2007 to allow KoFIU to also disseminate information to the NTA which relates to domestic currency transactions. This amendment took effect in January 2008.
- The maximum administrative fine: In December 2007 the maximum fine available for failure to file an STR was increased from KRW 5 million (USD 4 306) to KRW 10 million (USD 8 612).
- The FIU's information technology (IT) system: KoFIU now receives CTRs and STRs through an online reporting system. This IT system was developed from 2002 to 2007 in five phases and now incorporates rule and scoring systems that are based on artificial intelligence.
- Active participation in international organisations: The Korean government is actively participating in the APG and the Egmont Group. Korea undertook the role of APG Co-chair from 2002 to 2004, hosted the 7th APG Annual Meeting in June 2004 and hosted the 16th Egmont Group Plenary in May 2008.
- MOUs with foreign FIUs for exchange of information: KoFIU had only one MOU in place during the 2002 APG mutual evaluation, but as at August 2008 had 36 MOUs with foreign FIUs for exchange of information on ML and TF.

## 2. LEGAL SYSTEM AND RELATED INSTITUTIONAL MEASURES

### Laws and Regulations

#### 2.1 Criminalisation of Money Laundering (R.1 & R.2)

##### 2.1.1 Description and Analysis

68. Two statutes criminalise money laundering: the *Act on Special Cases Concerning the Prevention of Illegal Trafficking in Narcotics, Psychotropic Substances and Hemp* (ASPIT) 1995; and the *Proceeds of Crime Act* (POCA) 2001.

69. Article 7(1) of ASPIT criminalises ML related to trafficking in narcotic drugs:

“Any person who harbours or disguises the nature, location, origin, or restoration of illegal profits, etc. for the purpose of hindering the investigation or the detection of narcotics and other analogous substances related crimes or the source of illegal profits, etc. or avoiding the confiscation of illegal profits, etc. shall be either punished by imprisonment not exceeding seven years or a fine not exceeding 30 million won, or both penalties shall be imposed cumulatively.”

70. Attempts and conspiracies to commit these offences are punishable with maximum imprisonment of two years and/or a fine up to KRW 10 million (USD 8 612). Under Article 8, any person who knowingly receives the illegal proceeds of these offences commits an offence which is punishable with up to three years' imprisonment and/or a fine not exceeding KRW 10 million. Instigation (counselling or procuring) of any of the offences is punishable with imprisonment for up to three years and/or a fine not exceeding KRW 10 million.

71. Article 3(1) of POCA criminalises the dealing with proceeds of crime that is not related to narcotics trafficking and this is by reference to a list of predicate offences:

“Any person who commits any of the following acts shall be subject to imprisonment not exceeding five years or a fine not exceeding 30 million won.

- (1) Disguising acquisition or disposition of criminal proceeds and related properties.
- (2) Disguising the origin of criminal proceeds.
- (3) Concealing criminal proceeds and related properties for the purpose of facilitating a predicate offence or disguising illegally obtained properties as properties obtained from legitimate sources.”

72. Article 2 of POCA defines "criminal proceeds" as being:

- a. Properties generated by any act that constitutes a Serious Crime or properties received as a compensation for such an act.
- b. Funds or assets related to the offences prescribed in Article 19 Paragraph 2 (1) of *the Act on Punishment of Prostitution Brokerage* (applied only to the act of providing funds, land, or buildings with the knowledge that such properties are provided for prostitution or brokerage

of prostitution), Article 5 Paragraph 2 and Article 6 (applies only to the attempt for any crime prescribed in Article 5 Paragraph 2) of the *Punishment of Violence Act*, Article 3 Paragraph ① of the *Act on Offering of Bribe to Foreign Public Officials in International Business Transactions*, and Article 4 of the *Act on Aggravated Punishment of Economic Crimes*.”

73. Article 2 also defines ‘predicate offences’ as those “...crimes that are committed for the purpose of obtaining improper property gains and are listed in the Schedule (hereinafter, referred to as "Serious Crimes") or in Article 2 Paragraph 2.b. of this Act.”

74. It should be noted that in the English versions, the ML offence provision in Article 7(1) of ASPIT refers to ‘illegal profits’ while Article 3(1) of POCA refers to ‘criminal proceeds’. Korean authorities advised the evaluation team that the different wording is a matter of translation. The Korean term in both offence provisions is broad and encompasses all forms of proceeds, direct or indirect.

75. An attempt to commit the ML offence in Article 3(1) of POCA is a crime (Article 3(2)). In addition, Article 3(3) makes the preparation or conspiracy to commit the offence a crime punishable with imprisonment of up to two years and a maximum fine of KRW 10 million (USD 8 612). Article 4 makes knowingly accepting criminal proceeds and related properties a criminal offence carrying a maximum penalty of three years’ imprisonment and a maximum fine of KRW 20 million (USD 17 224).

## **Recommendation 1**

### ***Consistency with Vienna and Palermo Conventions***

76. Article 3(1)(b)(i) of the *United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988* (the *Vienna Convention*) requires each Party to establish as a criminal offence “The conversion or transfer of property, knowing that such property is derived from any offence or offences established in accordance with subparagraph a) of this paragraph, or from an act of participation in such offence or offences, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of such an offence or offences to evade the legal consequences of his actions.”

77. Similarly, Article 6(1)(a)(ii) of the *United Nations Convention Against Transnational Organised Crime, 2000* (the *Palermo Convention*) requires each Party to criminalise the “concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime.”

78. Article 7 of ASPIT does not specifically criminalise the conversion or transfer of property for the purpose of concealing or disguising the illicit origin of the property in accordance with the *Vienna* and *Palermo Conventions*. Rather, it directly criminalises the concealment or disguise of the property. Thus, conversion or transfer of property for the purpose of disguise is dealt with in the offence under ASPIT. The Korean authorities stated that the activity of concealment or disguise would include the conversion or transfer of property. This assertion was supported by the purposive rule of interpretation which is applied in this civil law system. The methods used to conceal the nature, location, origin or ownership of illegal profits would often involve conversion and transfer, which, in a broad context, would be acts of concealment and disguise. In addition, the word ‘ownership’ in Article 7(1) of ASPIT has a broad concept in Korean law. It not only includes passive property rights but also entails change of rights and controls over rights. In addition, Article 7 criminalises the conversion or transfer of property to assist a person to evade the legal consequences of his actions within the concept of concealment and disguise.

79. The ML offence in ASPIT expressly deals with disguise of ‘the nature, location, origin, or restoration of illegal profits’ and the ‘disposition, movement or ownership of or rights with respect to property’ as required by the *Palermo Convention* falls within this element of disguise. A judgment of the Supreme Court, which serves as precedent in the Korean system, has concluded that transferring money into another person’s account constitutes disguise of the acquisition or disposition of criminal proceeds (Supreme Court Judicial Precedent 2007 do10004). This decision supports the Korean authorities’ explanation that one means of disguising movement or ownership of property would be transfer of bank balances between accounts.

80. Article 7 appears to link the offence with an additional purpose of hindering the investigation or the detection of narcotics-related crime. This element does not amount to an additional prosecutorial burden beyond that found in the Conventions. Officials stated that this was not to be construed as an extra element of the offence and that Article 1 of the act states the purpose is “to seek the effective execution of international conventions”. Supreme Court precedents interpreting a similar provision to Article 3 of POCA, indicate that the Court considers that the degree to which the purpose of hindering the investigation or detection of narcotics-related crime is to be shown is not significant and does not need to be specific. The Supreme Court has said that what must be proven is that the defendant knew that the proceeds s/he dealt with were criminal proceeds and not that s/he had a purpose of facilitating an offence or disguising them as legally obtained property. That purpose is satisfied on proof that the defendant knowingly dealt with criminal proceeds.

81. The elements of the POCA offence include the transfer or conversion of criminal proceeds with the word ‘disposition’. The offence is sufficiently broad with respect to disguising the acquisition, disposition and origin of the proceeds, Article 3(1)(3) makes it an offence to conceal the criminal proceeds and related properties where this occurs for the purpose of facilitating a predicate offence. The Korean authorities confirmed that, as with Article 7(1) of ASPIT, this purpose is a broad one that is not an additional element of the offence. The real *mens rea* is the handling of criminal proceeds knowing that the property is criminal proceeds and related properties. This is consistent with the *Palermo Convention* which does not link the action of concealment or disguise to any purpose to facilitate a predicate offence.

### ***Acquisition, possession and use***

82. Article 8 of ASPIT and Article 4 of POCA criminalise ‘acceptance’ of the proceeds of crime but neither uses the terms ‘acquisition’, or ‘possession and use’ as required by the *Vienna* and *Palermo Conventions*. While the term ‘accept’ includes acquisition, ‘possession’ and ‘use’ are not expressly addressed. ‘Use’ in both conventions refers to use that could be other than for concealment and disguise. Officials suggested that a broad interpretation of ‘accept’ would include ‘possession’ and ‘use’ and that this interpretation is indirectly supported by a Supreme Court case (2005 do3045) which reasoned that the main purpose of POCA was to restrain predicate crimes and ML by regulating the disposition and management of criminal proceeds. This was further supported by an interpretative note published by the Ministry of Justice legislative drafters at the time POCA came into force. Knowledge of the nature of the proceeds would only appear to be criminalised at the time of acceptance of the proceeds. Subsequent knowledge of the nature of the proceeds would not be an offence. Nevertheless, this complies with Article 3(1)(c)(i) of the *Vienna Convention* and Article 6(1)(b)(i) of the *Palermo Convention* which both read “at the time of receipt”. However, the offences would be more effective and dissuasive if they clearly included the continued possession and use of the property, when, after receipt, knowledge is obtained of their nature as criminal proceeds or property acquired through criminal proceeds.

83. On the basis of the various definitions within ASPIT and POCA, as well as relevant civil law definitions within the *Civil Act*, both ASPIT and POCA cover the requirements of property as defined in the Conventions.

84. ASPIT extends to all forms of property, regardless of value and related properties derived, directly or indirectly from the production, manufacture and trafficking in narcotics or from acts of participation of such offences. This includes financial resources related to the provision of a place, facility, equipment, funds or means of delivery for the purpose of offences under the legislation prohibiting activities in relation to illegal narcotics.

85. POCA includes properties generated by any act that constitutes the predicate offences. In addition, criminal proceeds is further defined as “properties generated from criminal proceeds, properties acquired as the price of criminal proceeds and properties acquired as the price of such properties and any other properties that result from possession or disposition of criminal proceeds”. These definitions are found in Article 2(2), and clearly include property generated from any predicate offence or a reward for such an offence; and properties that result from the possession of criminal proceeds and derived from proceeds including property intermingled with property obtained from legitimate sources. This definition sufficiently extends the ML offence to direct and indirect proceeds of crime<sup>6</sup>.

86. Concealment and disguise of criminal proceeds and acceptance of criminal proceeds (both ASPIT and POCA, respectively) are criminal offences without the underlying predicate offence. Generally, the offences in POCA are prosecuted together with the predicate offences. Korean authorities cited a case of a person prosecuted and convicted separately of ML, sometime after his conviction of a predicate offence. Similarly, cases have been cited of persons indicted for ML under POCA who were laundering funds for the perpetrator of the predicate offence, in circumstances where they had not participated in the predicate (see for example Seoul Western District Court case 2008-11).

### ***Predicate offences***

87. Korea has a list approach to predicate offences (see the Schedule to POCA plus the offences identified in Article 2(2)(b) of POCA). While this list is broad, it does not include terrorism and TF<sup>7</sup>; and, environmental crime. Moreover, there is an insufficient range of offences within some of the categories, including: copyright, which only contains infringement of a trademark right; and, fraud, which does not cover some serious fraud offences<sup>8</sup>.

**Categories of predicate offences in Korean law, December 2008**

| CATEGORIES OF OFFENCES<br>IN THE 40<br>RECOMMENDATIONS | KOREA'S PREDICATE OFFENCES                                                                                                                                                         |
|--------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Participation in an<br>organised criminal group        | Offences prescribed in Article 114(1) among offences harming public security in Chapter 5, Section 2 of the <i>Criminal Act</i> , Articles 2 and 4, Article 5(1), and Article 6 of |

<sup>6</sup> A case example of a bank official convicted and sentenced in 2008 was supplied and clearly the property he conspired to disguise (certificates of deposit) were not the properties generated from the predicate of illegal gambling but represented property derived from those proceeds or more indirect property. There are no statutory limitations on the value or the type of property.

<sup>7</sup> Amendments to POCA, which include addition of the terrorist financing offences to the list of predicates, were passed by the National Assembly on 2 March 2009. In addition, offences in the *Copyright Act* and in the *Computer Programs Protection Act* were included as predicate offences, effective 20 March 2009. As these amendments occurred outside the period of time considered by this evaluation, they have not been taken into account in this report.

<sup>8</sup> Officials indicated that misdemeanours, among the frauds in the *Criminal Act*, were not considered serious enough to list. One of the lesser frauds or other breach of trust offences omitted was Article 357 (receiving or giving a bribe by breach of trust) punishable with up to five years imprisonment and a fine of KRW 10 million (USD 8 612). Fraud offences involving embezzlement generally and against an employer, respectively, are only predicates when the amounts defrauded are not less than KRW 300 million (USD 258 360) and not over KRW 500 million (USD 430 600). An official explained that the lower limit was to limit the fraud predicate to serious offences; and the upper limit was because the more serious frauds of over KRW 500 million must be punished under the *Aggravated Punishment of Special Economic Crimes Act*, Article 3 of which imposes increased sentences on these sizeable, aggravated frauds.

| CATEGORIES OF OFFENCES<br>IN THE 40<br>RECOMMENDATIONS            | KOREA'S PREDICATE OFFENCES                                                                                                                                                                                                                                                                                                                                                                                                                                     |
|-------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| and racketeering                                                  | the <i>Punishment of Violence Act</i> [Article 2, 3, 4(2) (Except for offences stipulated in Article 136, 255, 314, 315, 335, part of Article 337, part of Article 340(2), and Article 343 of the <i>Criminal Act</i> ) and a person who has attempted a crime stipulated in Article 5 (1)].                                                                                                                                                                   |
| Terrorism, including TF                                           | -                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| Trafficking in human beings and migrant smuggling                 | Offences prescribed in Article 40(1) and Article 42 of the <i>Child Welfare Act</i> .                                                                                                                                                                                                                                                                                                                                                                          |
| Sexual exploitation, including sexual exploitation of children    | Offences prescribed in Article 18 and Article 19(2) of the <i>Act on the Punishment of Acts of Arranging Sexual Traffic</i> (except for acts of providing funds, land or buildings, knowing that they are used for sexual trafficking), Article 22 and Article 23 (limited to a person who has attempted a crime in Articles 18 and 19).                                                                                                                       |
| Illicit trafficking in narcotic drugs and psychotropic substances | Article 6, 9, and 10 of the <i>Act on Special Cases Concerning the Prevention of Illegal Trafficking in Narcotics, etc.</i> and Article 58 and 61 of the <i>Act on the Control of Narcotics, etc.</i>                                                                                                                                                                                                                                                          |
| Illicit arms trafficking                                          | Offences in Article 70 of the <i>Control of Firearms, Swords, Explosives, etc. Act</i> .                                                                                                                                                                                                                                                                                                                                                                       |
| Illicit trafficking in stolen and other goods                     | Offences in Article 362 among offences on stolen goods in Chapter 41 of Section 2 of the <i>Criminal Act</i> .                                                                                                                                                                                                                                                                                                                                                 |
| Corruption and bribery                                            | Offences stipulated in Article 129 and Article 133 among offences regarding the duty of a public official in Chapter 7, Section 2 of the <i>Criminal Act</i> .                                                                                                                                                                                                                                                                                                 |
| Fraud                                                             | Offences of fraud and intimidation in Chapter 39, Section 2 of the <i>Criminal Act</i> , and Article 347 and 351 among offences of embezzlement and breach of trust in Chapter 40 (limited to a person who habitually commits the crimes of Article 347), and Article 355 and 356 (limited to a case where the amounts of property or profits obtained from criminal offences by an offender or a third party ranges from KRW 300 million to KRW 500 million). |
| Counterfeiting currency                                           | Offences in Article 207, 208, 212 (limited to a person who has attempted a crime of offences in Article 207 and 208) and Article 213 among offences regarding currency in Chapter 18, Section 2 of the <i>Criminal Act</i> .                                                                                                                                                                                                                                   |
| Counterfeiting and piracy of products                             | Offences in Article 93 of the <i>Trademarks Act</i> .                                                                                                                                                                                                                                                                                                                                                                                                          |
| Environmental crime                                               | -                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| Murder, grievous bodily injury                                    | Offences of Article 250, 254 (limited to a person who has attempted a crime of Article 250), and 255 (limited to preparations and conspiracies of Article 250) among offences of murder in Chapter 24, Section 2 of the <i>Criminal Act</i> .                                                                                                                                                                                                                  |
| Kidnapping, illegal restraint and hostage-taking                  | Offences of Article 323(2), and 324(4) among offences hindering the exertion of rights in Chapter 37, Section 2 and Article 336 among offences of theft and robbery in Chapter 38, Section 2 of the <i>Criminal Act</i> .                                                                                                                                                                                                                                      |
| Robbery or theft                                                  | Article 329, 331, 333, 340, 342 (except for a person who has attempted a crime of Article 331(2), 332 and 341) and 343 among the offences of theft and robbery in Chapter 38, Section 2 of the <i>Criminal Act</i> .                                                                                                                                                                                                                                           |
| Smuggling                                                         | Offences in Article 269 and 271(2) of the <i>Criminal Customs Act</i> (limited to a person who has attempted a crime of Article 269) .                                                                                                                                                                                                                                                                                                                         |
| Extortion                                                         | Offences of Article 350 and 352 (limited to a person who has attempted a crime of Article 350) among offences of fraud and intimidation in Chapter 39, Section 2 of the <i>Criminal Act</i> , and offences of Article 323, 324(5), 325, and 326 among offences of hindering the exertion of rights in Chapter 37, Section 2 of the <i>Criminal Act</i> .                                                                                                       |
| Forgery                                                           | Offences of Article 214, 217 and 223 among offences on securities, postage stamps in Chapter 19, Section 2 of the <i>Criminal Act</i> (limited to a person who has attempted a                                                                                                                                                                                                                                                                                 |

| CATEGORIES OF OFFENCES<br>IN THE 40<br>RECOMMENDATIONS | KOREA'S PREDICATE OFFENCES                                                                                                                                                                                                                                                                                                                                                                                                                                              |
|--------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                        | crime of Article 214 and 217), and Article 224 (limited to Article 214 and preparations and conspiracies of Article 215), Article 225, 227(2), 228(1), 229 (except for Article 228 (2)) among offences on documents in Chapter 20, Section 2, and Article 231, 234, 235 [limited to a person who has attempted crimes of Article 225, 227(2), 228(1), 229 (except for Article 228(2)) and 231 and 234), offences of Article 5 of the <i>Illegal Check Control Act</i> . |
| Piracy                                                 | Offences of Article 340, 342 and 343 among offences of theft and robbery in Chapter 38, Section 2 of the <i>Criminal Act</i> .                                                                                                                                                                                                                                                                                                                                          |
| Insider trading and market manipulation                | Offences of Article 443, and 445(42) of the <i>Act on Capital Market and Financing Investment Business</i> .                                                                                                                                                                                                                                                                                                                                                            |

88. POCA extends to Korean nationals anywhere in the world (Articles 3 and 8 of the *Criminal Act*; and Article 7-2 of POCA). Predicate offences by Korean nationals under both statutes committed outside Korea are recognised as predicate offences in domestic law regardless of whether the offences constitute a crime in the foreign country. Moreover, predicate offences include offences committed by a foreigner outside Korea that constitute offences in the country where they are committed, if the offence would constitute a predicate in Korea (POCA Article 2(1)).

89. ASPIT extends to Koreans under Articles 3 and 8 of the *Criminal Act* in respect of offences committed in a foreign country, by non-Korean nationals. Article 12 of ASPIT, read in conjunction with Article 5 of the *Criminal Act*, makes it an offence in Korea to commit illicit narcotics trafficking. This effectively recognises drug trafficking criminal acts as predicates for ML in domestic law even when committed outside Korea and regardless of whether the offences constitute a crime in the foreign country.

90. There is no provision in Korean law to prevent a defendant from being convicted of ML for property generated from the predicate offence he also committed. A number of examples were supplied of such prosecutions. The Supreme Court ruled in 2004, that a defendant was guilty of ML after he took a number of steps to conceal and disguise his own criminal proceeds from the supply of illegal political funds (Supreme Court 2004 do5652).

### Ancillary offences

91. Korean law establishes most of the ancillary offences in relation to ML including.

- Attempts: Article 3(2) of POCA and Article 7(2) of ASPIT criminalise attempts in relation to ML punishable by the same penalties as apply for the primary ML offences.
- Aiding and abetting: Article 32 of the *Criminal Act* provides for the offence of aiding and abetting the commission of a crime by another person. Aiding and abetting includes the facilitation as required by the Vienna and Palermo Conventions. Punishment is generally lesser for such offences than the substantive offence.
- Counselling: A person who “instigates” a crime is punishable as a principal (Article 10 of ASPIT). Instigation is akin to incitement, rather than counselling but in a civil code legal system, a broad interpretation of instigation would cover counselling, even after a person had formed intent to commit a crime but had doubts as to the method or means to carry out the crime.
- Conspiracy: Article 28 of the *Criminal Act* excludes conspiracy as a preparatory crime for any offence unless other acts provide for it. Article 3(3) of POCA and Article 7(3) of ASPIT

proscribe conspiracy (and preparation) to commit ML punishable with two years imprisonment and/or a fine of up to KRW 10 million. However, conspiracy and preparation are not available with respect to acceptance of criminal proceeds (Article 4 of POCA) or acceptance of the proceeds of illicit narcotics trafficking (Article 8 of ASPIT) and this would have some adverse effect on the effectiveness of the inchoate offences for ML. Article 30 of the *Criminal Act* provides for the liability of a co-principal and this provision has been interpreted in Supreme Court decisions to include persons involved in planning and reaching consensus on committing a crime. Those persons need not to have executed the crime. However, the use of Article 30 is, it seems, predicated on a substantive crime being committed by some individual.

### ***Additional elements***

92. Even if conduct would not be an offence in another country but would constitute an offence in Korea, the receipt of proceeds from that offence in Korea would constitute ML under POCA or ASPIT.

### **Recommendation 2**

93. Generally, all criminal offences in Korea require proof of intent (Article 13 of the *Criminal Act*). It must also be proven that the individual knew that the proceeds he accepted or otherwise handled with the purpose of concealment or disguise were generated from criminal proceeds or derived from such proceeds.

94. The court must take into account all objective factual circumstances in determining the intent element of an offence, including ML (Supreme Court, 2005 do 2709), including at the time of the acceptance of the criminal proceeds, as well as the relationship between a person who gave the criminal proceeds and the person who accepted it, the sequence of events, the time and place the proceeds were accepted and the nature and type of the proceeds<sup>9</sup>. See for example Supreme Court case 84 do 312 and 85 where it was held that intent in fraud and deceit cases can be established by all the objective facts before and after he committed the crime.

95. Article 18 of ASPIT and Article 7(1) of POCA provide for the punishment of legal persons for ML offences ‘in addition to’ punishment of the natural person who perpetrated the ML offence. Article 7(1) states “When a representative of a legal entity, an agent of a legal entity or an individual, or an employee of a legal entity violates Article 3, Article 4, or Article 5 of this Act, then in addition to punishment imposed on the actual offender, a fine under the relevant article of this Act shall be imposed on the legal entity or the individual.” There have been no prosecutions or convictions in Korea of legal persons under either of these articles without conviction of a natural person. Korean authorities provided decisions (notably three Incheon District Court road traffic cases) where legal persons had been convicted in the absence of conviction of a natural person. These prosecutions were against legal persons which were seen as complicit in the activities of their errant employees. On this basis, criminal liability for ML does extend to legal persons.

---

<sup>9</sup> Article 16 of the *Criminal Act* might appear to provide for a defence of lack of knowledge of the law in respect of all criminal allegations. It stipulates that, if a person commits a crime not knowing that his acts constitute a crime, he shall not be guilty if his misunderstanding is based on reasonable grounds. Korean officials explained that this general criminal provision caters for the situation of when an individual, positively believes that his acts will not constitute a crime but they do and his misunderstanding is reasonable. It does not protect those who are simply ignorant of the law. The Ministry of Justice may provide opinions to the public, at their specific request, regarding the interpretation of the criminal law<sup>9</sup>. In some circumstances, the court, although Ministry of Justice opinions are not binding on it, may regard a reliance on what transpires to be an erroneous opinion, as a misunderstanding based on reasonable grounds. These cases are not common and it is mainly these situations when Article 16 may provide a defence. Thus, Article 16 is not a hindrance to the proof of knowledge by inferring objective factual circumstances nor does it adversely affect effectiveness.

96. The limited extension of criminal liability to legal persons does not affect the possibility of parallel criminal, or civil or administrative proceedings. Pursuit of civil or administrative procedures does not prevent or interfere with criminal proceedings. There are no provisions that prevent civil or administrative sanctions in the same factual scenario for a criminal sanction. Civil compensation claims for damages are undertaken against legal persons convicted of ML but no cases were supplied.

### **Sanctions**

97. The sentences of imprisonment for Article 7(1) of ASPIT is seven years and a fine not exceeding KRW 30 million (USD 25 836); the penalties for the Article 8 offence are three years' maximum imprisonment and a fine of KRW 10 million (USD 8 612). With respect to POCA, the maximum sentence for Article 3 is five years' imprisonment and a fine of up to KRW 30 million (USD 25 836) and the Article 4 offence is punishable with a three years' maximum imprisonment and a KRW 20 million (USD 17 224) fine. It should be noted that the available inchoate offences, other than attempt, have lower sanctions (two years' imprisonment and fines of up to KRW 10 million (USD 8 612)). Under both ASPIT and POCA, criminal proceeds may be confiscated without limit. Legal persons are subject to the financial penalties only.

98. The penalties are much lower than those available for some major commercial crimes, for example, a maximum imprisonment of 10 years is available for some frauds under the *Criminal Act* and some forms of insider trading under the *Act on Capital Market and Financing Investment Business*. The maximum fines for ML are limited. The sentence proportionality in comparison with the maximum penalties in other countries in the Asia Pacific is on the low side, for example: Australia – five to 25 years; Hong Kong – three to 14 years; Indonesia – five to 15 years; Malaysia – seven years; Philippines – seven to 14 years; and, Singapore – seven years. The maximum sentence of five years' imprisonment for the ML offence in Article 3 of POCA is not comparable to these. While the maximum sentence of seven years' imprisonment for the ML offence in ASPIT is more comparable, this offence provision is infrequently used. However, Japan has a maximum of 5 years and other civil law countries have lower maximums, when there is an absence of aggravating circumstances. The maximum sentences are therefore narrowly proportionate.

### **Effectiveness**

99. It is difficult to assess the effectiveness and the dissuasiveness of these sanctions in relation to ML convictions because all sentences handed down by Korean courts are in the form of a single comprehensive punishment (for all offences the defendant is found guilty of) and run concurrently. That said, some material was provided in respect of the POCA ML offences. In one case in 2008, a defendant was convicted and sentenced for a predicate offence and afterwards for the related ML offence. He was ultimately (and separately) prosecuted and convicted for ML and received a sentence of one year imprisonment, suspended for two years with probation and penalty tax. Other recent cases resulted in imprisonment of one year and penalty taxes for individuals who had run illegal online gambling sites and then used other person's names to operate bank accounts to launder the criminal proceeds. These persons received the one year sentence both for their convictions for illegal gambling and ML.

100. In respect of ASPIT offences, there is a lack of recent convictions. No statistics are available for sentences, even when imposed in conjunction with other convictions for the underlying offences of illicit narcotics trafficking. The evaluators were told by the LEAs and by prosecutors, which in Korea's system also undertake a significant proportion of the investigation of more serious crime, particularly ML, that illicit narcotics trafficking is not a major problem in Korea. Trafficking such as it occurs is limited and on a small scale. The trafficking is aimed at mainly foreign residents and is ill-organised. Consequently, there have been no recent convictions for Article 7(1) or Article 8 and no sentences available as comparison.

101. Imprisonment terms of two years or at most three years for some of the ML offences and some of the ancillary offences cannot adequately dissuade the most serious forms of ML. Furthermore, the effectiveness of the sanctions could not be fully assessed due to the lack of information for comparison. That said, from the available information it appears that suspended sentences for lone ML convictions seem to be the norm, and this occurs in cases where the facts of the offence do not render the offence insignificant or minor.

## Statistics<sup>10</sup> and effectiveness

102. The number of convictions for ML are modest considering the size of Korea's population and economy.

**Money laundering cases where the *Proceeds of Crime Act* was applied**

|               | INVESTIGATIONS | PROSECUTIONS | CONVICTIONS* |
|---------------|----------------|--------------|--------------|
| 2004          | 62             | 51           | 50           |
| 2005          | 81             | 71           | 40           |
| 2006          | 75             | 47           | 42           |
| 2007          | 120            | 71           | 55           |
| Jan-June 2008 | 42             | 32           | 21           |

\* Includes rulings related to cases prosecuted the previous year.

### 2.1.2 Recommendations and Comments

103. It is recommended that Korea broaden the range of predicate offences to comply with FATF standards. Recent amendments to POCA (outside of the timeframe considered by this report) have incorporated TF as a predicate offence. Further amendments should be passed making terrorism and environmental crimes predicates for ML. Moreover, there is an insufficient range of offences within some of the categories, in particular copyright and fraud. Amendments to POCA have made a number of copyright offences predicates from March 2009. It is recommended that the insufficient range of fraud offences which constitute predicates also be addressed.

104. Consideration should be given to ways and means of making the sanctions in respect of the ML offences in Article 7(1) of ASPIT and Article 3(1) of POCA more effective in deterring and punishing the criminal activity proscribed. In terms of the inchoate offences, conspiracy and preparation should be made available for the acceptance of criminal proceeds (Article 4 of POCA) and for the acceptance of the proceeds of illicit narcotics trafficking (Article 8 of ASPIT).

105. In terms of effectiveness of the ML offences, Korea could benefit from an internal awareness raising campaign targeted at officials within the legal system including the judiciary, to ensure that there is an understanding across the board of the gravamen of the ML offences and the need to reflect this with effective sanctions.

### 2.1.3 Compliance with Recommendations 1 & 2

|     | RATING | SUMMARY OF FACTORS UNDERLYING RATING                                                                                                                                                                                           |
|-----|--------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| R.1 | LC     | <ul style="list-style-type: none"> <li>Terrorism, terrorist financing and environmental crimes are not predicate offences. In addition, there is an inadequate range of offences within two categories of predicate</li> </ul> |

<sup>10</sup> As related to R.32; see s.7.2 for the compliance rating for this Recommendation.

|     | RATING | SUMMARY OF FACTORS UNDERLYING RATING                                                                                                                                                                                                                            |
|-----|--------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|     |        | offences: copyright and fraud. <ul style="list-style-type: none"> <li>The ancillary offence of conspiracy is limited in its availability for money laundering cases.</li> </ul>                                                                                 |
| R.2 | PC     | <ul style="list-style-type: none"> <li>The sanctions for legal persons convicted of money laundering are insufficiently effective and are not dissuasive or proportionate. The sanctions imposed on natural persons are not effectively implemented.</li> </ul> |

## 2.2 Criminalisation of Terrorist Financing (SR.II)

### 2.2.1 Description and Analysis

106. The *Prohibition of Financing for Offences of Public Intimidation Act* (PFOPIA) was enacted on 21 December 2007 and came into force 22 December 2008. Prior to 22 December 2008, there was no offence of TF. Terrorism and TF are not predicate offences for ML<sup>11</sup>. In addition, under the *Punishment of Violences Act* there are provisions against organisations or groups that use or have the aim to use violence, collectively or habitually, with or without deadly weapons or other dangerous articles. Article 4(4) makes it an offence to be a member and provide funds or articles for the existence and maintenance of this type of organisation or group. Article 5(2) makes it an offence for non members to provide funds for the group's formation and maintenance. This legislation is primarily an anti-organised crime statute and its potential utility against terrorism and in particular, TF is of some limited use. There are no known examples of the *Punishment of Violences Act* being used with respect to terrorist groups.

107. Korea has two TF offences under PFOPIA:

- Providing or collecting funds for public intimidation (Article 6(1)(1)).
- Encouraging or requesting the collection, provision, delivery or keeping of funds or assets knowing such funds or assets are to be used for public intimidation (Article 6(1)(2)).

#### *Providing or collecting*

108. It is an offence for any person to collect, provide, deliver, or keep funds or assets with the knowledge that such funds or assets are used as funds for public intimidation offences (Article 6(1)(1)). The term “funds for public intimidation offences” is defined in Article 2 of PFOPIA as meaning “any funds or assets collected, provided, delivered, or kept for use in” any one of a list of acts set out in the legislation, with the intention to intimidate the public or it interfere with the exercise of rights of a national, local or foreign government (including international organisations established by treaty or agreement) or to force by intimidation such government to do something outside its duty. The acts listed include murder and causing bodily injury and hostage taking. In addition, the acts that constitute offences within the scope of the treaties listed in the annex to the *1999 United Nations Convention for the Suppression of the Financing of Terrorism* (the *Terrorist Financing Convention*) are included in the Korean legislation. ‘Terrorist’ and ‘terrorist organisation’ are not defined.

109. While this offence is new and thus untested, it does not expressly state some elements. Offences in Korean law are often broadly written, in the absence of pertinent Supreme Court decisions, the

<sup>11</sup> Amendments to POCA, which include addition of the terrorist financing offences to the list of predicates, were passed by the National Assembly on 2 March 2009. As these amendments occurred outside the period of time considered by this evaluation, they have not been taken into account in this report.

significance of the lack of specificity in the Article 6(1)(1) TF offence is difficult to assess. It is not expressly stated that funds or assets which are directly or indirectly provided or collected are covered by the offence. However, court decisions in relation to similar provisions in other legislation suggest that the court would read the PFOPIA Article 6(1)(1) offence as covering direct and indirect provision or collection of funds. No analogous court decisions are available to assist with interpretation of the coverage of the offence when it comes to the means used to provide or collect funds/assets or to the relevant intention. However, it seems likely given the general rules of interpretation of Korean law that the definition includes the use of any means to provide or collect funds or assets and for where it is intended the funds or assets be used in full or in part for the acts.

110. In addition, the offence does not adequately address the provision or collection of funds or assets for use by a terrorist organisation or by individual terrorists for furtherance of their respective criminal activities or criminal purpose as expected in Article 2 of the *Terrorist Financing Convention*. That is, the Korean offence does not criminalise provision or collection of funds or assets used by the terrorist organisation or terrorist for purposes other than for terrorist acts. This is partly caused by the lack of a definition of ‘terrorist’ and ‘terrorist organisation’ in the act.

#### *Encouraging or requesting*

111. The remaining TF offence (Article 6(1)(2) of PFOPIA) criminalises the activity of any person who encourages or requests collection, provision, delivery or keeping of funds or assets knowing such funds or assets are to be used for terrorism. The *Terrorist Financing Convention* (Article 2(5)(b)) also expects that it be an offence for a person to organise or direct another to commit the TF offence. ‘Encouragement’ has the same meaning as ‘organise or direct’. The existence of knowledge that the provision and collection of funds, that are to be used in whole or in part, to carry out terrorist acts or by a terrorist organisation or by a terrorist can be inferred from objective factual circumstances. Korean law allows for such direct or indirect evidence of knowledge as established in Supreme Court precedent (see discussion in Section 2.2 of this report).

#### *Definition of “property or other assets”*

112. The meaning of ‘property or assets’ in PFOPIA takes into account the wider meaning of ‘property’ in the *Civil Act* – i.e. assets, including things and rights that have some economic value, no matter how nominal. In the *Civil Act*, the concept of things is set out in Articles 98 through 102 and Article 98 incorporates corporeal matter that may be natural forces that can be managed, like electricity. Movables and immovable things are defined in Article 99. Rights over properties are described in Part 2 of the *Civil Act*, commencing at Article 185.

#### *Ancillary offences*

113. PFOPIA makes some provision for ancillary offences. Article 6(4) criminalises the attempt of either one of the Article 6(1) offences. There is no general conspiracy offence provided for in PFOPIA however and Article 28 of the *Criminal Act* only allows for preparation and conspiracy to be a crime if so specified in the piece of legislation. The Korean authorities stated that Article 28 of the *Criminal Act* refers only to the joint preparation before a crime reaches the attempt stage. PFOPIA does not criminalise preparation as envisioned in Article 28. The Korean authorities indicated that conspiracy is covered by way of liability as a co-principal (Article 30 of the *Criminal Act*). Supreme Court decisions<sup>12</sup> suggest that a co-principals include persons involved in the planning of the crime or who had implicitly reached a consensus on committing a crime. These cases and Article 30 appear predicated on the intended crime being

<sup>12</sup> 2002D0868 and 2007/2001do4947.

eventually committed by someone, although not necessarily by the accused. This is not consistent with Article 2(5) of the *Terrorist Financing Convention*.

### **Legal persons**

114. Article 6(6) of PFOPIA allows for the prosecution of legal persons when a natural person or an agent or employee or other hired person of the legal person has committed and the natural person has committed the offence in connection with his or her duties. Agents or employees of natural persons can also be prosecuted. Criminal prosecution does not preclude parallel civil or administrative action, or vice versa.

### **Sanctions**

115. The penalties for committing Article 6(1)(1) and Article 6(1)(2) of PFOPIA are a maximum of ten years' imprisonment and a fine not exceeding KRW 100 million (USD 86 120). These sanctions would appear proportionate and dissuasive. They are comparatively strong when viewed against the sanctions available for ML and are comparable to other jurisdictions in the region. As these offences came into force on 22 December 2008, it is too early to determine their effectiveness.

### **Statistics<sup>13</sup> and effectiveness**

116. Korea has had no TF prosecutions or convictions to date. However, the evaluation team is aware that over the 18 months prior to and during the on-site cases involving suspected links to terrorism and TF have been investigated<sup>14</sup>. There is a clear risk of TF in Korea.

## **2.2.2 Recommendations and Comments**

117. Korea has recently taken some important steps in the fight against terrorist financing. The TF offence came into force on 22 December 2008 and was recently (though outside of the time frame considered in this report) added to the list of predicates for the ML offence. The PFOPIA is a well intentioned piece of legislation. It provides a foundation for Korea's counter-terrorist financing laws. It would be more effective and in closer compliance with the *Terrorist Financing Convention* if it were strengthened by addition of provisions which make it clear that it applies to the funding of terrorist organisations and individual terrorists even when those funds or assets, or the intention of the provider of those funds or assets, cannot be linked to a terrorist act. It is recommended that the PFOPIA be amended so as to include a definition of terrorist and terrorist organisation, to cover the provision/collection of funds for an individual terrorist or terrorist organisation.

## **2.2.3 Compliance with Special Recommendation II**

|       | RATING | SUMMARY OF FACTORS UNDERLYING RATING                                                                                                |
|-------|--------|-------------------------------------------------------------------------------------------------------------------------------------|
| SR.II | PC     | <ul style="list-style-type: none"> <li>The terrorist financing offence does not adequately cover provision/collection of</li> </ul> |

<sup>13</sup> As related to R.32; see s.7.2 for the compliance rating for this Recommendation.

<sup>14</sup> Upon receiving intelligence from Interpol, the International Crime Investigation Team of the National Police Agency stopped (in Afghanistan) a group attempting to smuggle 50 tons of acetic anhydride from Korea to Afghanistan between 2007 and March 2008. The NPA also stopped an attempt to illegally export 12 tons of the material in July 2008. As a result of the investigation, one Afghanistan and 9 Korean sellers and exporters were arrested (for violations of the *Customs Act*), and all 12 tons of the acetic anhydride were seized. It was found that USD 50 000 for purchase of the acetic anhydride was sent to the hawala accounts of the Taliban, which led to investigation into 5 Pakistani account operators and 116 remitters for violating the *Foreign Exchange Transactions Act*. 30 illegal immigrants have been deported and investigations and 31 persons are currently facing charges.

|  | RATING | SUMMARY OF FACTORS UNDERLYING RATING                                                                                                                                                                                                                                                                                                                                                                                                      |
|--|--------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|  |        | <p>funds for an individual terrorist or terrorist organisation.</p> <ul style="list-style-type: none"> <li>• Terrorist financing is not a predicate offence for money laundering.</li> <li>• It is too soon to determine the effectiveness of the terrorist financing offence as it came into force on 22 December 2008.</li> <li>• The ancillary offence of conspiracy is only available where an offence has been committed.</li> </ul> |

## 2.3 Confiscation, Freezing and Seizing of Proceeds of Crime (R.3)

### 2.3.1 Description and Analysis

118. Article 8 of POCA permits confiscation court orders against all defendants for criminal proceeds and Article 10 permit the confiscation of property of equivalent value of the criminal proceeds when these cannot be confiscated. Articles 13 to 16 of ASPIT authorise court orders to confiscate criminal proceeds, including property acquired in relation to narcotics trafficking. Property that is intermingled with such direct or indirect assets and other property are consistent with the terms used for confiscation of the proceeds of crime in both ASPIT and POCA.

119. Article 67 of the *Act on the Control of Narcotics* provides for the confiscation of “narcotics, etc., and the relevant facility, equipment, funds or means of transportation that have been furnished for the crimes as defined in this Act as well as any proceeds derived therefrom”. Where this property is not confiscable, the equivalent value may be collected instead.

120. In addition, Article 3(1) of the *Act on Confiscation and Recovery of Proceeds of Corruption* provides that “Proceeds of corruption may be confiscated. In case confiscation of proceeds of corruption is provided for by another law, then the proceeds of corruption shall be confiscated pursuant to such other law.”

#### ***Property subject to confiscation***

121. Article 48 of the *Criminal Act* provides for the confiscation of a thing (in whole or in part) used or sought to be used in the commission of a crime, produced by or acquired by means of criminal conduct; and received in exchange for a thing. The power to confiscate is only available if the property is owned by the criminal or belongs to third parties who acquired the property after the commission of the offence but who had knowledge of the nature of the thing in relation to an offence. ‘Things’ is defined broadly in the Articles 98 to 102 of the *Civil Act*. When the things mentioned cannot be confiscated, the equivalent corresponding value of the thing shall be collected. Article 49 provides for confiscation even when a conviction has not been achieved when the requisites of confiscation in Article 48 have been met.

122. The property subject to confiscation under POCA adequately covers the property listed in Recommendation 3. That is, properties generated by any act that constitutes the predicate offences. In addition, criminal proceeds is further defined as “properties derived from criminal proceeds” and this later term is described as properties generated from criminal proceeds, properties acquired as the price of criminal proceeds and properties acquired as the price of such properties and any other properties that result from possession or disposition of criminal proceeds. These definitions are found in Article 2(2) of POCA and clearly include property generated from any predicate offence or a reward for such an offence; and properties that result from the possession of criminal proceeds and derived from proceeds including property intermingled with property obtained from legitimate sources. The properties may be owned by a criminal defendant or a third party. See also the power to confiscate in cross border situations of the means

of payment as defined in the *Foreign Exchange Transactions Act*, as discussed in Section 2.7 of this report below.

123. The definition in Article 13 of ASPIT includes property that is generated from Article 7 ML of the criminal proceeds of illegal narcotics trafficking. Confiscation may be ordered of property that is derived from criminal proceeds or received as payment. It includes property that is intermingled with such direct or indirect assets. Property in ASPIT extends to all forms of property, regardless of value and related properties derived, directly or indirectly from the production, manufacture and trafficking in narcotics or from acts of participation of such offences. This includes financial resources related to the provision of a place, facility, equipment, funds or means of delivery for the purpose of offences under the legislation prohibiting activities in relation to illegal narcotics. Confiscation and freezing orders are set out in Articles 19 through 63 of ASPIT.

124. In respect of both statutes should it be that the criminal proceeds cannot be confiscated or the confiscation of the properties is deemed improper, due to the nature of the properties, the use of the properties and rights of other persons than the offenders, the properties subjected to confiscation may be collected (Article 10 of POCA and Article 16 of ASPIT).

125. The property subject to confiscation under the *Act on the Control of Narcotics* includes proceeds from and instrumentalities used in the commission of narcotics offences, but does not include instrumentalities intended for use in such crimes. The *Act on Confiscation and Recovery of Proceeds of Corruption* provides only for confiscation of the proceeds of corruption.

#### ***Provisional measures***

126. If a court is satisfied that there are reasonable grounds to find that a property may be subject to confiscation and deems it necessary to confiscate the property, the court may prohibit disposal by issuing a preservation order. These orders freeze property that may become the subject of a confiscation order. Such orders are available in Article 33 of ASPIT and in Articles 8 and 12 of POCA. Article 12 of POCA, applies the statutory provisions set out in Articles 19 through 63 of ASPIT, *mutatis mutandis* to confiscations of criminal proceeds in the POCA.

127. ASPIT also allow for orders to preserve (*i.e.* freeze) property where there are reasonable grounds, before the institution of criminal proceedings and applications must be made by a public prosecutor. This may be made without notice to the proposed defendant as provided in Article 34 and Article 35 of ASPIT. Orders under Articles 33 and 34 may both be made without notice and at the prosecutor's discretion. Preservation orders may be executed before the owner is notified of the order. Articles 37 and 38 specifically provide for preservation orders on immovable and movable property, respectively.

#### ***Powers to identify and trace property subject to confiscation***

128. Korean law enforcement authorities have adequate powers to identify and trace property. How effective the powers are in practice is more difficult to gauge. Under the *Financial Transaction Reports Act (FTRA)*, as amended in 2008 to take into account the *Act on Prohibition of Financing for Offences of Public Intimidation*, KoFIU receives STRs and CTRs, analyses this information and disseminates cases to law enforcement agencies. Law enforcement agencies can then determine whether to investigate further to assess whether the property related to the STRs are criminal proceeds or should be subject to confiscation.

129. Public prosecutors and judicial police officers (Articles 195 and 196 of the *Criminal Procedure Act*) have the authority to seize, search or inspect evidence and interrogate witnesses in order to identify and track properties subject to confiscation or other criminal proceeds. As provided by Article 196 of the

*Criminal Procedure Act*, judicial police officers include investigators attached to public prosecutors offices and police officials acting under a public prosecutor's instructions.

130. Search warrants are required under Article 215 and this is the main search and seizure provision for investigations conducted by the PPO, which is the principal public body responsible for investigation into ML and serious financial crimes (Articles 215, 219, 106, 109 and 139 of the *Criminal Procedure Act*). Warrants are issued by the District Court when a court is satisfied that there is reasonable suspicion of the suspected offence or offences. Anecdotal information suggests that it can be difficult to obtain search warrants for ML cases.

131. There is a procedure to search and seize without warrant and then to obtain a post event warrant under Article 217. However, this appears rarely to be applied in practice when banking or other financial documents are the subject of the search in a financial institution. Such searches are invariably made only under Article 215 with a prior warrant. It should be noted that Korea's financial institutions have a strong compliance culture and no doubt this assists in reducing the relative necessity for search and seizure of financial search documents compared to other jurisdictions. There are appropriate powers in Articles 217 and 218 for search and seizure of evidence at the locus of arrest, without warrant when the arrest is made under Article 200-3, also without warrant.

132. The Central Investigation Division of the Supreme Prosecutor's Office formed a team in 2006, within the Hi-tech Crimes Investigation Division, for investigation of ML and recovery of criminal proceeds and to provide specialist support in the identification and tracking of criminal proceeds by public prosecutors and judicial police officers acting under them. It appears to the evaluators that this team offers genuine and practical support when required to District Prosecutors and others.

133. Rights established in respect of properties that are to be confiscated, shall be maintained if such rights are established by any person other than the offenders before the occurrence of the crime. If such rights are established by any person other than the offenders after the occurrence of the crime and without the knowledge that the properties were criminal proceeds, their rights are observed (Article 9(2) of POCA and Article 48(1) of the *Criminal Act*).

#### ***Steps to prevent or void actions***

134. The authorities have limited powers to prevent or void actions as envisaged by this Recommendation. If a defendant has disposed of properties subject to confiscation, the value corresponding to the proceeds subject to confiscation can be collected, and when a person other than the offender obtains properties subject to confiscation with the knowledge that the properties are criminal proceeds, the properties subject to confiscation can still be forfeited (Article 48(2) of the *Criminal Act*).

135. However, if an offender passes rights to properties, that are subject to confiscation to a third party who does not know that they are criminal proceeds, any disposition of the property which has been subjected to a confiscation preservation order after the issuance of the said order shall not come into effect against confiscation (Articles 9, 10 and 12 of POCA and Article 36 of ASPIT). These powers may assist to prevent the effect or limit the significance of contracts or other means used to try and prejudice the recovery of criminal proceeds but do not meet the requirement of the criteria.

#### ***Additional elements***

136. Properties of a criminal organisation can be confiscated when the organisation and persons in that organisation violate Article 4 (makeup and activities of organizations) and Article 5 (use and support of

organisations) of the *Punishment of Violences Act*. The properties of these organisations can be confiscated if they satisfy the requirements of Article 48 of the *Criminal Act*.

137. Under Article 48 of the *Criminal Act*, a conviction is not required for confiscation. In the absence of a conviction, what will have to be proven are the requirements listed in the provision that the thing to be confiscated was in whole or in part used or sought to be used in the commission of a crime; or is a thing produced or acquired by means of criminal conduct; or a thing exchanged for any of the preceding types of things.

138. An offender may seek to demonstrate the lawful origin of property under Article 33(2) of ASPIT and applied to the POCA *mutatis mutandis* by Article 12 of POCA.

### Statistics<sup>15</sup> and effectiveness

139. In 2007, property to a total value of KRW 163.5 billion (USD 140.95 million) was confiscated and collected under POCA and KRW 8.79 million (USD 7 578) was confiscated and collected under the *Act on the Control of Narcotics*. In addition, in that same year, property to a total value of KRW 54 108 million (USD 46.65 million) was confiscated under other legislation.

#### Proceeds of crime preserved and confiscated under the *Proceeds of Crime Act*

|               | NO. OF PRESERVATION<br>CASES | AMOUNT (KRW)  | NO. OF<br>CONFISCATIONS | AMOUNT (KRW)  |
|---------------|------------------------------|---------------|-------------------------|---------------|
| 2005          | 73                           | 2.9 billion   | 63                      | 22.1 billion  |
| 2006          | 472                          | 238.3 billion | 26                      | 10.5 billion  |
| 2007          | 507                          | 54.1 billion  | 29                      | 163.5 billion |
| Jan-June 2008 | 312                          | 71.2 billion  | 17                      | 2.2 billion   |
| TOTAL         | 1 364                        | 366.5 billion | 135                     | 198.3 billion |

#### Proceeds of crime preserved and confiscated under the *Act on the Control of Narcotics*

|               | NO. OF PRESERVATION<br>CASES | AMOUNT (KRW)     | NO. OF<br>CONFISCATIONS | AMOUNT (KRW)  |
|---------------|------------------------------|------------------|-------------------------|---------------|
| 2005          | -                            | -                | 1                       | 5 million     |
| 2006          | 3                            | 23.8 million     | 1                       | 3.95 million  |
| 2007          | 5                            | 31.07 million    | 3                       | 8.79 million  |
| Jan-June 2008 | 4                            | 541.56 million   | 4                       | 5.97 million  |
| TOTAL         | 19                           | 2 596.43 million | 9                       | 23.71 million |

#### Proceeds of crime confiscated under the *Proceeds of Crime Act* and the *Act on Special Cases Concerning the Prevention of Illegal Trafficking in Narcotics*

| YEAR |              | GAMBLING<br>OFFENCES | CORRUPTION | SEXUAL<br>TRAFFICKING | SECURITIES<br>OFFENCES | OTHER<br>CRIMES |
|------|--------------|----------------------|------------|-----------------------|------------------------|-----------------|
| 2006 | Amount (KRW) | 224 288              | 12 205     | 1 557                 | 10                     | 308             |

<sup>15</sup> As related to R.32; see s.7.2 for the compliance rating for this Recommendation.

| YEAR          |                           | GAMBLING<br>OFFENCES | CORRUPTION | SEXUAL<br>TRAFFICKING | SECURITIES<br>OFFENCES | OTHER<br>CRIMES |
|---------------|---------------------------|----------------------|------------|-----------------------|------------------------|-----------------|
|               | <i>million)</i>           |                      |            |                       |                        |                 |
|               | No. of cases              | 342                  | 94         | 25                    | 1                      | 10              |
| 2007          | Amount ( <i>million</i> ) | 16 616               | 14 214     | 6 036                 | 16 877                 | 365             |
|               | No. of cases              | 328                  | 91         | 60                    | 13                     | 15              |
| Jan-June 2008 | Amount ( <i>million</i> ) | 11 196               | 2 541      | 6 543                 | 44 339                 | 6 589           |
|               | No. of cases              | 166                  | 48         | 48                    | 2                      | 18              |

### 2.3.2 Recommendations and Comments

140. While the confiscation regime established under the *Criminal Act* applies to all crimes in Korea, confiscation powers are not available for ML (under the POCA) where the predicate offences were terrorism, including terrorist financing, or environmental crime. Recent amendments to POCA (outside of the timeframe considered by this report) have incorporated TF as a predicate offence. As noted earlier in this report, it is recommended that further amendments be passed making terrorism and environmental crimes predicates for ML.

141. Given the size of the economy and the risk of money being laundered in Korea, the number of confiscations each year and the value confiscated is low. The confiscation figures themselves are not unimpressive compared to the number of ML cases prosecuted and convicted. However, as noted previously in Section 2.1 of this report, those convictions are relatively low.

142. It is recommended that the relevant agencies in Korea jointly, maybe by way of the Law Enforcement Consultation Committee, consider the entire confiscation regime with a view to encouraging more concerted use of these tools.

143. The statistics supplied in relation to confiscation were not comprehensive, invariably comprised the amounts preserved (frozen); the amounts ordered to be confiscated; and also the amounts realized in a given time period. It is recommended that Korean agencies ensure their statistics in this area are comprehensive and available to assist in understanding the effectiveness of the whole confiscation regime in Korea.

### 2.3.3 Compliance with Recommendation 3

|     | RATING | SUMMARY OF FACTORS UNDERLYING RATING                                                                                                                                                                                                                                                                                                                                                      |
|-----|--------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| R.3 | PC     | <ul style="list-style-type: none"> <li>Confiscation powers are not available for the money laundering offence where the predicate offence was terrorism, including terrorist financing, or environmental crime.</li> <li>Given the size of the economy and the risk of money being laundered in Korea, the number of confiscations and the value confiscated each year is low.</li> </ul> |

## 2.4 Freezing of Funds Used for Terrorist Financing (SR.III)

### 2.4.1 Description and Analysis

144. Since 22 December 2008 Korea has had two parallel regimes for restricting the financial activities of entities designated in accordance with S/RES/1267(1999) and S/RES/1373(2001): the first under the *Foreign Exchange Transactions Act* (FETA), and the second (most recent) under PFOPIA.

#### *S/RES/1267(1999)*

145. Under Article 15 of the FETA, Article 27 of the *Presidential Enforcement Decree of the Foreign Exchange Transactions Act* and the *Guidelines on Payment and Receipt for Implementation of Duty to Keep International Peace and Safety (the Guidelines)*<sup>16</sup>, the Minister of Strategy and Finance may require residents or non residents to get permission before making payments from Korea to a foreign country. Article 15(3) requires anyone who intends to perform a transaction that is proscribed by the Minister (including transactions with entities listed under S/RES/1267(1999)) to get permission before making such a transaction. Penalties for failing to get permission under Article 15 are up to 3 years' imprisonment and a maximum fine of KRW 300 million.

146. Under these provisions 153 transactions with entities designated under S/RES/1267(1999) have been restricted: before September 2001 and a further 355 transactions with listed entities were restricted after September 2001.

147. However, the regime under these statutory provisions does not establish a freezing mechanism for terrorist assets or funds. The regime 'restricts' foreign exchange transactions and other related transactions, including export and import of securities and precious metals – i.e. does not permit them to occur.

148. Under the regime that came into force in December 2008, the Financial Services Commission (FSC) may take administrative measures to proscribe terrorist funds by restricting the financial transactions of any person or legal person when it is deemed necessary to prevent a financing for offences of public intimidation or to implement a treaty entered into by Korea or generally to maintain global peace and security. This encompasses those persons and groups designated by the UN.

149. As noted earlier in this report, there are no definitions of 'terrorist' or 'terrorist organisation' in Korean law. The FSC may make such designations after prior consultation with the Minister of Justice and the Minister of Foreign Affairs and Trade (Article 4(2)). In accordance with the Guidelines, such consultation should not incur delay. When a person, legal person or a group is designated as a restricted person, they can be denied access to domestic financial transactions as well as foreign exchange transactions (Article 4 of PFOPIA). The Ministry of Strategy and Finance's regime continues and is now

---

<sup>16</sup> The *Guidelines on Payment and Receipt for Implementation of Duty to Keep International Peace and Safety*, issued by the Minister of Strategy and Finance, a competent authority, enable Korea to comply with its international obligations by prescribing matters set out in the FETA and the relevant *Presidential Enforcement Decree* and to underpin SR.III. They set out the individuals and entities as listed in the various UNSC Resolutions, including S/RES/1267(1999) and its successor resolutions, and require that Article 15 of the FETA and Article 27(1) of the *Presidential Enforcement Decree of the Foreign Exchange Transactions Act* applies to them. The language used, with respect to prohibiting payment or receipt to/from listed individuals and entities is expressed as a mandatory requirement. Transactions may not be undertaken without permission from the Governor of the Bank of Korea. Any prohibited transactions with the listed individuals and entities would be punishable under Article 27(1)-8 of the FETA with a term of imprisonment (maximum 3 years) or a fine (maximum KRW 200 million). These sanctions may not fully reflect the gravamen of the offences but can be considered to be generally effective, proportionate and dissuasive. The Guidelines are therefore to be considered to constitute other enforceable means.

overlapped by the second, new regime. Under Article 3 of PFOPIA, the new act applies to all foreign exchange transactions actions described in Article 2(1) of FETA.

150. It should be noted that this second regime is essentially only a prohibition on transactions with designated persons and financial institutions that are required to report STRs under the *FTRA*. This relates to funds or assets dealt with by those organisations, but it does not encompass all property and assets contemplated under S/RES/1267(1999) as movable property such as jewellery, precious stones, vehicles, ships and aircraft are not included. Further, transactions of immoveable property would not be restricted.

#### ***S/RES/1373(2001)***

151. Korea does not have an explicit mechanism to designate terrorists and terrorist entities outside the S/RES/1267(1999). PFOPIA is the principal instrument of designation of terrorists or terrorist organisations for reporting entities and for all transactions. As with S/RES/1267(1999) this process is managed by the Ministry of Strategy and Finance or the FSC. As noted earlier, under PFOPIA, the FSC must, under Article 4, consult with the Ministry of Justice and the Ministry of Foreign Affairs and this could cause delay. As stated earlier, the deficits of both regimes for freezing as they currently exist, is that not all property of designated persons, terrorists, and those who finance terrorism or such organisations can be frozen. Significant kinds of property are omitted.

#### ***Actions initiated under the freezing mechanisms of other jurisdictions***

152. Article 4(1)(1) of the PFOPIA provides that the FSC may designate persons “When it is deemed necessary to prevent financing for offences of public intimidation in order to implement an international treaty to which Korea is a party or a generally accepted international law”. This is interpreted to provide a power to designate entities in Korea in order to give effect to listings under the freezing mechanisms of other jurisdictions. Korea has only done so with respect to US Executive Orders (for example designating 504 entities on 22 December 2008 which had been listed by US Executive Order).

153. In addition, as with the regime under the Ministry of Strategy and Finance, PFOPIA does not freeze assets as such, it only prohibits their further use and denies access to further financing, within the limitations noted above.

154. The Ministry of Strategy and Finance and the FSC and other interested bodies, such as the Supreme Prosecutor’s Office, have no formal arrangements to ensure the prompt determination of whether reasonable grounds or a reasonable basis exists to initiate the measures available to them. The arrangements that do exist rely on various branches of government contacting their known counterparts and coming to an agreement of the need to introduce a measure against an individual (or entity) or not. KoFIU performs an initial screening in consultation with the officials seconded from other relevant government agencies to KoFIU, which is a useful preliminary mechanism. There is however no mechanism in place to support decision-making re designation.

155. The Ministry of Strategy and Finance guidelines provide information to institutions on the obligations to take freezing measures in respect of the Ministry of Strategy and Finance’s regime. In addition, the *Presidential Enforcement Decree for the PFOPIA* was signed on 22 December 2008 and it provides that permission must be sought from the FSC for a transaction in respect of a designated person. Further, approval may be obtained for disbursements in respect of reasonable living expenses. Debts to third parties with no connection to offences in PFOPIA may be granted permission. In addition there is indication in the guidelines that the administrative appeals and litigation procedure is also available under Article 3 of the *Administrative Appeals Act* and Article 19 of the *Administrative Litigation Act*.

156. Further guidance to financial institutions was issued by the FSC on 12 December 2008 to support implementation of the PFOPIA and its enforcement decree. The *Regulations on Prohibition of Financing for Offences of Public Intimidation* (FSC Notice 2008-177), identifies the financial institutions subject to the PFOPIA and provides standard forms for applying for permission for financial transactions by restricted persons and for applying to de-list entities or unfreeze property. The FSC has also issued a *Guideline for Risk-based STR Reporting*. In accordance with this, financial institutions should establish and follow procedures to compare customer information with the following watch lists:

- FSC list of persons who are restricted from financial transactions, pursuant to the PFOPIA.
- Non-cooperative countries and territories (NCCT) as announced by the FATF in its NCCT lists and FATF Statements.
- List of specially designated nationals or blocked persons (SDNs) published by the Office of Foreign Assets Control (OFAC).
- United Nations consolidated list of terrorist entities.
- List of politically exposed persons (PEPs) in foreign countries.

157. The Ministry of Strategy and Finance guidelines were last issued on 8 July 2008. They do not contain an explanation of the obligations on the financial institutions and the importance of timely communication, nor do they inform those institutions of the necessary steps to de-list entities or unfreeze property. The evaluators found during the November 2008 on-site visit that most financial institutions and their respective associations, which were required to report under the *FTRA* were confused between the Ministry's guidelines and the requirements of PFOPIA. Many were preparing to meet the challenge of TF only in the last months of 2008 and were hoping to purchase or had very recently purchased proprietary software to assist with the various designated lists. They appeared confused as to the difference between the two regimes. However, this was just prior to the introduction of the PFOPIA in December 2008, and, since that time, further guidance has been issued to institutions which will likely have been of assistance in clarifying the obligations and procedures, though this is difficult to assess from a distance.

### ***Communication of listings***

158. Korean officials advised that when the United Nations designates terrorist entities, the FSC is notified by the Korean Ambassador to the UN and it immediately commences the designation process within Korea. Names are circulated to all financial institutions involved with foreign exchange. The Ministry also posts the Consolidated List of designated persons or entities under the Notice of the Minister of Strategy and Finance (2008-9) *Guidelines for Payment and Receipt for Implementation of Duty to Keep International Peace and Safety* on its website. Official documents regarding the notice are distributed to foreign exchange banks requiring them to immediately implement the freezing measures under the regime. Korean regulators advised the evaluation team that they were promptly circulated the lists and any changes by the Ministry of Strategy and Finance. There is also a gazette operated by the Ministry that lists the changes on a weekly basis.

159. Under PFOPIA, the FSC is responsible for updates. On 22 December 2008, the date the PFOPIA came into force, the FSC designated 504 terrorists (including legal persons) as restricted persons and announced the designation in the official gazette. The FSC notified the regulators and regulatory associations for financial institutions and posted the list on the FSC and KoFIU websites.

160. The regulatory agencies and associations do not have a clear system of advising financial institutions of updates to the S/RES/1267(1999) list. The information supplied to the evaluation team was confused and contradictory in this regard. The institutions the evaluation team met with did not clearly confirm that they regularly receive updates. Their responses showed confusion between the Ministry of Strategy and Finance regime (FETA) and PFOPIA.

161. The Ministry of Strategy and Finance guidelines include the lists of persons or entities referred to S/RES/1267(1999) and successor resolutions. Terrorists proscribed by US Executive Orders are included. Therefore, payment and receipt of foreign exchange for terrorists or terrorist entities designated by the U.N. or US Executive Orders are prohibited, regardless of the owner or source of the funds.

162. The FETA regime thus does not affect an asset freeze as such. Instead, it deprives access to new financing and only in relation to foreign exchange. Similarly, under PFOPIA the designated person is restricted from conducting any transactions with reporting entities and they must seek approval to conduct a transaction. Reporting entities are defined in the *FTRA* (Article 2) and do not include DNFBPs. The transactions are wide-ranging and include domestic transactions. However, prior approval from other Ministries must be obtained before a designation (Article 4) and this could cause delay, especially in the absence of a mechanism for obtaining approval that is designed to avoid any delay. The arrangements do not therefore allow for freezing without delay of the assets of persons and entities designated by the Al-Qaida and Taliban Sanctions Committee.

### ***Delisting, unfreezing access to frozen funds and challenges to freezing orders***

163. If the cause for measures to restrict foreign currency transactions of designated persons or entities pursuant to Article 15(1) of the FETA ceases to exist, the Minister of Strategy and Finance must promptly remove such measures (Article 27(4) of FETA). When there is a request from the UN, the Minister can remove such measures by notifying the relevant financial institutions and posting a notice on the Ministry website. There is an appendix to the guidelines with the list of terrorists and terrorist organisations set out and delisting will simply involve the removal of the names and the notification of the amended list.

164. Under Article 4(4) of PFOPIA, the FSC can de-list persons, including legal persons, when they are found to not be related to terrorism or terrorists. In the *Presidential Enforcement Decree of the PFOPIA* there are obligations to allow appeals against designation and the process.

165. Korean authorities cited examples of when the UN de-listed individuals and they were removed from the annex to the guidelines. It is difficult to say how well the procedure works for delisting, nonetheless, the procedures are public.

166. Access to funds can be obtained in respect of the Ministry of Strategy and Finance's regime by proving that they need funds to pay for basic expenditures and needs as per Articles 27 and 35 of the *Presidential Enforcement Decree of the PFOPIA*. Article 4(3) of PFOPIA makes allowance for similar expenditure and the recent *Presidential Enforcement Decree of the PFOPIA* sets out the procedures.

### ***Freezing and seizing and confiscation in other circumstances***

167. There are no laws for the confiscation of terrorist property and assets. As already noted, terrorism and TF are not predicate offences under POCA<sup>17</sup>. POCA could only be used if the acts of the designated terrorists and the terrorist-related funds amounted to ML or to dealing with criminal proceeds. This is not

---

<sup>17</sup> Amendments to POCA, which include addition of the terrorist financing offences to the list of predicates, were passed by the National Assembly on 2 March 2009. As these amendments occurred outside the period of time considered by this evaluation, they have not been taken into account in this report.

what is envisaged by Special Recommendation III and would not have the effect of immediate freezing of terrorist assets.

168. Korean authorities cited Article 48 of the *Criminal Act* and provisions in the *Criminal Procedure Act* relating to confiscation of instrumentalities as satisfying the Special Recommendation. In addition, reference was made to the *Punishment of Violences Act* (POVA), and it should be noted this act has provisions that are predicates for the POCA. However, these pieces of legislation fall into the same difficulties of that of the POCA, in that they depend on property or other assets having the qualities demanded of those separate pieces of legislation. These pieces of legislation are not primarily aimed at terrorism and cannot adequately address the immediate freezing and confiscation of terrorist funds and other assets as envisaged by the Special Recommendations.

### ***Bona fide rights of third parties***

169. Third parties can make requests for their interests to be recognised under both regimes. In PFOPIA there is a system of appeal to the FSC and if not satisfied the avenue is administrative appeal and administrative litigation as noted previously. If the Minister of Strategy and Finance refuses to recognise a right (and say grant permission to a transaction) then any person has the right to administrative appeal and administrative litigation.

### ***Capacity to monitor compliance***

170. The Ministry of Strategy and Finance has designated the Bank of Korea as responsible for monitoring activity of interest under FETA. The Bank of Korea operates an IT network where institutions processing foreign transactions report on all matters relating to foreign transactions.

171. The Ministry has designated the FSC as the supervisory authority responsible for checking implementation of obligations under PFOPIA. The FSC makes inspections on financial institutions in the course of its normal supervisory duties and this will include the compliance with the new regime from December 2008. However, the FSC has had or will have had imposed on it new responsibilities for which many of its inspectors may have had little appropriate training or background. The evaluators question if there are sufficient resources both for employing more inspectors to allow more time for inspections to cover the new responsibilities and for training in the new areas of inspection.

### ***Additional elements***

172. The FSC has appropriate contact with international counterparts and no doubt this extends to TF issues, with the caveat mentioned earlier concerning expertise and training. The Foreign Exchange Policy Division of the International Finance Bureau in the Ministry of Strategy and Finance serves as a contact point for international counterparts for matters concerning restriction of financial transactions. There is no formal mechanism for examining or giving effect to other countries' freezing mechanisms.

## **Statistics<sup>18</sup> and effectiveness**

### **Restricted transactions under the *Foreign Exchange Transactions Act*, 17 July 2008**

|                     |                     | PERSONS | GROUPS | TOTAL |
|---------------------|---------------------|---------|--------|-------|
| Prior to 09/11/2001 | UN Security Council | 152     | 1      | 153   |
| After 09/11/2001    | UN Security Council | 297     | 154    | 451   |

<sup>18</sup> As related to R.32; see s.7.2 for the compliance rating for this Recommendation.

|              |                          | PERSONS    | GROUPS     | TOTAL      |
|--------------|--------------------------|------------|------------|------------|
|              | US Executive Order 13224 | 64         | 61         | 125        |
| <b>TOTAL</b> |                          | <b>513</b> | <b>216</b> | <b>729</b> |

173. Under FETA, permission was granted for 1 185 transactions to be made, involving a total of USD 390 million, in 2007 and 977 transactions worth USD 400 million in the first half of 2000. Under PFOPIA, from February to April 2009 (outside the timeframe formally considered by this evaluation), there were 50 applications for permission to conduct transactions, 23 of which were agreed to (worth a total of USD 48.7 million).

174. No data is kept on the total value of assets prohibited from further transactions. No cases appear to have been prosecuted under the existing system. There are no statistics in relation to confiscation actions. It is difficult to judge the effectiveness of existing measures without such information on their application.

#### 2.4.2 Recommendations and Comments

175. Since 22 December 2008, Korea has had two parallel regimes for restricting the financial activities of listed entities. The measures in place for implementation of S/RES/1267(1999) do not establish a freezing mechanism for terrorist assets or funds; rather, they provide for a restriction on foreign exchange transactions and related transactions by or with non-residents or in connection with foreign entities. This may include the export and import of securities and precious metals from Korea. It includes domestic banking, cash and securities transactions with financial institutions only. Korea has a mechanism to designate terrorists and terrorist entities in accordance with S/RES/1373(2001), but it relies on KoFIU's initial screening and thereafter there is no explicit mechanism for the ultimate determination of designation.

176. It is recommended that, as a matter of urgency, steps be taken to broaden the system so as to effect a freeze, and allow for confiscation, of to all types of 'funds' as defined in Article 1 of the *Terrorist Financing Convention*.

177. It is recommended that further underlying procedures and guidance to financial institutions be developed and refined. There should be a clear policy steer as to which body oversees this area and has responsibility for guidance. Compliance and monitoring should be considered a high priority and sufficient resources allocated to accommodate the increased demands in this area.

#### 2.4.3 Compliance with Special Recommendation III

|        | RATING | SUMMARY OF FACTORS UNDERLYING RATING                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
|--------|--------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| SR.III | PC     | <ul style="list-style-type: none"> <li>Measures for implementation of S/RES/1267(1999) do not allow for freezing of terrorist assets (only restriction of transactions) and obligations under S/RES/1373(2001) have not been fully implemented.</li> <li>The current regimes only cover foreign exchange transactions and related foreign transactions and domestic banking, cash and securities transactions conducted by financial institutions.</li> <li>There are no provisions for freezing concerning movable or immovable property or property derived from funds or assets owned or controlled by designated entities.</li> <li>There are no provisions with respect to confiscation of funds or other assets of designated persons or entities other than where those funds or assets can be confiscated as criminal proceeds.</li> <li>Procedures underlying the mechanisms for restricting the funds or other assets of designated entities are in place but require clarification.</li> </ul> |

## Authorities

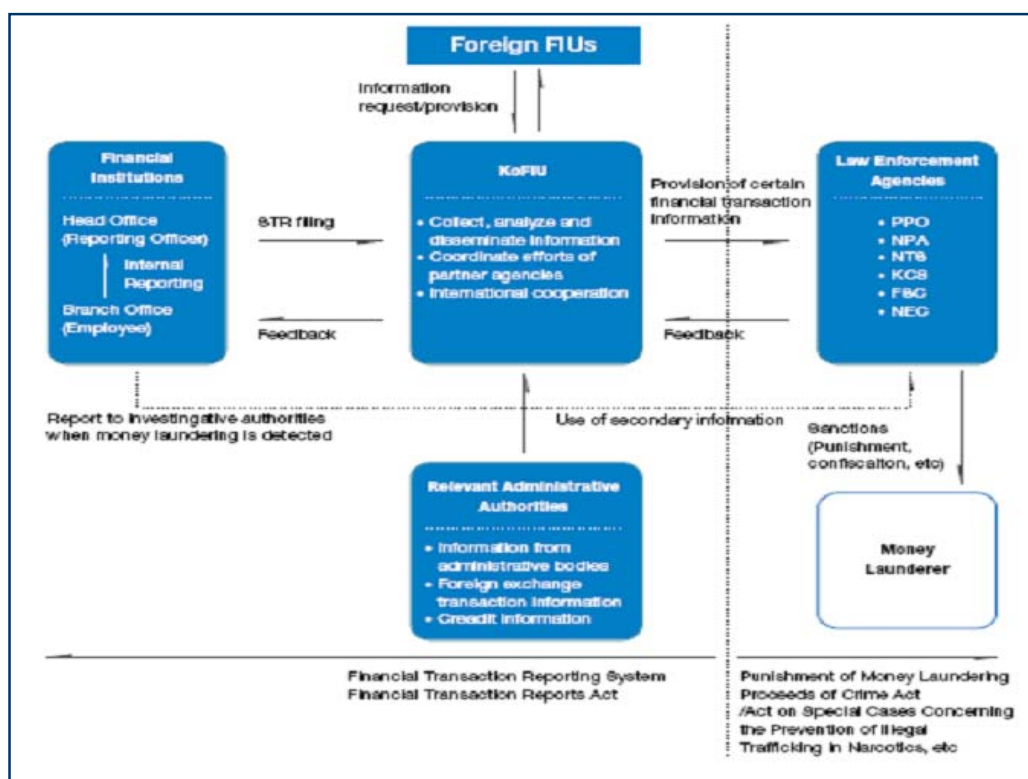
### 2.5 The Financial Intelligence Unit and its Functions (R.26)

#### 2.5.1 Description and Analysis

178. The Korea Financial Intelligence Unit (KoFIU), which has been part of the Financial Services Commission since February 2008, was established on 28 November 2001. It is Korea's financial intelligence unit (FIU) and the lead agency in Korea for AML/CFT matters.

#### *Independent national centre for receiving, analysing and disseminating STRs*

KoFIUs' functions and relationships, 2008



179. Under Article 3.1 of the FTRA and Article 5.1 of the *Presidential Enforcement Decree of the FTRA*, KoFIU's mission is the:

- Collection, analysis and dissemination of STRs, CTRs and foreign exchange transaction information.
- Supervision and inspection of financial institutions' AML/CFT activities<sup>19</sup>.
- Actions to comply with the Prohibition of Financing for Offences of Public Intimidation Act.

<sup>19</sup> This Section focuses on the functions of KoFIU as an FIU. For discussion of KoFIU's supervisory role, see Section 3.10.

- Research on ML and TF trends and preventive measures.
- Provision of AML training and consultation to financial institutions on AML/CFT.
- Domestic and international ML and TF co-operation and information exchange.

### ***Analysis of STRs***

180. Korea's STR reporting system was first introduced in November 2001, with enactment of the FTRA. Under that act (Article 4(1)) and the *Presidential Decree to the FTRA*, financial institutions and, since 22 December 2008 casinos, are obliged to report STRs related to ML and TF<sup>20</sup> to the Commissioner of KoFIU. For the past five years, the number of STRs filed had been increasing year by year: from 4 680 in 2004 to 52 474 in 2007 and 44 012 in the first half of 2008. The number of STRs received in 2008 is expected to reach 90 000.

181. Since January 2006 Korea has also had a Currency Transaction Report (CTR) system. Reporting entities are obliged to report any payment or receipt of cash (except foreign currencies) or similar means of payment, conducted in one trading day under the same name, if the amount equals or exceeds a threshold of KRW 30 million. Such reports must be made within 30 days of handling the transaction (Article 4(2), paragraphs 1 and 2 of FTRA). In 2006, KoFIU received 5 011 521 CTRs, in 2007 it was 3 868 070 and in the first half of 2008 KoFIU received 2 230 671 CTRs.

182. As Korea has foreign exchange controls, KoFIU also collects records on foreign exchange transactions. The Governor of the Bank of Korea, the Commissioner of Customs and others must provide information to the Commissioner of KoFIU on any approvals given or reports filed with respect to foreign exchange transactions (FTRA Article 6). In 2006 there were 2 423 806 international foreign exchange transactions (inbound and outbound) and in 2007 there were 2 991 698.

183. Since 2002 KoFIU has actively developed the KoFIU IT System (KoFIS) for efficient management and use of financial transaction reports information:

- Phase 1 (2002): The Phase 1 project enabled KoFIU to perform integrated analysis of large volumes of foreign currency transactions and credit information.
- Phase 2 (2004): Phase 2 focused on enhancing collection and dissemination of information through establishment of the on-line STR filing system. Phase 2 also added electronic approval and knowledge management systems.
- Phase 3 (2005): Phase 3 focused on establishing the CTR system, refinement of the information analysis system and improvement of work procedures to cope with more sophisticated ML methods and diversification of financial products.
- Phase 4 (2006): Phase 4 focused on: fine-tuning of the rule-based information analysis system, which had been developed in Phase 3; and establishment of a communication network between KoFIU and other agencies and to provide a comprehensive AML portal.

---

<sup>20</sup> Reporting of TF STRs commenced on 22 December 2008, which is within 2 months after the date of the onsite visit. However, KoFIU officials noted prior to that time, some STRs related to TF had been filed because the name of a customer was similar to a name designated in the UNSCR list.

- **Phase 5 (2007):** Phase 5 improved the reliability of the ML risk levels automatically assigned to STRs. Artificial intelligence was introduced, allowing adjustments to be made to weightings according to changes in the environment. A process was also implemented where the results of analysis are fed back into the system for determining ML risk levels.
- **Phase 6 (2008):** The IT system was strengthened to prepare for implementation of enhanced CDD, AML/CFT obligations for casinos, and the *Prohibition of Financing for Offences of Public Intimidation Act*. A system to graphically depict the flow of financial transactions was also implemented to support typologies development and analysis.

184. KoFIU has developed a 'Rule and Scoring System' to prioritise STRs for analysis. The rules have been developed from typologies and patterns seen in past STRs, statistics and experience and the scores applied are determined according to the nature of the transaction and the persons involved in it. This system allocates one of three ratings to each STR; high risk, medium risk, or low risk. Approximately 20% of STRs are classified as high risk, 15% as medium risk and 65% as low risk. High risk STRs are automatically allocated to analysts for in-depth analysis. Low risk STRs are stored in the database for future use. Medium risk STRs are examined by the Deputy Director of the Information Analysis Office and s/he decides whether in-depth analysis should be conducted.

185. When STRs are allocated to analysts, they are accompanied by information on the rating given to the STR and also information on any related STRs. The ratings assist analysts to prioritise which of their allocated STRs should be examined first. Each analyst is able to request further information from other agencies and is given a maximum of 2 months to analyse the STR and report to the Director of his/her Division. Where necessary, this period can be extended by one month with the approval of the Deputy Director of Information Analysis Co-ordination Office. The results of the analysis are provided to the Director responsible for the Division, from him to the Director of the Information Analysis Co-ordination Office for approval of the report. The Director of the Information Analysis Co-ordination Office sends the report to the Commissioner of KoFIU, accompanied by a recommendation as to its dissemination, for approval. It normally takes one to two months to complete the analysis, and 7 to 14 days for review of the analysis and dissemination, but in the most urgent situations this timeframe could be as little as one day.

186. Strategic analysis is also conducted to extract and analyse STRs, CTRs and foreign exchange transaction information stored in KoFIS based on standard parameters set by KoFIU. The main purpose of this analysis is to use information stored in the database to the fullest extent. Multi-dimensional analysis<sup>21</sup> and link analysis (visual links)<sup>22</sup> is used to extract information on suspicious transactions based on ratings calculated from factors such as the number of reports received relating to the case, the amount involved in the transactions and suspicion level. Strategic analysis across the whole database is conducted twice a year and is conducted on cases when deemed necessary. In the six years from January 2003 when KoFIU began conducting strategic analysis, 23 strategic analyses were performed, involving 513 cases.

**Strategic analysis, 2003–2008**

|                           | 2003 | 2004 | 2005 | 2006 | 2007 | 2008 | TOTAL |
|---------------------------|------|------|------|------|------|------|-------|
| <b>Cases Registered</b>   | 131  | 42   | 71   | 123  | 91   | 61   | 519   |
| <b>Cases Analysed</b>     | 117  | 56   | 53   | 138  | 63   | 86   | 513   |
| <b>Cases Disseminated</b> | 9    | 9    | 14   | 11   | 17   | 29   | 89    |

<sup>21</sup> Multidimensional analysis allows analysts to choose information they need from the database and look at the information from several aspects i.e. customer information, financial transaction information and foreign transaction information.

<sup>22</sup> Link analysis enables analysts to have a better understanding of complicated sets of financial transactions via visual images showing links between the transactions.

### **Guidance for reporting entities**

187. Reporting entities are required to appoint reporting officers (Article 5 of FTRA) and notify the KoFIU Commissioner of the appointment (Article 9 of the *Presidential Enforcement Decree of the FTRA*). The *Financial Transaction Reports and Supervisory Regulations* and the *Presidential Enforcement Decree of the FTRA* detail the obligations of reporting officers and procedures to be followed.

188. In accordance with the *Financial Transaction Reports and Supervisory Regulations*, KoFIU provides information to reporting entities on reporting procedures. In August 2008 KoFIU produced the *AML Enforcement Guidelines*, effective December 2008, which provide further detail for reporting entities on STR and CTR reporting systems, including: clear description of the types of transactions subject to reporting; the criteria to be applied to determine whether a transaction is suspicious; the means of reporting; and, timeframes within which reports should be made. These guidelines have been distributed to all reporting entities and are available on the KoFIU internet site. KoFIU has also produced a standard STR format and an on-line reporting system. On its website, KoFIU posts answers to questions that financial institutions may have with regard to reporting STRs.

189. In 2009, KoFIU plans to use its on-line reporting system to provide financial institutions with more examples and patterns of transactions that have a high possibility of ML or TF.

### **Access to information**

190. The Commissioner of KoFIU may access financial, administrative and law enforcement information when necessary for analysis of STRs and specific financial transaction information pursuant to Article 10 of FTRA and Article 14 of the *Presidential Enforcement Decree of the FTRA*. The Commissioner of KoFIU may request any of the following information from the relevant authorities:

- Family register.
- Information on resident registration.
- Basic information on business<sup>23</sup>.
- Criminal records and investigation records.
- Other information that the KoFIU Commissioner recognises as necessary after consultation with heads of relevant administrative organisations.

**KoFIU's access to government information, December 2008**

| INFORMATION TYPE    | SOURCE                                                 | METHOD OF REQUEST AND RESPONSE         |
|---------------------|--------------------------------------------------------|----------------------------------------|
| Criminal Record     | National Police Agency                                 | Written                                |
| Tax-Related Record  | National Tax Service                                   | By email                               |
| Immigration Control | Korea Immigration Service                              | Online, with direct access to database |
| Land Registration   | Ministry of Government Administration and Home Affairs | By email                               |

<sup>23</sup> This includes business registration number, business type, location of office(s), date of establishment, management, changes in capital, issuance of corporate bonds and corporate credit information.

| INFORMATION TYPE           | SOURCE                                         | METHOD OF REQUEST AND RESPONSE         |
|----------------------------|------------------------------------------------|----------------------------------------|
| Family Register            | Local Government                               | Written                                |
| Health Insurance           | National Health Insurance Corporation          | By email                               |
| Employment Insurance       | Ministry of Labour                             | By email                               |
| Customs Clearance          | Korea Customs Service                          | By email                               |
| Resident Registration      | Ministry of Public Administration and Security | Online, with direct access to database |
| Basic Business Information | CRETOP(commercial database)                    | Online, with direct access to database |

191. Some of the information KoFIU seeks from other authorities is obtained almost immediately while for the rest, replies are usually received within 3 weeks. Agencies have never refused to provide KoFIU with requested information

192. When financial institutions file STRs, they are obliged to keep: documents that may prove the real name of party involved in the financial transaction; documents of financial transactions reported as STRs; and, documents showing the institutions' grounds for suspicion, for five years from the day the report was submitted (Article 4(4) of FTRA). The Commissioner of KoFIU may refer to or make a copy of such documents when necessary for its analysis (Article 4(5)).

193. In addition, when necessary for analysis of specific financial transaction information, the Commissioner of KoFIU may request heads of credit information institutions to provide information (Article 10(2) of FTRA and Article 14(2) of the *Presidential Enforcement Decree of the FTRA*). The Commissioner of KoFIU may also request the heads of financial institutions to provide documents or information in their possession to assist analysis being conducted at KoFIU (Article 10(3) of FTRA). Under these provisions KoFIU may obtain additional financial information related to persons or activities being analysed.

### **Dissemination**

194. When KoFIU finds likely cases of illegal transactions, ML, TF or other offences in its STR analysis, it disseminates the information to the PPO, NPA, NTS, KCS, FSC and/or NEC. The Commissioner of KoFIU provides law enforcement agencies with specific financial transaction information when it is deemed necessary for investigations or for supervision of financial institutions pursuant to Article 7 of FTRA and Articles 12 and 13 of the *Presidential Enforcement Decree of the FTRA*.

#### **KoFIU criteria for determining recipient agency for disseminations**

| AGENCY                                                     | TYPE OF INFORMATION DISSEMINATED                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
|------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Public Prosecutors Office or National Police Agency</b> | Information of use for investigation of criminal cases regarding illegal assets or money laundering. The criteria used to determine whether to disseminate to the PPO or to the NPA are:<br>- When an investigation is underway, the information is disseminated to the organisation conducting the investigation.<br>- Where there is no current investigation, the decision is made after consideration of the STR amount, type of predicate offences and investigation efficiency. Cases involving a large amount of proceeds, serious predicate offences, persons who are socially important or where special investigative techniques are likely to be required are usually disseminated to the PPO. |
| <b>National Tax</b>                                        | Information suggesting illegal refunds prescribed in Article 8 of the <i>Act on the Aggravated Punishment of Specific Crimes</i> , or suggesting crimes committed through foreign                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |

| AGENCY                               | TYPE OF INFORMATION DISSEMINATED                                                                                                                                                                                                                                                                                                                                                |
|--------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Service</b>                       | exchange transaction prescribed in Article 9 of the <i>Procedure for the Punishment of Tax Evaders Act</i> and Article 8 of the <i>Act on the Aggravated Punishment of Specific Crimes</i> .                                                                                                                                                                                    |
| <b>Korea Customs Service</b>         | Information suggesting crimes proscribed in Article 269 of the <i>Customs Act</i> and Article 6 of the <i>Act on the Aggravated Punishment of Specific Crimes</i> , or crimes committed through foreign exchange transactions as proscribed in Articles 269 and 270 of the <i>Customs Act</i> and Article 6 of the <i>Act on the Aggravated Punishment of Specific Crimes</i> . |
| <b>National Election Commission</b>  | Information suggesting crimes proscribed in Article 45, paragraphs 1 and 2 of the <i>Political Fund Act</i> .                                                                                                                                                                                                                                                                   |
| <b>Financial Services Commission</b> | When dissemination of financial transaction information is necessary for supervision of financial institutions in regard to illegal assets, money laundering or terrorist financing.                                                                                                                                                                                            |

195. In addition, the Public Prosecutor General or heads of other agencies may request the Commissioner of KoFIU to provide them with information to aid investigations. When making such a request, the Public Prosecutor General or heads of other agencies provide KoFIU with relevant information and reasons for the request. They may request information by mail or electronically (Articles 7(4) and 7(5) of FTRA and Article 13(1) of the *Presidential Enforcement Decree of the FTRA*).

#### ***Independence and autonomy***

196. KoFIU was established in 2001 pursuant to Article 3(1) of FTRA and Article 5 of the *Presidential Enforcement Decree of the FTRA* in order to effectively implement Korea's AML/CFT system. KoFIU was originally within the Ministry of Finance and Economy (MOFE), but as a result of a government reorganisation in February 2008, has been transferred to the FSC.

197. Paragraph 2(3) of FTRA provides for KoFIU's independence and autonomy when it states that "KoFIU shall perform its duties as an independent unit." That paragraph goes on to provide that KoFIU's employees shall not be engaged in any duty other than those set out in the FTRA or the *Prohibition of Financing for Offences of Public Intimidation Act*.

198. Paragraph 3(3) of FTRA further provides that "The number of regular staff, organisational structure, operational system, and other matters related to KoFIU shall be determined by the *Presidential Enforcement Decree* taking into consideration the functional independence and political neutrality of KoFIU." That enforcement decree directly provides the Commissioner of KoFIU with a range of powers and obligations including with respect to regulating the reporting of STRs and CTRs, security of information and dissemination to government agencies.

199. The Commissioner of KoFIU is appointed directly by the President of Korea. S/he is in charge of general management and administration, including preparation and management of KoFIU's budget, which is audited separately by the National Assembly from audits conducted of the FSC's budget. The Commissioner of KoFIU is also required, under Article 3(4) of FTRA, to report annually to the National Assembly with respect to the operation of KoFIU.

200. While KoFIU is a part of the FSC it is located at separate premises and has its own IT system, which is not accessible by FSC staff. When KoFIU determines that it holds information necessary for supervision of financial institutions in regard to illegal assets, ML or TF, this information is disseminated to the FSC in the same way as disseminations are made to law enforcement agencies.

### ***Protection of information***

201. Over 99% of all STRs are filed via the on-line reporting system. The STRs are submitted in a standardised way, encrypted and sent over a secure line. KoFIU's IT system is within the secure Korean government IT environment and has two firewalls.

202. Staff at KoFIU are granted various levels of access to information depending on their role. In order to access STR information, there are layers of security to satisfy: card key security to enter the office with terminals on which STR data may be viewed; biometrics (identification by thumbprint) to log-on to these terminals, followed by a user identification and password system and reconfirmation of biometric data (thumbprint). The *KoFIU IT System Management Guidelines* set out rules for managing security measures such as designation of personnel, regular renewal of IDs and passwords, and maintaining and monitoring access log records.

203. As noted previously, information held by the FIU is disseminated only in accordance with the law. KoFIU's officials, any persons who work in intermediary institutions or persons engaged in investigation of criminal offences related to financial transaction reports information should not provide or divulge information or documents obtained in the course of their duties or information provided by other organisations. They should not use such information for any purpose other than that for which the information was provided. No-one should request KoFIU's officials, any persons who work in intermediary institutions or persons engaged in investigation of criminal offences related to financial transaction reports information to provide financial transaction reports information or documents or to use such information for any purpose other than that for which the information was provided (Article 9(1) of FTRA). Any persons who violate Article 9 may be subject to imprisonment of up to five years or a fine up to KRW 30 million (Article 13). There have been no cases of KoFIU officials or others inappropriately disclosing information.

### ***Public reports***

204. The Commissioner of KoFIU is required, under Article 3(4) of FTRA, to report annually to the National Assembly with respect to the operation of KoFIU. KoFIU also supplies LEAs with a wide range of monthly statistics upon request.

205. KoFIU publishes an annual report that features the previous year's achievements, including: performance of the AML system; major AML policy activities; collection, analysis and dissemination of financial transaction information; cases of disclosed ML; and, next year's plans and direction for development. The annual report is distributed in hard copy and can be found on the KoFIU website. In 2007 KoFIU also published a *White Paper* which outlined the status of their analysis and the plan for further development of Korea's AML/CFT system.

206. KoFIU also publishes an annual *Information Analysis Casebook* that includes information derived from real cases and on the types of predicate offences found in cases disseminated to LEAs. This casebook is used internally and is also provided to reporting entities, as well as being published on the KoFIU website.

207. KoFIU provides training for employees of financial institutions, with approximately 5 000 to 6 000 employees, including directors and management, of financial institutions attending each year. Employees from compliance units comprise a large proportion of the attendees. Topics covered to date include: detailed explanation of AML laws; ML typologies; suspicious transaction indicators; and, the future direction of AML/CFT examinations. This training is primarily provided to smaller institutions which have limited capacity to provide education and training programs for their own employees.

#### Training provided to reporting entities, 2005-June 2008

| YEAR          | NUMBER OF WORKSHOPS | NUMBER OF ATTENDEES |
|---------------|---------------------|---------------------|
| 2005          | 58                  | 5 285               |
| 2006          | 51                  | 6 351               |
| 2007          | 58                  | 6 202               |
| Jan-June 2008 | 21                  | 1 930               |

#### *The FIU and the Egmont Group of FIUs*

208. KoFIU became a member of the Egmont Group in June 2002. It regularly exchanges information with foreign FIUs, following the *Egmont Principles of Information Exchange*. KoFIU may exchange financial transaction information with foreign FIUs based on reciprocity principle (Article 8(1) and 8(2) of FTRA) as long as the following conditions are met:

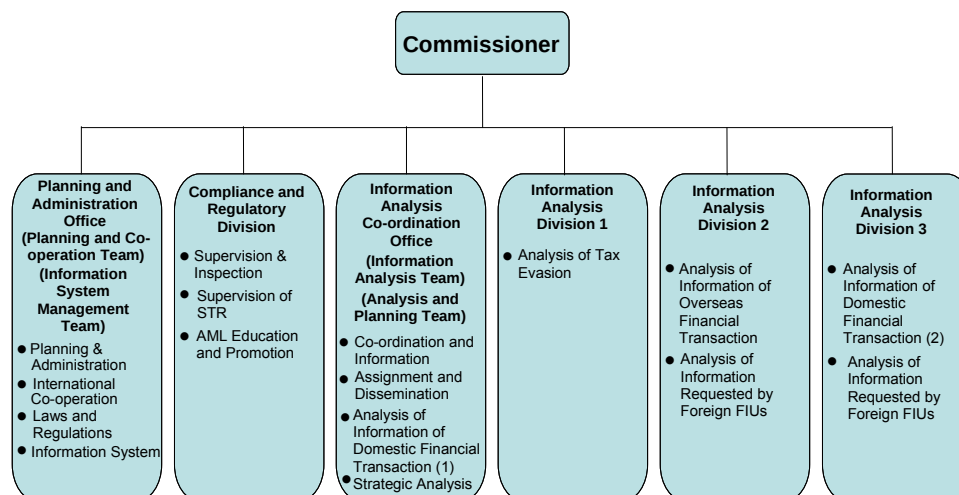
209. Information provided by foreign FIUs should not be used for purposes other than those for which the information was provided.

- The fact that information was disseminated should be kept confidential.
- Information provided to foreign FIUs should not be used for investigations or trials of criminal cases in a foreign country without the consent of the Commissioner of KoFIU.

210. KoFIU does not require Memoranda of Understanding (MoUs) in order to exchange information with foreign counterparts. It has however established 36 such MOUs, which are considered beneficial for KoFIU as well as its partners as they clearly outline the mechanisms to be followed to protect and exchange information in line with the *Egmont Principles of Information Exchange*.

#### Resources (FIU)<sup>24</sup>

#### KoFIU organisational structure since October 2005



<sup>24</sup> As related to R.30; see s.7.1 for the compliance rating for this Recommendation.

211. KoFIU's budget has steadily increased over the five years, more than doubling from KRW 4.3 billion in 2004 (USD 3.7 million) to KRW 9.2 billion (USD 7.93 million) in 2008. As at November 2008, KoFIU had 67 staff, of which 58 are permanent and nine temporary. Of the 67 staff at KoFIU, 28 are analysts. Of the permanent staff, 29 are recruited through the FSC, to which KoFIU belongs, and a further 29 are seconded from relevant agencies; eight from Ministry of Justice (including three public prosecutors), seven from the NPA, 6 from the NTS, seven from the KCS and 1 from the FSS.

212. As noted previously, KoFIU's officials are prohibited from divulging information that they obtain in the course of their duties or using such information for any purpose other than that for which the information was provided and it is an offence to do so or to ask anyone to do so (Articles 9 and 13 of FTRA). In addition, KoFIU's officials are prohibited from engaging in any duty other than those set out in the FTRA (Article 3(2)).

213. KoFIU holds a monthly meeting of analysts. In the meeting, analysts share examples; discuss newly introduced laws and regulations; and, collect opinions that can help improve analysis. Good examples of analysis are selected and disseminated and stored in KoFIS so that best practices are shared.

214. A number of times each year KoFIU holds internal mini-seminars for its staff on issues arising from work being conducted by the FATF, the APG and Egmont Group of FIUs. In addition, work has begun, in conjunction with other relevant authorities, to develop the following education programs for KoFIU staff:

- Comprehensive understanding of the financial system (money and banking, derivatives and asset management, secondary market of securities, and foreign exchange control).
- Response to new ML techniques (private banking, real estate finance, project financing, investigation on insurance fraud, and structural analysis of new financial products).
- Supervision of institutions that file STRs (supervision of insurance companies and securities firm and disclosure systems in the secondary market).

#### Statistics (FIU)<sup>25</sup> and effectiveness

215. In 2007, KoFIU received more than 50 000 STRs from reporting entities, 90% of which were submitted by banks. Detailed analysis is conducted on around 7 000 transactions each year and from these KoFIU disseminates 2 000 to 3 000 STRs to law enforcement agencies such as the PPO, NPA, NTS, KCS and FSC.

**Receipt and analysis of STRs**

|                          | 2002 | 2003  | 2004  | 2005   | 2006   | 2007   | JAN-JUNE 2008 | TOTAL   |
|--------------------------|------|-------|-------|--------|--------|--------|---------------|---------|
| <b>Receipt</b>           | 275  | 1 744 | 4 680 | 13 459 | 24 149 | 52 474 | 44 012        | 140 793 |
| <b>In-depth analysis</b> | 208  | 1 252 | 4 272 | 5 846  | 6 598  | 7 270  | 5 136         | 30 582  |
| <b>Dissemination</b>     | 104  | 432   | 995   | 1 799  | 2 267  | 2 331  | 2 281         | 10 209  |

<sup>25</sup> As related to R.32; see s.7.2 for the compliance rating for this Recommendation.

#### Number of cases disseminated to law enforcement agencies

| YEAR          | PPO   | NPA   | NTS   | KCS   | FSC | NEC | TOTAL |
|---------------|-------|-------|-------|-------|-----|-----|-------|
| 2002          | 45    | 34    | 6     | 7     | 12  | 0   | 104   |
| 2003          | 241   | 94    | 25    | 58    | 10  | 0   | 428   |
| 2004          | 369   | 136   | 214   | 221   | 5   | 10  | 955   |
| 2005          | 593   | 270   | 313   | 570   | 31  | 0   | 1 777 |
| 2006          | 534   | 553   | 413   | 657   | 50  | 1   | 2 208 |
| 2007          | 561   | 569   | 490   | 629   | 44  | 0   | 2 293 |
| JAN-JUNE 2008 | 315   | 413   | 876   | 497   | 14  | 0   | 2 115 |
| TOTAL         | 2 658 | 2 069 | 2 337 | 2 639 | 166 | 11  | 9 880 |

\* 825 cases were disseminated to more than 1 law enforcement agency. 167 cases were not provided previously but disseminated later upon request. And 78 cases were handled for strategic analysis.

### 2.5.2 Recommendations and Comments

216. KoFIU has access to information held by government entities, however, it commonly takes from one to three weeks to receive responses from each of these authorities. For example, according to KoFIU, to obtain land registration information, it takes, on average, about 8 days, and obtaining criminal record or family register data takes, on average, 21 days. The assessment team is concerned that this may be leading to some delays in STR analysis, and as a consequence, delays in dissemination of information to law enforcement agencies. It normally takes approximately one to two months to gather information and complete the analysis, and seven to 14 days for review of the analysis and dissemination. KoFIU officials informed the assessment team that some information can be obtained immediately and that KoFIU is planning to introduce direct access to information for some request in the near future. In order to ensure timely access to information and prompt dissemination to law enforcement agencies, it is recommended that KoFIU take these and any other actions which will lead to receipt of information from other authorities on a more timely basis and any actions which might lead to faster analysis of STRs.

217. The number of STRs being submitted to KoFIU is increasing rapidly. For example, 4 680 STRs were received in 2004 and 52 474 in 2007. This rate of increase is expected to continue, especially since the obligation to file STRs related to TF was implemented in December 2008. The rate of increase of analysts at KoFIU has not matched the increase in STRs received. There were 21 analysts in 2004, 28 analysts in 2007 and 28 analysts as at the time of the on-site visit. Over 90% of STRs received in-depth analysis in 2004, whereas in 2007 this had decreased to 14%. While IT developments have been important for the efficiency of KoFIU's operations, it is recommended nonetheless that KoFIU increase its human resources in order to ensure effective analysis of STR information.

### 2.5.3 Compliance with Recommendation 26

|      | RATING | SUMMARY OF FACTORS UNDERLYING RATING                                                                                                                                                                                                                                                                                                                                                                                                                            |
|------|--------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| R.26 | LC     | <ul style="list-style-type: none"> <li>KoFIU does not have timely access to other agencies' financial, administrative and law enforcement information and this is leading to delays in STR analysis and delays in dissemination of information to law enforcement agencies.</li> <li>The human resources for STR analysis is insufficient considering the significant and continuing increase in the amount of information being submitted to KoFIU.</li> </ul> |

## **2.6 Law Enforcement, Prosecution and Other Competent Authorities – the Framework for Investigation and Prosecution of Offences and for Confiscation and Freezing (R.27 & 28)**

### **2.6.1 Description and Analysis**

#### **Recommendation 27**

##### ***Authority to investigate money laundering / terrorist financing***

218. In Korea, investigations of ML and TF offences are conducted by the Ministry of Justice, Public Prosecutors' Office (PPO), National Police Agency (NPA), Korea Customs Service (KCS), National Tax Service (NTS), National Election Commission (NEC) and the Financial Services Commission (FSC).

##### ***Public Prosecutors' Office and the National Police Agency***

219. The PPO and the NPA have primary responsibility for criminal investigations in Korea, including investigation of ML and TF offences. Article 195 of the *Criminal Procedure Act* and Article 4 of the *Public Prosecutor's Office Act* provide for the public prosecutors' responsibility and authority to investigate crimes. Article 96 of the *Criminal Procedure Act* provides for police officers' responsibility and authority to investigate crimes under the instructions of public prosecutors.

220. Article 4(1) of the *Public Prosecutor's Office Act* notes that the duties of the Public Prosecutors include *inter alia* the investigation of crimes and the institution of public prosecutions. This power to investigate relates to all crimes and thus includes ML and TF. The same act indicates that the Public Prosecutors are responsible for direction and supervision of judicial police officials with respect to the investigation of crimes.

221. In 2006 the Central Investigation Division at the Supreme Prosecutors' Office established a team for investigation of ML and confiscation of criminal proceeds. The team comprises four persons dispatched from Supreme Prosecutors' Office, including prosecutors; two persons from NTS; two persons from FSS; and, two persons from the Korea Deposit Insurance Corporation. This team provides on-site support of investigations, primarily those conducted by District Prosecutors' Offices, by supplementing investigations with team members focussing on confiscation of related criminal proceeds. Such support was provided for 14 investigations in 2006, 17 investigations in 2007 and 17 investigations in the first eight months of 2008. It has also developed manuals and awareness raising on redemption of criminal proceeds. From May 2006 when the team began operation to June 2008 there were 1 346 cases where the POCA confiscation provisions were applied, relating to a total of KRW 358.8 billion (USD 309 million).

222. Article 196 of the *Criminal Procedure Act* provides for the NPA's responsibility and authority to investigate crimes under the instructions of public prosecutors. As this authority relates to all crimes, it includes ML and TF. The NPA has a Division responsible for investigation of narcotics and white collar crimes which leads the more complex ML investigations. Previously, the NPA had a dedicated AML Unit which was the primary point for receipt and analysis of STRs and investigation of the more complex ML cases, but this unit was disbanded in 2007. Generally, complex ML cases are handled by the PPO or are investigated by the NPA under the direction of the

##### ***Korea Customs Service***

223. The KCS has the right to inspect parties to and persons concerned in export and import transactions, service transactions or capital transactions related to export and import transactions. (Article 33 of the *Presidential Enforcement Decree of the Foreign Exchange Transactions Act*), and has

the authority to investigate ML when the predicate offences include smuggling, customs evasion, overseas capital flight, violation of the *Trademark Act* or manipulation of export and import prices for the purpose of capital flight (Articles 5 and 6 of the *Act on Duties of Judicial Public Officers*). The Director of the KCS Financial Investigation Division has primary responsibility for the KCS ML investigations (Article 6 of the *Rules on Korea Customs Service* and its organisations).

224. Since 2003, KCS has actively focussed on ML, capital flight and illegal alternative remittances. From July 2003 to June 2008, the KCS conducted 39 ML investigations. Of these, 14 were trade-based ML cases involving price manipulation of exported/imported goods, disguised products and trade in fake items.

**KCS money laundering investigations**

|                           | NO. OF CASES | VALUE INVOLVED (USD MILLION) |
|---------------------------|--------------|------------------------------|
| <b>July 2003-Dec 2004</b> | 6            | 11.6                         |
| <b>2005</b>               | 15           | 64.1                         |
| <b>2006</b>               | 8            | 7.3                          |
| <b>2007</b>               | 6            | 9.2                          |
| <b>Jan-June 2008</b>      | 4            | 7.2                          |
| <b>TOTAL</b>              | 39           | 99.4                         |

#### *National Tax Service*

225. The NTS has the authority to investigate tax evasion, including tax fraud, which is a predicate offence in Korea (Article 2 of the *Procedure for the Punishment of Tax Evaders Act*). Its International Investigation Division collects and analyses data on ML and TF provided by KoFIU, orders relevant divisions to investigate STRs, and disseminates its analysis to KoFIU.

#### *National Election Commission*

226. Article 52 of the *Political Fund Act* empowers the NEC to investigate violations of that act (many of which constitute predicates for ML). In 2004 the NEC established a Political Funds Division responsible for investigation of offences regarding political funds (Article 15 of the *National Election Commission* and Article 10(5) of the *Rules on Offices of National Election Commission*). Its functions include:

- Prevention of violations of acts related with election expenses and political funds.
- Investigation and identification of receipt and expenditures of political funds and of election funds and corresponding measures.
- Collection, analysis and publication of data on offences regarding political funds.
- Research and improvement of investigation techniques regarding election or political funds.
- On-site investigation and identification of major law violations.

227. When a national election is held, the NEC requests data from KoFIU on people of interest, including candidates, their family and fundraisers. After preliminary work by the NEC, cases are provided to the PPO for investigation. To date there has been one prosecution arising from an NEC investigation which commenced as a result of a KoFIU dissemination. There have been no ML prosecutions resulting from NEC investigations.

### *Financial Services Commission and Financial Supervisory Service*

228. Article 426 of the *Act on Capital Market and Financing Investment Business* empowers the FSC to direct the FSS to investigate violations of that act (many of which constitute predicates for ML). In addition, the Securities and Futures Commission, within the Financial Services Commission, exercises a comprehensive authority to investigate unfair transactions, including market manipulation and exploitation of undisclosed information (Article 81(2) of the *Futures Trading Act* and Article 206-3(1) and 206-3(7) of the *Securities and Exchange Act*).

### ***Ability to postpone or waive arrest***

229. When a prosecutor, a police officer or a judicial police officer in charge of national tax and customs investigates ML or TF offences, they can exercise an authority to arrest (Article 201-2, 201-3) or detain a suspect (Article 201) under the *Criminal Procedure Act*. That act provides the Public Prosecutor with the discretion to commence investigations and conduct prosecutions. In none of the numerous provisions dealing with the power of arrest is there a requirement that arrests must be made when sufficient evidence has been obtained of a crime. Officials from the PPO informed the evaluation team that they, and the NPA, depending on the particular case, do in fact postpone the arrest of a suspect or postpone a seizure of money or property in order to identify additional persons involved or in order to gather further evidence. This occurs most commonly in drug investigations when the prosecutors are trying to gather evidence on additional persons involved in the criminal activity. The PPO does not have procedures dedicated to situations where the arrest of a suspect is postponed or waived in order to progress an investigation.

### ***Additional elements***

#### *Special investigative techniques*

230. Controlled deliveries may be conducted with respect to investigation of narcotics offences (Articles 3 and 4 of the *Act on Special Cases Concerning the Prevention of Illegal Trafficking in Narcotics*). Investigations of ML, TF and predicate offences sometimes use entrapment (in accordance with Article 199 of the *Criminal Procedure Act* and relevant judicial precedents) and, under court order, telecommunications interception (in accordance with the *Protection of Communication Secrets Act*).

#### *Specialised investigation groups*

231. As noted previously, a specialised team for the investigation of ML and confiscation of proceeds of crime was established in 2006 in the Supreme Prosecutor's Office. In addition to PPO staff, this team has secondees from the NTS, FSS and the Korea Deposit Insurance Corporation. In addition, the law enforcement consultation committee, comprising representatives of all enforcement agencies, meets quarterly to strengthen co-operation and enhance efficiency of AML/CTF efforts. The focus of these meetings is improvement of the effectiveness of KoFIU's work through discussions of issues including requests for co-operation; feedback on information disseminated by KoFIU; and areas where legal/institutional improvements are required.

## **Recommendation 28**

### ***Production, search and seizure of financial and other records***

#### *Public Prosecutors' Office and National Police Agency*

232. A public prosecutor or police officer may obtain a warrant to seize any articles which, it believes, may be used as evidence, or liable to confiscation, and search the person, effects or dwelling or any other place of the defendant. The person, effects, dwelling or any other place of a person other than the defendant may be searched only when there are circumstances which warrant the belief that there are articles liable to seize therein (Articles 219, 106, 109 and 215 of the *Criminal Procedure Act*). When executing an arrest officers may seize documents without warrant if the arrest occurs at the time of commission of the crime.

#### *Korea Customs Service*

233. KCS investigators, as specialised judicial police officers, can seize, search, arrest or detain suspects with a search warrant issued by a judicial court under Articles 106 to 245 of the *Criminal Procedure Act*, and can summon a suspect and a witness and listen to their statements. When a customs officer investigates a smuggling offence, one of predicates of ML, he may summon and examine a suspect, effect search and confiscation (under a warrant), search a ship, vehicle, aircraft, warehouse and the person and arrest a flagrant offender under Articles 283 to 310 of the *Customs Act*, and he also can request the submission of books or documents under Article 266 of the same act.

#### *National Tax Service*

234. Under Article 3 of the *Procedure for the Punishment of Tax Evaders Act*, a tax official can effect confiscation or search for the purpose of the investigation into tax offences with a search warrant issued by judicial court. Where the offence is in progress, or where there is a probability that the suspect of offense may flee or destroy the proof relating to his crime, the issuance and delivery of the warrant may be requested post factum.

#### *National Election Commission*

235. Where violation of the *Political Fund Act* is suspected or a report of such an offence is received, the members and employees of the NEC may: enter the place of any political party and any supporters' association; question and investigate any person in connection with the investigation of any offence involving political funds; ask for the submission of related documents and materials; collect evidential materials; ask a suspect to appear at election commission and may ask him to go along; and, ask for the submission of data on financial transactions (Article 52 of the *Political Fund Act* and Article 45 of the *Rules on Management of Political Fund*).

#### *Financial Services Commission*

236. The FSC, which was established in 2008, has the right to investigate unfair trade practices related with securities and futures under *Securities and Exchange Act* as well as the *Futures Trading Act*. The FSC may gain a warrant and under that warrant order a person concerned to submit a statement, appear for testimony and submit books, documents, or other things necessary for an investigation, and may request a securities-related institution to submit documents necessary for the investigation (Article 206-3 of the *Securities and Exchange Act*). The FSC also has the power to order persons concerned to make a report,

submit data or allow an inspection of books, documents or other articles (Article 81(2) of the *Futures Trading Act*).

### ***The power to take witnesses' statements***

237. A public prosecutor or a police officer may, if necessary for an investigation, request any person other than a suspect to make an appearance in order to hear a statement of facts from the person. In cases where persons who are deemed likely to know facts refuse to appear or make statements, public prosecutors may seek permission from a judge to interrogate them as witnesses (Article 221 and Article 221-2 of the *Criminal Procedure Act*).

238. Under Article 170 of the *Income Tax Act*, Article 122 of the *Corporate Tax Act* and Article 35 of the *Value-Added Tax Act*, if necessary for carrying out his duties, a tax officer may put forward any question to a taxpayer or a person concerned stipulated in a tax act or investigate any books, documents, and other things, or order him to present them.

239. Customs officers have the authority of judicial police officers (Article 221 of the *Criminal Procedure Act*), and, when necessary to investigate any customs offence, suspects and witnesses may be interrogated or summonsed or asked to appear (Article 291 and 294 of the *Customs Act*).

### **Resources (law enforcement and prosecution authorities only)<sup>26</sup>**

#### *Public Prosecutors' Office and the National Police Agency*

240. In addition to the Supreme Prosecutors' Office (SPO), which serves as headquarters of the organisation, the PPO has 5 High Prosecutors' Office, 18 District Prosecutors' Office and 38 branch offices. There are approximately 7 500 staff members nationwide, and among them are approximately 1 650 prosecutors and 5 000 investigators. In 2007, total budget for the PPO was KRW 554 billion (USD 478 million). In 2008, this increased by 14% to KRW 630 billion (USD 543 million), and there was also additional special allocation of KRW 1.2 billion (USD 1.04 million) to establish its high tech investigative and evidence handling capability with facilities for copying and analysing contents of data from confiscated PCs, and a clean room.

241. The NPA has a headquarters in Seoul, 16 Provincial Offices, 238 Police Stations and 826 Police Offices. There is a total of approximately 96 000 staff within the organisation, comprising 18 300 officers (approximately 20%) who are dedicated to criminal investigations. Among them, approximately 5 000 investigators are allocated to white-collar crime matters. There is no longer a dedicated unit responsible for ML investigations, with these being allocated to the NPA office most relevant considering the location of the suspected criminal activity. In 2007, the total budget for the NPA was KRW 6.6 trillion.

242. Under Article 4 of the *Public Prosecutors' Office Act*, prosecutors exercise a right independent of political power in the investigation of crimes and the institution of public prosecution and matters necessary for the maintenance thereof. The public prosecutors and police, under the direction of public prosecutors, are also required to observe political neutrality in performing their duties as servants of the people (Article 4 of the *Public Prosecutors' Office Act*).

243. The integrity requirements for public prosecutors and police are outlined in the *State Public Officials Act*, the *Public Service Ethics Act*, the *Anti-Corruption Act* and Article 63 of the *Political Fund Act* (Duty of confidentiality). The NPA also has a Police Service Charter and the observance of this by

---

<sup>26</sup> As related to R.30; see s.7.1 for the compliance rating for this Recommendation.

staff is reviewed on an annual basis. The PPO similarly conducts annual checks of the observance by its staff of its *Code of Conduct*. All public officials in Korea are employed after passing a competitive examination and vetting of their integrity and history. Financial vetting is conducted for high level officials.

244. The Ministry of Justice provides staff training programs on ML and TF for police officers, public prosecutors and other investigative bodies. It provides education and training with respect to investigative techniques related with the procedures for confiscation of criminal proceeds, asset tracing, financial transactions and other matters relevant to ML/TF investigations. The PPO conducted one training session in 2006, for 59 persons (including prosecutors), which had ML as one of its topics. Two such sessions were conducted in 2007, for 86 persons, and two more in 2008, for 63 persons. The NPA's Korea Police Investigation Academy trains approximately 1 210 persons annually through seven different investigation training programs, all of which have some component focussed on ML and asset tracing.

#### *Korea Customs Service*

245. The KCS has headquarters in Seoul, six customs houses, including Incheon International Airport, and 41 customs offices. Article 43 of the *National Finance Act* and the rules on the KCS and its organisations provide for a quarterly budget allocation to be obtained by the KCS from the Minister of Strategy and Finance. In 2007, the total budget for the KCS was approximately KRW 357 billion, which was increased by 6% to KRW 378.9 billion in 2008. As at 30 June 2008, KCS had 4 427 personnel, of which 573 were Customs investigators.

246. In addition to the FTRA provisions on confidentiality of information, provisions relating to the integrity and ethics of KCS officials are found in the *State Public Officials Act* (particularly Articles 56, 61 and 64), the *Public Service Ethics Act*, the *Anti-Corruption Act* and Article 63 of the *Political Fund Act* (Duty of confidentiality). The KCS has also established a detailed *Code of Conduct for Customs Officers*. Any suspected breaches of the *Code of Conduct for Customs Officers* are reported to the Anti-Corruption and Civil Rights Commission. In addition, KCS officers undergo regular background checks and must provide an annual internal report on changes in their financial status. The KCS Audit Division conducts regular surveys and inspections, as well as an awareness raising campaign, in order to identify and stop and corruption.

247. The Customs Border Control Training Centre conducts education programs for staff involved in financial investigations explaining laws related with ML and investigation techniques. The KCS Financial Investigation Division annually publishes a casebook on ML to help improve ML investigation techniques. In addition, the Financial Investigation Division published the *Guide on TBML Crackdown* in July 2007 in order to raise awareness of trade-based ML, and this guide is now used as education material in the KCS and KoFIU. From 2006 to 2008 a total of eight training courses were provided which had an ML component to a total of 135 customs officers. Persons manning the x-ray scanning equipment at ports must also complete four hours of mandatory training each week to ensure they are aware of secretion methods, including methods for hiding money and monetary instruments.

#### *National Tax Service*

248. Under Article 27(5) of the *Government Organization Act*, supported by the *State Public Officials Act* and an official order for the NTS and its organisations, the NTS is responsible for imposition, exemption and collection of domestic taxation.

249. The NTS has a headquarters in Seoul, 6 Regional Tax Offices, 107 District Tax Offices, a National Tax Offices Training Institute and a Technical Service Institute. There are approximately 20 000

personnel within the organisation, and approximately 4 000 are involved in investigations. The budget for 2007 was KRW 1.37 trillion (USD 1.2 billion).

250. Provisions relating to the integrity of NTS officials can be found in the State Public Officials Act, the Public Service Ethics Act, the Anti-Corruption Act, the Code of Ethics for Public Officials of National Tax Service and Article 63 of the Political Fund Act (Duty of confidentiality). The code of ethics provides a code of conduct which must be adhered to by all staff. It deals with matters including operation of a fair workplace, promotions and personnel matters, conflicts of interest, use of information for personal gain and disclosure of information. Training is provided to staff on the code of conduct. A range of sanctions are available for breaches of the code of conduct.

251. The National Tax Officials Training Institutes conducts a 'program for investigation of tax offenders' and a 'program for international investigation' for all tax officers. The program for investigation of tax offenders includes components on ML and TF, the functions and role of KoFIU, relevant laws and investigative cases. The program for international investigation provides 'action learning' on matters including how to make effective use of information collected from KoFIU. Over the past three years, a total of 217 NTS staff have received this training.

#### *National Election Commission*

252. The NEC was established as an independent constitutional agency. It is made up of members nominated by the legislative, administrative and judicial bodies, and is guaranteed neutrality and independence to ensure that it is not unduly influenced by the legislature, judiciary or government authorities (Articles 114 and 115 of the *Constitution of the Republic of Korea* and Article 15 of the *Election Commission Act*).

253. The NEC has a 4-tier structure; the commission itself, 16 metropolitan/provincial offices, 249 city/county offices and 3 571 town/village offices. The NEC has 2 500 regular staff, amongst whom approximately 300 staff are involved in investigations. The annual budget is, on average, KRW 215 billion (USD 185 million).

254. Provisions relating to the integrity for NEC officials can be found in the State Public Officials Act, Public Service Ethics Act, Anti-Corruption Act, Code of Conduct for Public Officials of the National Election Commission and Article 63 of the Political Fund Act (Duty of confidentiality). Annual reviews are conducted of NEC staff observance of the Code of Conduct. In addition, senior officials must disclose their assets, and these declarations are reviewed as part of the NEC's anti-corruption measures.

255. The NEC regularly provides education programs for employees investigating political funds. The Korean Civic Education Institute and the Legal Research and Training Institute are in charge of educating NEC employees to improve their investigative techniques and financial analysis techniques. In addition, it holds at least one of these training sessions each year for employees involved in investigations who are based in a metropolitan or provincial office to enhance their investigative ability, including their financial investigation skills. These courses are mandatory. Over the past three years, a total of 496 staff have been trained at courses which included a component on financial investigations.

#### *Financial Services Commission*

256. The Securities and Futures Commission, within the FSC, performs an independent role of investigating unfair transactions in the securities and futures market. The FSC was established in 2008 with a 2008 budget of KRW 150 billion (USD 129 million).

257. The *State Public Officials Act* and the *Code of Conduct for Employees of the Financial Supervisory Service* set out the requirements for the FSC and its staff in terms of independence, political neutrality, integrity, ethics and professional standards. Under FTRA Articles 9 and 13, officials are prohibited from divulging information that they obtain in the course of their duties or using such information for any purpose other than that for which the information was provided and it is an offence to do so or to ask anyone to do so. In addition, various provisions concerning the integrity and ethics of FSC staff are contained in the *Public Service Ethics Act*, the *Anti-Corruption Act*, Article 35 of the *Act on the Establishment of Financial Services Commission* and Article 63 of the *Political Fund Act*.

258. All public officials in Korea are employed after passing a competitive examination and vetting of their integrity and history. Financial vetting is conducted for high level officials.

259. FSC staff have not yet received training on ML/TF.

### Statistics<sup>27</sup> and effectiveness

260. From 2002 to June 2008, KoFIU disseminated 9 880 cases to law enforcement agencies (LEAs). Among them, 4 261 are ongoing and the rest – 5 619 cases – have been closed. Of the closed cases, 2 164 were either prosecuted by the PPO or resulted in other action being taken by LEAs, such as levying of charges or issuance of warnings. Thus, 22% of the cases disseminated from KoFIU have resulted in a prosecution or some other form of action being taken by the PPO or another LEA.

261. 80% of cases disseminated to the NTS are found to have involved illegal activity, while 17% of the cases disseminated to the NPA and 9% of the cases disseminated to the NEC are found to have involved illegality. Korean authorities believe that NTS's high rate of determination as to illegality because detection of illegality in tax evasion cases is relatively easy to establish while investigations into ML and other financial crimes can be highly complex.

**Action taken by LEAs after disseminations from KoFIU, 2002-June 2008**

|              | No. of<br>Disseminated<br>Cases | Completed Cases |               |                       |                            | Ongoing Cases |
|--------------|---------------------------------|-----------------|---------------|-----------------------|----------------------------|---------------|
|              |                                 | Total           | Action Taken* | No Suspicion<br>Found | Investigation<br>Suspended |               |
| PPO          | 2 658                           | 1 935           | 837           | 924                   | 174                        | 723           |
| KCS          | 2 639                           | 1 653           | 597           | 1 056                 | -                          | 986           |
| NTS          | 2 337                           | 617             | 492           | 125                   | -                          | 1 720         |
| NPA          | 2 069                           | 1 332           | 210           | 960                   | 162                        | 737           |
| FSC          | 166                             | 71              | 27            | 44                    | -                          | 95            |
| NEC          | 11                              | 11              | 1             | 10                    | -                          | 0             |
| <b>TOTAL</b> | <b>9 880</b>                    | <b>5 619</b>    | <b>2 164</b>  | <b>3 119</b>          | <b>336</b>                 | <b>4 261</b>  |

262. In 2007, there were 120 ML investigations, resulting in 55 convictions. There were also 29 confiscations related to ML investigations. The number of ML investigations is very small compared to the number of predicate offences committed. In 2006 there were 465 749 predicate crimes committed, 98% of which relate to fraud, embezzlement, smuggling, forgery and market manipulation, all crimes which can be expected to generate proceeds of crime and thus likely to result in some form of ML. This raises concerns as to a lack of focus on ML investigations. Indeed, information received from officials indicates

<sup>27</sup> As related to R.32; see s.7.2 for the compliance rating for this Recommendation.

that it is easier for the PPO and the NPA to prosecute predicate offences rather than ML and this is commonly where the investigative focus lies.

#### ML investigations, convictions, confiscations and collection

|               | ML<br>INVESTIGATION | INDICTMENT | CONVICTION | NO. OF<br>CONFISCATIONS | AMOUNT<br>CONFISCATED<br>(KRW MILLION) |
|---------------|---------------------|------------|------------|-------------------------|----------------------------------------|
| 2004          | 62                  | 51         | 50         | 11                      | 36 762                                 |
| 2005          | 81                  | 71         | 40         | 63                      | 22 130                                 |
| 2006          | 75                  | 47         | 42         | 26                      | 10 593                                 |
| 2007          | 120                 | 71         | 55         | 29                      | 163 507                                |
| Jan-June 2008 | 42                  | 32         | 21         | 17                      | 2 200                                  |

263. As the TF offence was introduced on 22 December 2008, as at 14 January 2009 (the end date for consideration of material in this report), there had not been any TF investigations conducted in Korea.

#### 2.6.2 Recommendations and Comments

264. While Korean LEAs are designated with ML and TF investigative authority and are well resourced and trained, there is a lack of focus on ML investigations. Indeed, the NPA has disbanded its dedicated area responsible for ML investigations. In addition, while the on-site visit for this evaluation occurred just one month before implementation of the TF offence, little preparation or awareness was demonstrated by enforcement agencies, raising concerns about implementation of TF investigations, at least in the near future. The evaluation team recommends that the PPO convene inter-agency meetings of enforcement authorities to establish a concerted program for increasing the number of ML and TF investigations in Korea.

265. Other than for the NTS and NEC, powers to compel production of documents and for search and seizure depend on obtaining a warrant. According to some officials, the process of obtaining a warrant from a court can take time and is sometimes very difficult, especially in investigation of ML offences. The assessment team is concerned about the effectiveness of a system where a warrant is always required in order to compel production of, search for or seize documents and suggests that the Ministry of Justice review this situation to ensure that the warrant requirement and/or process for obtaining warrants is not unduly hindering enforcement agencies' ability to obtain financial information and other documents for use in investigation and prosecution of ML, TF and predicate offences.

#### 2.6.3 Compliance with Recommendations 27 & 28

|      | RATING | SUMMARY OF FACTORS UNDERLYING OVERALL RATING                                                                                                                                                                                                                                                                                                       |
|------|--------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| R.27 | LC     | <ul style="list-style-type: none"> <li>Effectiveness concerns: The number of investigations of money laundering is low when compared with the incidence of predicate crimes, and, as the terrorist financing offence was implemented in December 2008 it is too early to judge the effectiveness of terrorist financing investigations.</li> </ul> |
| R.28 | LC     | <ul style="list-style-type: none"> <li>Effectiveness concern: The requirement that a warrant be obtained in order to compel production, search and seizure and the difficulties experienced in obtaining such warrants may result in a relatively limited use of these powers in cases of money laundering and terrorist financing.</li> </ul>     |

## 2.7 Cross-border Declaration or Disclosure (SR.IX)

### 2.7.1 Description and Analysis

266. Korea has 9 international airports, 11 seaports and shares a land border with North Korea, along which there are 2 border checkpoints. In 2007, 33 844 000 international passengers passed through Korean airports. Incheon International Airport is the largest of the 9 international airports, with 29 345 140 passengers – approximately 80% of all international passengers – using it in 2007.

267. Under Article 9 of the *Inter-Korea Exchange and Cooperation Act*, persons crossing the border between South and North Korea must do so with a certificate from the Ministry of Unification. No cases of cash smuggling or detection of counterfeit bills have been detected at that border.

#### *Cross-border declaration of currency and bearer negotiable instruments*

268. Korea has a declaration system for cross border movement of currency and bearer negotiable instruments (BNI). Any resident or non-resident who intends to export or import means of payment exceeding USD 10 000 or the equivalent is required to report this to KCS (FETA Article 17, Article 29(2) of the *Presidential Enforcement Decree of the FTRA* and Articles 6-2 and 6-3 of the *Foreign Exchange Transactions Regulations*). ‘Means of payment’ refers to government bills, bank notes, coins, cheques, postal money orders, letters of credit, bills of exchange, promissory notes, travellers’ cards, and any other payment orders by mail or telex with details on payment (Article 1-2(34) of the *Foreign Exchange Transactions Regulations*).

269. The KCS operates declaration desks at points of entry/exit for persons carrying means of payment exceeding USD 10 000. After receiving a report from a traveller, the customs officers issue him/her with a certificate of foreign declaration of foreign currency. In order to detect undeclared means of payment, customs officers, airport corporation staff and police officers search travellers randomly and on suspicion. In addition, all hold and personal baggage which enters or leaves Korean airports passes through X-ray scanners.

#### *Detection methods*

270. The assessment team had an opportunity to visit Incheon Airport Customs and examine the detection systems in place there<sup>28</sup>. The screening procedures in place at all of Korea’s international airports are described below.

271. Upon departure:

- A declaration desk is located at the security screening point where all persons carrying means of payment worth more than USD 10 000 are expected to submit a report to that effect.
- At the security screening point, a security companies, entrusted by the airport corporation, conducts screening of travellers and their carry-on baggage<sup>29</sup>. X-ray machines are used to screen

<sup>28</sup> The FATF Best Practices Paper for SR.IX notes that a preferred method of cash smuggling is the use of commercial airlines. Therefore, the assessment team focused additional attention on the system in place at the airports.

<sup>29</sup> There are approximately 830 employees in the four security companies contracted to provide services to the airport corporation. An MOU was concluded between Incheon Airport Customs and Incheon International Airport Corporation on in May 2001. It says, *inter alia*, that a security company commissioned by the airport corporation conducts security screening of all goods upon departure, and when undeclared items are detected or a person denies screening, KCS shall be notified and the persons and items shall be handed over to KCS.

carry-on baggage and metal detectors to screen passengers. Sometimes travellers receive a pat-down search. If any suspicious activity or items are detected, customs officers are informed.

- All hold baggage is examined using x-ray scanners. If a bag appears suspect, Customs officers further screen the baggage and may open it.
- Customs officers have the power to question travellers on suspicion or randomly.

272. Upon arrival:

- Every traveller must submit a customs declaration form. The declaration form asks whether a passenger carries “More than USD 10 000, or equivalent in Korean or foreign currency, securities, etc.” and indicates that if the answer is yes then the traveller must visit the declaration station inside the baggage claim area.
- At the exit, passengers submit the customs declarations to customs officers.
- If a suspicion is formed, Customs officers may conduct x-ray screening of carry-on luggage at the exit of the baggage claim area. This screening also occurs on a random basis
- All hold baggage is examined using x-ray scanners. If there is any suspicion, Customs officers further screen the baggage and may open it.
- KCS uses the Advanced Passenger Information System (APIS) for passenger targeting. Relevant information is provided to officers in the terminal, including ‘rover agents’.
- Cameras throughout the terminal allow Customs officers to track suspicious persons.
- Customs officers have the power to question travellers on suspicion or randomly.

273. The KCS also uses x-ray scanners (including container scanners and mobile scanners) to screen air and sea cargo, including postal and express mail. Cargo screening is conducted on inbound and outbound cargo on a risk basis and sometimes on a random basis.

**Detections of illegal exports and imports by x-ray scanner**

|                      | 2005       |                      | 2006       |                      | 2007         |                      | JAN-JUNE 2008 |                      | TOTAL        |                      |
|----------------------|------------|----------------------|------------|----------------------|--------------|----------------------|---------------|----------------------|--------------|----------------------|
|                      | # OF CASES | AMOUNT (USD MILLION) | # OF CASES | AMOUNT (USD MILLION) | # OF CASES   | AMOUNT (USD MILLION) | # OF CASES    | AMOUNT (USD MILLION) | # OF CASES   | AMOUNT (USD MILLION) |
| <b>Smuggling out</b> | 555        | 27                   | 656        | 37                   | 1 139        | 38                   | 552           | 19                   | 2 902        | 121                  |
| <b>Smuggling in</b>  | 25         | 2                    | 39         | 4                    | 71           | 8                    | 108           | 6                    | 243          | 20                   |
| <b>TOTAL</b>         | <b>580</b> | <b>29</b>            | <b>695</b> | <b>40</b>            | <b>1 210</b> | <b>47</b>            | <b>660</b>    | <b>25</b>            | <b>3 145</b> | <b>141</b>           |

### ***False declarations***

274. Customs officers have the power to investigate the illegal export and import of means of payment, precious metals or securities pursuant to Article 6 of the *Act on the Persons Performing the Duties of Judicial Police Officials and the Scope of Their Duties*. This includes situations where travellers have not submitted declarations and where they have submitted false declarations. There is a sanction for making a false declaration under FETA Article 28(1).

275. When customs officers detect attempts of illegal export or import of means of payment, they question the traveller to determine the source or use of the funds and their intended use (Article 242 of the *Criminal Procedure Act* and Article 6 of the *Act on the Persons Performing the Duties of Judicial Police Officials and the Scope of Their Duties*). When it is suspected that the funds are related to ML, KCS investigates by tracing the source of funds.

### **Stop or restrain powers**

276. Under the *Act on the Persons Performing the Duties of Judicial Police Officials and the Scope of Their Duties*, Customs officials have the power to question, stop, or restrain cash and BNI if there is any suspicion of ML, TF or other offences. In addition, Customs officers may question, stop or demand provision of any evidence when they suspect persons have not reported, or falsely reported, the export or import of any means of payment (Article 19 of FETA and Article 6-4 of the *Foreign Exchange Transactions Regulations*). When a suspicious act is detected, a Customs officer investigates, using his/her authority as a judicial police officer<sup>30</sup>, and sends the investigation results to prosecutors' office.

277. Article 19 of the FETA further provides that the Minister of Strategy and Finance may deliver warnings where persons fail to submit required reports (including customs declarations). In addition, the Minister of Strategy and Finance restrict or suspend the means of payment for up to one year when a person has performed any transaction or any act that requires permission or a report without obtaining permission or submitting a report thereon or by submission of a false report. In this provision, "restricting" is interpreted as meaning to stop or restrain the means of payment.

278. In addition, Article 6-4 of the *Regulation on Foreign Exchange Transactions Regulations* provides "If any person on his way out of or into the country intends to export or import a means of payment, the head of the customs service shall ascertain whether he made a report of the export and import of the means of payment, etc. by asking questions, demanding to provide documentary evidence, etc. In case it is discovered that the person intends to export or import without making a report, the head of the customs service may take necessary measures including requiring him to report, restricting the export or import, etc." According to Customs officials, this provision also covers situations where a person makes a false declaration, though that is not strictly stipulated in the article.

**Cases where means of payment has been stopped or restrained**

|                     | 2004 | 2005 | 2006 | 2007  | JAN-JUN 2008 | TOTAL |
|---------------------|------|------|------|-------|--------------|-------|
| <b>No. OF CASES</b> | 686  | 553  | 631  | 1 134 | 592          | 3 596 |

### **Record keeping**

279. The KCS obtains data on the imports and exports of means of payment exceeding USD 10 000, through the customs declaration forms, in accordance with Articles 6(2) and 6(3) of the *Regulation on Foreign Exchange Transactions*. These declaration forms seek information from travellers on their name, date of birth, passport number, nationality, occupation, sex, purpose of travel, flight number, period of stay, countries visited prior to entry to Korea address in Korea. Questions on the form seek information on issues including the amount of duty free items being carried and whether more than USD 10 000 in currency/BNI or equivalent in other currencies is being carried. This information is input to the Customs

<sup>30</sup> Customs officials who are engaged in investigation of *Customs Act* offences may perform the duty of judicial police officials or assistant judicial officials, depending on their rank. Judicial officers have the power to interview suspects and assistant judicial police officers can support such interviews (Article 6 of the *Act on the Persons Performing the Duties of Judicial Police Officials and the Scope of Their Duties*).

Data Warehouse<sup>31</sup> and is provided to the NTS and KoFIU in accordance with Article 6(2) of the *Regulation on Foreign Exchange Transactions*.

280. When a person does not declare export or import of means of payment, or makes a false declaration, the person is questioned under Articles of 241 and 242 of the *Criminal Procedure Act* and data on the amount of currency or monetary instruments and his/her identity is secured is obtained and input into the customs investigation information system.

281. Information on suspected criminal activity and criminals (including travellers who are suspected of ML or TF but who are not carrying means of payment above the threshold) is kept in Customs Investigation Information System.

### ***National and international information sharing and co-operation***

282. Article 6 of FTRA and Article 11 of the *Enforcement Decree of the FTRA* require that the Governor of the Bank of Korea, the Commissioner of Customs, and other persons holding foreign exchange information provide the KoFIU Commissioner with records related to the approvals given and declarations filed under Article 17 of the *FETA*. Article 6(3) provides that these records must be submitted to the Commissioner of KoFIU in electronic format by the 10<sup>th</sup> day of the month following their generation.

283. The Governor of the Bank of Korea is obliged to provide the Commissioner of Customs with information on the approvals for import/export of means of payment given or reports filed and may also provide other related information (Articles 17 and 21 of the *FETA*).

284. Information on immigration matters, managed by the Ministry of Justice's Immigration Office, foreign currency trade records managed by the Bank of Korea, tax records managed by the National Tax Service and passport data managed by the Ministry of Foreign Affairs are put into an Enforcement Information System, which is utilised by Customs and Immigration authorities in smuggling and illicit trade cases. In addition, Korea Customs uses APIS system for passenger targeting. High-risk passengers are selected for inspection based on data received prior to arrival and the inbound passenger information provided by immigration authorities.

285. In some airports, co-operative activities are undertaken between the Customs, Immigration and Quarantine (CIQ) organisations. These agencies carry out joint inspections of goods and work jointly on a range of security and counter-terrorism activities at airports and seaports. The Ministry of Justice's Immigration Control System and the Customs Information System are linked to ensure both agencies have comprehensive information on suspect activity and suspect persons.

286. The KCS has concluded Customs Mutual Assistance Agreements with Customs authorities in 25 countries and holds Customs Commissioners' Meetings with authorities from 36 countries, allowing a strong basis for exchange of information. KCS also has eight overseas customs attachés<sup>32</sup> to promote information sharing. When ML offences are committed by illegal movement of means of payment, the KCS can co-operate with foreign investigative organisations under the *Act on International Judicial Mutual Assistance in Criminal Matters*, *POCA* and the *Extradition Act*.

---

<sup>31</sup> The Customs Data Warehouse is a comprehensive database that aids information analysis and investigations by consolidating and organising over 1 000 different types of Customs data, along with information from external sources.

<sup>32</sup> Posted in China (Beijing, Hong Kong and Shanghai), Indonesia, Japan, Thailand, the United States and at the World Customs Organisation.

## Sanctions

287. Article 27(1)(9) of the FETA provides that any person who exports or imports a means of payment, precious metals or securities without obtaining permission, or after obtaining such permission by fraudulent or other illegal means, shall be punished by imprisonment for not more than three years or by a fine not exceeding KRW 200 million (USD 172 000)<sup>33</sup>. In addition, Article 28(1)(3) provides that export or import of a means of payment, precious metals or securities without making a report, or with a false report, is an offence punishable by imprisonment for not more than two years or by a fine not exceeding KRW 100 million (USD 86 134)<sup>34</sup>.

288. Where the liable person is a representative, agent, employee or otherwise employed by a legal person or another natural person, that entity is also punishable a fine not exceeding KRW 200 million or three times the amount involved (whichever is larger) (FETA Article 31). No fines have been imposed on legal entities to date.

289. Over a three and a half year period from 2005 to June 2008, 2 261 fines, averaging USD 6 280 per fine were imposed by the PPO<sup>35</sup> and no terms of imprisonment were imposed. These fines were levied with respect to illegal import/export of USD 79.1 million in currency/BNI. While the number of fines issued has been increasing, and the average amount of currency/BNI involved has not changed, the average amount per fine has decreased from USD 7 414 in 2005 to less than half that amount – USD 3 687 – in 2008. This raises some questions as to the sanctioning policy and ultimately the dissuasiveness of the penalties imposed.

**Fines imposed on illegal export or import of KRW, foreign currency and BNI**

| YEAR                            | 2005 | 2006 | 2007 | JAN-JUNE 2008 | TOTAL |
|---------------------------------|------|------|------|---------------|-------|
| Number of cases                 | 526  | 434  | 840  | 461           | 2 261 |
| Value involved (USD 1 million)  | 18.9 | 14.2 | 29.8 | 16.1          | 79.1  |
| Amount of fines (USD 1 million) | 3.9  | 3.0  | 5.6  | 1.7           | 14.2  |

290. Article 6 of the *Prohibition of Financing for Offences of Public Intimidation Act*, which came into operation in December 2008, stipulates that any natural person who 'delivers' funds for public intimidation offences is punishable by imprisonment not exceeding ten years or a fine not exceeding KRW 100 million (USD 86 206). Legal persons are punishable by a fine not exceeding KRW 100 million. Thus the export or import of means of payment related to TF is punishable. While this provision is very new and has not yet been tested, it appears that the range of fines and imprisonment available represents proportionate and dissuasive sanctions.

291. Since 2004 the KCS has uncovered 39 ML cases, of which three involved export/import of means of payment.

## ***Seizing, freezing and confiscation, including assets of designated entities***

292. Where a person is found to have imported/exported means of payment without permission or by fraudulent means, the currency/BNI involved will be confiscated, or the value thereof shall be collected in

<sup>33</sup> If however three times the value of the object related to the offence exceeds KRW 200 million, the fine may be greater than KRW 100 000 but not exceeding the value of the object.

<sup>34</sup> If however three times the value of the object related to the offence exceeds KRW 100 million, the fine may be greater than KRW 100 000 but not exceeding the value of the object.

<sup>35</sup> Fines are imposed by the District Prosecutor's Office after a simplified prosecution.

lieu of such confiscation (Article 30, read with Articles 17 and 28(1)(3), of the *FETA*). In addition, an act of exporting or importing means of payment constitutes disguising or concealing criminal proceeds under the scope of the ML offences. As such, currency/BNI which is proceeds of crime may be confiscated or collected under Article 8 or Article 12 of POCA.

293. Under the *Guidelines on Payment and Receipt for Implementation of the Duty to Keep International Peace and Safety*, when there are receipts and payments with a person designated by the United Nations as connected with terrorist funds, cross-border movements of means of payment are prohibited. The lists of terrorists designated by the UN, including persons related with the Taliban, are disseminated to financial institutions and the KCS to ensure that movement of currency/BNI related to designated persons is not permitted and the currency/BNI involved is effectively frozen by the refusal of permission to conduct transactions.

### ***Gold and precious metals and stones***

294. The requirement to submit a customs declaration under Article 17 of the *FETA* applies to precious metals in addition to currency and BNI. Any person who carries with him/her any gold or precious metals and stones and who intends to export/import them must complete a customs declaration or report this to the Bank of Korea (and the Bank of Korea must notify the KCS of any reports received on a monthly basis). Also, in terms of cargo, any person who intends to export or import goods (including gold or precious metals and stones) is required to submit an import/export declaration to the head of any Customs House, detailing the value and quantity of the goods, the purpose of export/import, the destination, the country of origin and the place of loading, and details of the parties to the transaction (Article 241(1) of the *Customs Act* and Article 246 of the *Presidential Enforcement Decree of Customs Act*). These declarations should be accompanied by supporting documents, such as a copy of the bill of lading or airway bill and the country of origin certificate (Article 245 of the *Customs Act* and Article 250(1) of the *Presidential Enforcement Decree of the Customs Act*). In addition,

295. The KCS investigates imports and exports of gold, precious metals and precious stones without declaration or permission in violation of *FETA*, and has a database of records on cross-border movement of gold, precious metals and precious stones. This information is provided to KoFIU, and KoFIU makes use of the data in its analysis.

### ***Information protection***

296. The Customs Data Warehouse is accessible only by those who have gained permission from the KCS information management department, and logs are kept of its use. In addition, in February 2008 a digital rights management system was introduced to limit downloading and printing of data from this system.

297. Persons involved in any activity prescribed in the *Foreign Exchange Transactions Act* must not use any information obtained in connection with such duties for purposes other than those as prescribed in that act and must not divulge such information to any other person (*FETA* Article 22). Such unauthorised disclosure is punishable by up to two years' imprisonment or a fine not exceeding KRW 100 million.

### ***Additional elements***

298. Korea has implemented the following measures outlined in the FATF Best Practices for SR.IX:

- The reporting threshold for cross-border movement of currency/BNI is USD 10 000 (relates to *Threshold in the declaration system*).

- X-ray scanners are used to inspect escrow cargo, postal items and possessions and cargo is examined by a container scanner and vehicle-type moving scanner (relates to *Technical capabilities*).
- The declaration system applies to BNI and precious metals as well as currency (relates to *Other forms of cash*).
- KCS implemented the APIS in 2001 (relates to *Targeting cash couriers*).
- Information from customs declarations is input to a database (relates to *Collection of data*).
- 80 machines to detect counterfeit currency are in place at airports and manuals and education programs are in place to assist detection of counterfeit currency (relates to *Inspections*).
- KCS has ties to relevant authorities and is involved in a commission for preventing counterfeit currency (established in 2004 by the KCS and involving five other agencies including the Bank of Korea and the National Intelligence Service) (relates to *International and domestic co-operation*).

299. The KCS receives data on cross-border movement of means of payment from the Bank of Korea and the Foreign Exchange Bank, and inputs it to the electronic Customs Data Warehouse along with its own information holdings. Information in the customs declarations is linked with data on foreign exchange transactions and data on customs clearances, and this is analysed in order to detect ML, TF or other criminal activity. Since November 2007, an automated data-mining process has run across this system to detect persons suspected of smuggling foreign currency out of Korea, with possible cases alerted to Customs officers for further action.

#### Statistics (Customs)<sup>36</sup> and effectiveness

**Customs declaration forms received**

|                      | INWARD         | OUTWARD       | TOTAL          |
|----------------------|----------------|---------------|----------------|
| <b>2003</b>          | 37 729         | 3 430         | <b>41 159</b>  |
| <b>2004</b>          | 36 743         | 2 658         | <b>39 401</b>  |
| <b>2005</b>          | 37 005         | 2 569         | <b>39 574</b>  |
| <b>2006</b>          | 38 794         | 2 595         | <b>41 389</b>  |
| <b>2007</b>          | 37 890         | 2 917         | <b>40 807</b>  |
| <b>JAN-JUNE 2008</b> | 20 716         | 1 241         | <b>21 957</b>  |
| <b>TOTAL</b>         | <b>208 877</b> | <b>15 410</b> | <b>224 287</b> |

**Cash/BNI smuggling detections at seaports and land border checkpoints**

|                            | 2003 | 2004 | 2005 | 2006 | 2007 | JAN-JUNE 2008 | TOTAL      |
|----------------------------|------|------|------|------|------|---------------|------------|
| <b>NO. OF CASES</b>        | 35   | 74   | 81   | 96   | 136  | 24            | <b>446</b> |
| <b>VALUE (KRW BILLION)</b> | 10   | 5    | 4    | 10   | 8    | 9             | <b>46</b>  |

<sup>36</sup> As related to R.32; see s.7.2 for the compliance rating for this Recommendation.

**False declarations received**

|                     | 2003 | 2004 | 2005 | 2006 | 2007 | JAN-JUNE 2008 | TOTAL     |
|---------------------|------|------|------|------|------|---------------|-----------|
| <b>NO. OF CASES</b> | 7    | 10   | 19   | 6    | 8    | 5             | <b>55</b> |

## 2.7.2 Recommendations and Comments

300. Korea has a declaration system in place for movement of currency or BNI over a threshold of USD 10 000. The KCS has adequate powers to stop or restrain currency and BNI where no declaration or a false declaration is made, or in case of suspicion of ML or TF. However:

- The evaluation team has concerns about whether detection of cross-border movement of currency/BNI at seaports and land border checkpoints are adequately conducted.
- The only sanctions imposed to date for export/import of means of payment without reporting or with false reporting have been fines and, over the three and a half years to June 2008, these average USD 6 280, which is not considered to be sufficiently dissuasive.
- The evaluation team has concerns about the freezing/seizure mechanism of terrorist funds and its effectiveness.

301. It is recommended that KCS review the measures in place at seaports and land borders for detection of cross-border movement of currency/BNI to ensure these are at least at the same level as those in place at the international airports. Further, it is recommended that KCS and the PPO take a stronger stance in terms of fines, with a view to ensuring that the level of fines imposed is dissuasive.

## 2.7.3 Compliance with Special Recommendation IX

|              | RATING    | SUMMARY OF FACTORS UNDERLYING RATING                                                                                                                                                                                                |
|--------------|-----------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>SR.IX</b> | <b>LC</b> | <ul style="list-style-type: none"> <li>• The sanctions imposed on persons who do not make declarations or who make false declarations are only in the nature of fines and these are too low to be considered dissuasive.</li> </ul> |

### 3. PREVENTIVE MEASURES: FINANCIAL INSTITUTIONS

302. In Korea, financial institutions are required to conduct customer due diligence (CDD) under the 1993 *Act on Real Name Financial Transactions and Guarantee of Secrecy (Real Name Financial Transactions Act)* and the 2006 *Financial Transaction Reports Act (FTRA)*. The *Real Name Financial Transactions Act* effectively prohibits anonymous accounts and accounts in obviously fictitious names and requires financial institutions to identify and verify the identity of their customers, while the FTRA requires financial institutions to conduct CDD in some, but not all, of the circumstances specified by the FATF Recommendations. However, Korea has exempted a range of financial institutions from essential CDD measures, and, since 22 December 2008, casinos<sup>37</sup> have become the only DNFBP with AML/CFT obligations.

#### Law, regulation and other enforceable means

303. In September 2008 KoFIU produced the *AML Enforcement Guidelines* (the Guidelines), which deals with many AML/CFT activities, including: establishment of internal AML systems by institutions; CDD and enhanced CDD; risk-based transaction monitoring; STR and CTR reporting; record keeping; and, secrecy, exemptions and sanctions. The guideline was distributed to the relevant professional associations, including the: Korea Federation of Banks; the Korea Securities Dealers Association; the Korea Life Insurance Association; the General Insurance Association of Korea; the Korea Casino Association; the National Federation of Fisheries Cooperatives; the National Forestry Cooperatives Federation; and, the National Agricultural Cooperative Federation. KoFIU requested that these associations circulate the guidelines to institutions in their respective sectors “so that they can implement AML measures without any difficulties” (KoFIU notification of publication of the *AML Enforcement Guidelines*, 5 September 2008).

304. Whether the *AML Enforcement Guidelines* can be deemed to be ‘other enforceable means’ is a crucial issue for the assessment of Korea’s preventative measures, and one to which the assessment team devoted careful consideration. Korean authorities consider the *AML Enforcement Guidelines* constitutes ‘other enforceable means’ and they rely exclusively on the guideline for compliance with Recommendations 6, 7, 8, 9, 11 and 21, as well as the ongoing and enhanced due diligence requirements under Recommendation 5 and key elements of Recommendations 10 and 18.

305. The *FATF Methodology* requires evaluators to consider each of the following factors when determining whether a document contains requirements that amount to other enforceable means:

- The document must set out enforceable obligations addressing requirements in the FATF Recommendations.
- The document must be issued by a competent authority.

---

<sup>37</sup> Trust companies are considered financial institutions for the purposes of the *Financial Transaction Reports Act* and trust and company service providers are not a recognised independent profession in Korea.

- There must be effective, proportionate and dissuasive sanctions for non-compliance with the requirements set out in the document.

306. For the reasons below, the assessment team has concluded that when examined against these factors, the *AML Enforcement Guidelines* does not constitute other enforceable means, but rather is of the nature of guidance and advice.

***Does the document clearly state binding requirements which are understood to be mandatory?***

*Purpose of the AML Enforcement Guidelines*

307. The stated purpose of the *AML Enforcement Guidelines*, in Section I, is to provide “basic principles and cases necessary for financial institutions to establish and operate the AML system reasonably and efficiently, pursuant to the *Financial Transaction Reports Act*”. It is expressly intended to provide “concrete interpretation of the AML system”. This does not describe a document that is intended to set out legally binding requirements. The document goes on to note that institutions will need to develop and implement their own internal guidelines “based on the Guidelines” and in doing so may have to “may make some changes in this Guidelines [sic]<sup>38</sup>, if it is reasonable for the implementation of this Guideline, considering type, size, scope, expense, and effect of their business.” Korean authorities have confirmed that the *AML Enforcement Guidelines* gives financial sector associations and institutions a degree of discretion in application of the AML/CFT measures it outlines.

308. When the Guidelines was distributed, KoFIU requested that the professional associations circulate it to the financial institutions in their respective sectors “so that they can implement AML measures without any difficulties” (KoFIU notification of publication of the *AML Enforcement Guidelines*, 5 September 2008) KoFIU and representatives of the associations explained to the assessment team that the associations were expected to adapt the content of the *AML Enforcement Guidelines* to the business characteristics and environments of their sectors.

*Requirement for institutions to implement the Guidelines*

309. Financial institutions are required to take the Guidelines into account in establishing and implementing the internal AML/CFT controls (Articles 5(2) and 5-2 of the FTRA). Specifically, Article 5(2) requires financial institutions to establish internal AML/CFT guidelines and Article 5-2 requires these internal guidelines to incorporate CDD measures as prescribed in accordance with the FTRA’s enforcement decree. Article 10-6 of that enforcement decree authorises the Commissioner of KoFIU to provide financial institutions “appropriate measures according to a type of a customer and financial transaction...in consideration of recommendations of international bodies related with anti-money laundering.” The *AML Enforcement Guidelines* are such measures issued by the Commissioner of KoFIU.

*Perspective of the financial sector*

310. Private sector representatives uniformly expressed the opinion that the *AML Enforcement Guidelines* sets forth mandatory sanctionable requirements and all were keen to explain that they are taking steps to implement the *AML Enforcement Guidelines*. The assessors do not dispute that Korean authorities and financial institutions believe that financial institutions are to refer to the *AML Enforcement Guidelines* in establishing their internal AML/CFT control systems. However, the fact that the associations and

---

<sup>38</sup> This analysis is based on a translation of the *AML Enforcement Guidelines* from Korean to English. Throughout the translation the document is referred to as ‘this Guidelines’ but to aid readers such references have been changed to ‘this Guidelines’.

individual institutions were left with a substantial degree of discretion concerning the application of the *AML Enforcement Guidelines*, along with other factors discussed below, suggests that the Guidelines does not in fact create independent legal obligations.

#### *Language of the document*

311. Much of the document contains descriptive explanations that are clearly not intended to establish legally binding requirements. Similarly, large passages of text – for example on correspondent banking relationships, PEPs, wealth management, and ongoing monitoring – are explanatory or couched in relatively weak terms such as ‘should pay special attention to’, ‘may verify’, ‘should establish’, and do not seem intended to create a mandatory obligation for the obliged entities.

312. There are areas in the guideline which describe what financial institutions are required to do. However, after careful examination, it is clear that these portions of the guideline outline mandatory elements of Korea’s AML/CFT system that are already established in legal texts. Such restatement of existing requirements constitutes advice, and does not set out independent legal obligations. For example, in paragraph 3.1 of Section II, the guideline states that “Financial institutions are obliged to report to KoFIU when transactions suspicious of money laundering or financing for offences of public intimidation are worth more than KRW 20 million or USD 10 000 in case of foreign currency transaction”. This is a summary of the obligations imposed on reporting entities by Article 4 of the FTRA and Article 6 of the *Enforcement Decree of the FTRA*.

313. Similarly, Section IV of the *AML Enforcement Guidelines* provides a systematic and detailed discussion of Korea’s new CDD requirements for financial institutions, explaining that, “[i]n order to perform CDD efficiently, financial institutions are required to establish and operate internal guidelines that include”: which transactions require CDD; timing of CDD; risk-based procedures for customer identification and verification; procedures for when customer identification and verification cannot be completed satisfactorily; and, the obligation to notify customers<sup>39</sup>. Again, these statements set forth no additional legal obligations: the legal provisions requiring financial institutions to establish and operate internal guidelines, and the specifications of what the internal guidelines must include are Articles 5 and 5-2 of FTRA and Article 24 of the *Financial Transactions Report and Supervision Regulations*.

314. Admittedly, some statements in the *AML Enforcement Guidelines* do appear to be intended to set forth new, independent legal requirements. For example, Section IV.2 (Risk-Management System) goes beyond provisions in the FTRA and the *Financial Transactions Report and Supervision Regulations* and appears to impose an additional, specific obligation. Section IV.2.2.1 states:

“1) In order to recognize money laundering risk, financial institutions **are required to consider** the risks as the followings.

1. Country risk.
2. Customer risk.
3. Product and service risk.

2) When evaluating risk, financial institutions **are required** to set factors and importance for risk evaluation in accordance with their business environment and characteristics.” (emphasis added).

---

<sup>39</sup> According to the *AML Enforcement Guidelines* (at p.41), financial institutions are obliged to notify their customers of the legal grounds for customer identification and verification, the information required, and measures to be taken if the customer refuses to provide identification information or if identification cannot be verified.

315. The document then explains these risks in greater detail, provides examples of information sources for evaluating them, and offers examples of low and high risk customers and high risk products (*AML Enforcement Guidelines*, pp.24-26). However, the statement ‘requiring’ financial institutions to consider certain risk categories is embedded in several pages of general discussion and is not clearly flagged as a legally binding requirement. The assessment team also found it significant that not only are so-called requirements embedded in general discussions, meaning financial institutions must be very attentive to pluck them out, but that ‘requirements’ on a single topic (*e.g.* PEPs) are often scattered across several parts of the *AML Enforcement Guidelines*, rather than being presented as a single, organised set of mandatory obligations.

***Is it issued by a competent authority or SRO?***

316. As the financial supervisory body in charge of AML/CFT<sup>40</sup> issues, KoFIU is a competent authority to issue the *AML Enforcement Guidelines*. Articles 3 and 11 of FTRA authorise KoFIU to supervise and administer the act. Article 10-6 of the *Enforcement Decree of the FTRA* authorises the Commissioner of KoFIU to “provide reporting entities with guidelines on customer due diligence measures appropriate for each category of customer or category of transaction”. KoFIU has authority to administer penalties for violations of the act and related regulations (Article 11(2)).

317. Korean authorities assert that the *AML Enforcement Guidelines* is an enforceable instrument because: Article 10-6(1) of the *Presidential Enforcement Decree of the FTRA*, which was promulgated on 11 November 2008, states that the Commissioner of KoFIU “may provide appropriate measures according to a type of a customer and financial transaction to financial institutions in consideration of recommendations of international bodies related with anti-money laundering”. While the *AML Enforcement Guidelines* is an instrument providing reporting entities with information in accordance with Article 10-6(1), this does not resolve the question of whether it constitutes other enforceable means.

318. In addition, Article 10-6(2) of the *Presidential Enforcement Decree of the FTRA* provides that “Financial institutions shall follow work instructions pursuant to Article 5-2(1) [of the FTRA] that contain details on measures for customer identification as prescribed in (1) [Article 10-6(1)]”. Korean authorities further assert that the *AML Enforcement Guidelines* constitutes “work instructions” under article 10-6(2). However, Article 5-2(1) of FTRA refers only to institutions’ internal guidelines, not to instructions emanating from government authorities.

***Are there effective, proportionate and dissuasive sanctions for non-compliance?***

319. The guidelines themselves establish no specific sanctions. They do provide a compilation of information on sanctions for violations of specified AML provisions stipulated in the FTRA, POCA and the *PFOPIA* (*AML Enforcement Guidelines* Section IX, pp.78-84). However these sanctions, as listed in the guidelines, relate to some but not all matters addressed by the guidelines. Since many of the relevant provisions interpreted by the guidelines only came into force on 22 December 2008 and as at that time no administrative actions have been taken against financial institutions for AML/CFT violations, other than those related to STR reporting, no examples exist of sanctions which illustrate exactly what provision in what document was considered to have been breached.

---

<sup>40</sup> KoFIU’s clear regulatory authority over AML issues is sufficient to establish it as a competent authority to issue the *AML Enforcement Guidelines* for purposes of our analysis of ‘other enforceable means’. KoFIU’s authority with respect to administration and supervision of the *Prohibition of Financing for Offences of Public Intimidation Act* is somewhat less clear. That act does not mention KoFIU, referring rather to the Financial Services Commission as the authority responsible for many of the actions it establishes.

320. It does not appear that institutions are subject to sanctions for non-compliance with the *AML Enforcement Guidelines*. Administrative penalties are not available for non-compliance with the Guidelines. Article 11(2) of FTRA authorises the Commissioner of KoFIU to issue a “correction order or demand of discipline of persons involved” in response to violations of Articles 4, 4-2, 5 and 5-2 of the act or orders/directives issued under the act with respect to these areas “detected as a result of an examination” authorised under Article 11(1). However, Article 17 authorises administrative fines up to KRW 10 million (USD 8 620) only for violations of reporting obligations under Article 4 or Article 4-2 or for refusing to comply with, rejecting, obstructing or evading an order, directive or examination referred to in Article 11. Nothing in law or regulation authorises an administrative fine or other administrative sanctions for failure to comply with the *AML Enforcement Guidelines* directly.

321. Korean officials acknowledge that if a financial institution fails to follow the *AML Enforcement Guidelines* in establishing and implementing its internal AML/CFT guidelines, the only administrative remedies available are a corrective order, directing the institution to follow specific areas of the Guidelines, or a demand that the financial institution discipline the person(s) involved in failing to comply with the Guidelines. Administrative fines are only available for failure to comply with a corrective order or demand issued by a supervisory authority – not for failure to comply with the Guidelines.

322. Criminal penalties for violations of the FTRA are available only for violations of non-disclosure/confidentiality obligations, reporting obligations, and filing false reports, not for violations of CDD and internal control requirements (Articles 13 and 14). Criminal penalties are also available under Article 6 of the *Real Name Financial Transactions Act* for violation of Article 3, which requires financial institutions to “perform financial transactions with customers under their real names”. These sanctions do not however cover violations of the range of CDD measures addressed in the *AML Enforcement Guidelines*, and attach only to failure to identify, verify, and conduct financial transactions in a customer’s real name.

323. The authorities also assert that sanctions can be applied by the Financial Supervisory Service to any reporting entity that does not comply with the *AML Enforcement Guidelines*. However, the assessment team finds these arguments rather indirect. Article 5(2) of FTRA obliges reporting entities to establish and follow their internal business manuals with a view to prevent ML and TF. Similarly, Article 5-2 of the same act makes it mandatory for financial institutions to establish and follow their internal guidelines with respect to CDD. Article 10-6 of the *Presidential Enforcement Decree of the FTRA* stipulates that the Commissioner of KoFIU may provide financial institutions with guidelines in regard to appropriate measures taken in consideration of the FATF Recommendations. Where the Commissioner provides such guidelines they must be included in the financial institutions’ business manuals and they must be followed. Pursuant to Article 11 of FTRA, the Commissioner of KoFIU may require his officials to inspect financial institutions, and, if financial institutions do not comply with Article 5-2 (i.e. that they must establish and comply with their own business manuals), the Commissioner may ask for correction or demand that the institution discipline its employee(s) responsible for non-compliance with Article 5-2.

324. Korean officials also argue that AML/CFT deficiencies (based on non-compliance with the *AML Enforcement Guidelines*) could also “be used as deficiencies that lead to a violation of broader requirements such as operating in a safe and sound manner”. However, no link between the *AML Enforcement Guidelines* and the safety and soundness provisions of the *Banking Act* can be found. Indeed, the purpose of the *Banking Act*, including its safety and soundness requirements, is “to contribute to the stability of financial markets and the development of the national economy by pursuing the sound operation of financial institutions...” (Chapter I, Article 1). In contrast, Korea’s AML/CFT regime primarily serves criminal law policies. The *AML Enforcement Guidelines* states that it is based on the FTRA, the *Presidential Enforcement Decree of the FTRA* and the *Financial Transaction Reports and Supervisory Regulation*, as well as on the *FATF Recommendations*. Its stated purpose is to prevent financial institutions covered by the FTRA from being used for ML and TF, “thereby efficiently curbing

such illegal activities”. Significantly, the *AML Enforcement Guidelines* does not reference or attach the *Banking Act*, nor does it mention general safety and soundness requirements.

## **Conclusion**

325. Because of the stated purpose of the *AML Enforcement Guidelines*, the ambiguous nature of the language employed, the absence of a clear link between the *AML Enforcement Guidelines* and any sanctions, and the absence of effective, proportionate and dissuasive sanctions for non-compliance, this document does not constitute ‘other enforceable means’ for the purposes of the *FATF Methodology*. In order to provide a full description of the Korean AML/CFT system, the *AML Enforcement Guidelines* is mentioned throughout this section of the report, but its content does not factor into compliance with the ratings. As Korea relies on this document for its implementation of a number of important AML/CFT measures, it is recommended that its provisions be transplanted into one or more laws/regulations/decrees and a review be conducted to ensure that all of the obligations of relevant *FATF Recommendations* are implemented in this new law/decreed/regulation.

## **Scope issues**

326. The Korean AML/CTF system applies to a range of financial institutions (Article 2 of FTRA and Article 2 of the *Presidential Enforcement Decree of the FTRA*):

- Korea Development Bank, Export-Import Bank of Korea, Industrial Bank of Korea, and other financial institutions governed by *the Banking Act*.
- Long-term credit banks.
- Investment trading companies, investment brokerage companies, collective investment companies, trust companies, securities finance companies, merchant banks and institutions providing book entry services.
- Mutual savings banks and Korea Federation of Savings Banks.
- Agricultural co-operatives and the National Agricultural Cooperatives Federation. Fisheries co-operatives and the National Federation of Fisheries Cooperatives. Credit co-operatives and the Central Credit Cooperative Association. Community credit co-operatives and the Korean Federation of Community Credit Cooperatives. Forestry Cooperative Association and National Forestry Cooperatives Federation.
- Insurance companies.
- Post offices.
- Casinos.
- Credit guarantee funds and technology credit guarantee funds.
- Discretionary investment companies.
- Specialised credit financial companies and new technology investment associations.
- Financial holding companies.

- Companies investing in small and medium enterprises and small and medium enterprises establishment co-operatives.
- Specialised corporate restructuring companies and corporate restructuring co-operatives.
- Foreign exchange businesses.

### **Exemptions**

327. Article 5 of FTRA provides for entities specified in the *Presidential Enforcement Decree of the FTRA* to be exempt from certain AML/CFT measures: establishing an internal reporting system, establishing and operating internal control guidelines, and providing employee education and training. Article 10 of the *Presidential Enforcement Decree of the FTRA* exempts securities finance companies, brokerage companies, and transfer agents (governed by the *Securities and Exchange Act*); asset management companies (governed by the *Act on Business of Operating Indirect Investment and Assets*); and financial holding companies (governed by the *Financial Holding Company Act*) from all of these requirements.

328. Article 10 of the *Presidential Enforcement Decree of the FTRA* also authorises the Commissioner of KoFIU to exempt certain other types of financial institutions from some of the above AML/CFT measures, to the extent this would not undermine the effectiveness of the AML system. KoFIU has exempted many financial institutions from internal reporting/monitoring and education/training requirements of Article 5 of the FTRA, primarily on the grounds that they do not take deposits or give loans, do not conduct any financial transactions with customers, or otherwise present a low risk of ML/TF because of the nature of the business or its products. These fully exempt financial institutions include: credit guarantee funds; technology credit guarantee funds; investment advisory companies, new technology investment associations; the National Forestry Cooperatives Federation; and foreign exchange businesses (Article 18(2) of the *Financial Transaction Reports and Supervisory Regulation*). In addition, partial exemptions (requiring AML/CFT guidelines and training/education, but not internal reporting systems) have been granted to specialised credit financial companies; small and medium enterprise start-up investment companies; and corporate restructuring investment companies (Article 18(1)).

329. Most of these exemptions do not raise serious concerns. The *FATF Methodology* recognises that a decision to limit the application of certain *FATF Recommendations* on a strictly limited and justified basis may be appropriate, taking into account the degree of ML or TF risks presented. While Korean officials did not provide information demonstrating a robust assessment underpinning the exemptions, information was available detailing the features of each type of institution that supported a conclusion that they are low risk for ML/TF. While the assessment team believes that decisions, particularly decisions to completely exempt institutions from AML/CFT obligations, should be based on a formal risk analysis, for the most part it appears that the exempted financial institutions do present a relatively low ML/TF risk. However, without a comprehensive risk analysis, the decision to exempt investment advisory companies, specialised credit finance companies and venture business investment associations - all of which are normally considered to present some ML/TF risk – from establishing internal AML/CFT guidelines and establishing an internal monitoring/reporting system, must be questioned and may lead to vulnerabilities in Korea's AML/CFT system.

330. Korean officials maintain that the exemptions do not relieve the exempted institutions of their CDD obligations. However, the assessors believe that the lack of internal AML/CFT guidelines, ongoing monitoring, training, and other fundamental elements of institutions' AML/CFT programs would prevent exempt institutions from being able to conduct effective CDD, and may create a significant vulnerability in the due diligence regime. This deficiency should be addressed by either providing a detailed explanation

of how institutions are to conduct CDD without these fundamental elements or by imposing obligations on these financial institutions to have the fundamental elements of an AML/CFT program and customer identification procedures in place.

331. With respect to express CDD exemptions, pursuant to Article 10.2.1 of the *Enforcement Decree of the FTRA*, Article 21 of the *Enforcement Regulation of the FTRA* exempts a very limited number of particular types of transactions from CDD requirements. These transactions include such things as payment of court fees, transactions involving “specific bonds,”<sup>41</sup> and signing an insurance contract where there is no payout at maturity. Some of these transactions are also exempt from basic customer identification and verification requirements under the *Real Name Financial Transactions Act* and the *Enforcement Decree of the Real Name Financial Transactions Act*. Exempting these activities from CDD requirements does not appear to create a significant AML/CFT vulnerability. However, it must be noted that the *FATF Methodology* does not permit the *elimination* of CDD requirements, except in the case of occasional transactions below a threshold. The elimination of all CDD requirements with respect to these transactions creates a vulnerability, albeit a limited one, in the due diligence regime.

### **3.1 Risk of Money Laundering or Terrorist Financing**

332. Korea considers the banking sector, which provides payment services and comprises the largest share of Korea’s financial industry, is probably the most vulnerable to ML and TF. Authorities have thus focused their AML/CFT inspection and supervision activities on the banking sector. However, the *Capital Market Consolidation Act*, which will take effect in February 2009, will put all the capital market related operations currently carried out by banks, securities, life insurance companies, asset management companies as well as trust business under a single regulatory regime and this is expected to bring more scrutiny of risks in these activities and products.

333. Since the amendments to the FTRA, which came into force on 22 December 2008, Korea has adopted a risk-based approach to AML/CFT, including risk-based CDD. Article 5-2(2) requires financial institutions (‘reporting entities’) to establish and apply internal guidelines that include “adequate measures designed to prevent money laundering and financing for offences of public intimidation according to types of customers or types of financial transactions”. Article 5-2(1) requires financial institutions to apply these risk-based internal guidelines in conducting customer identification and verification.

### **3.2 Customer Due Diligence, Including Enhanced or Reduced Measures (R.5 to 8)**

#### **3.2.1 Description and Analysis**

#### **Recommendation 5**

##### ***Anonymous accounts***

334. There is no express prohibition in Korea on financial institutions’ keeping anonymous accounts or accounts in fictitious names. However, with very limited exceptions,<sup>42</sup> the *Real Name Financial Transactions Act* (Article 3(1)), which came into force in 1993, requires financial institutions to conduct transactions in customers’ real names. For accounts existing when that act came into effect, Article 5(1) requires financial institutions to verify the customer’s identity when the first transaction is executed after

<sup>41</sup> These bonds include bonds issued for employment stabilization security and workers training; foreign exchange equalisation fund bonds; restructuring assistance bonds for small/medium business; certain corporate and other government issued bonds.

<sup>42</sup> Transactions not subject to real name identification and verification include continued transactions by accounts in which the real names of the persons concerned are verified and receipt of various kinds of public imposts (*Enforcement Decree of the Real Name Financial Transactions Act* Article 4(1)).

the act became effective<sup>43</sup>. Institutions are not allowed to conduct transactions unless identification and verification of the customer has been conducted. The *Enforcement Decree of the Real Name Financial Transactions Act* requires financial institutions to verify customer identification data (for an individual, name and resident registration number; for a legal person, title and registration number), using specified independent source documents that appear to be reliable (for an individual, his/her resident registration card, passport, registered foreigner identification card<sup>44</sup>; for a legal person, the registration certificate issued pursuant to the *Corporate Tax Act*). These provisions effectively prohibit anonymous accounts and accounts in obviously fictitious names.

335. The ban on anonymous accounts and accounts in obviously fictitious names appears to be effectively implemented. Private sector representatives across all types of financial institutions uniformly indicated that they believe this requirement to identify and verify customers' identities is absolute. Violation of the requirement in Article 3(1) attracts a penalty for executives and employees of financial institutions of a fine not exceeding KRW 5 million (Article 7(1)). Korea enforces the real name provision, imposing fines for its violation on over 160 people per year in 2003-2005; on 54 persons in 2006; on 62 persons in 2007 and on 100 persons in 2008. The total value of fines imposed in 2008 was KRW 267 900 000, which is an average of KRW 2 679 000 (USD 2 310).

#### **When CDD is required**

336. Article 5-2(1)(1) of FTRA requires financial institutions to identify and verify the identity of their customers when they open new accounts. Article 10-2(2) of the *Enforcement Decree of the FTRA* defines opening a new account to mean "entering into a contract with a reporting entity to initiate a financial transaction stipulated in" the FTRA. The FTRA (Article 2(2)) treats 'financial transactions' comprehensively, with an exhaustive list of transactions involving dealings with financial assets<sup>45</sup>, such that CDD is required whenever establishing business relations.

337. Article 5-2(1)(1) of FTRA requires customer identification and verification for occasional transactions above the designated threshold of KRW 20 million for domestic currency transactions and USD 10 000 for foreign currency transactions<sup>46</sup>. At the time of the site visit, KRW 20 million was approximately USD 14 280, which is just below the USD/EUR 15 000 threshold provided for in the *Interpretative Note to Recommendations 5, 12, and 16*<sup>47</sup>. Leaving aside the threshold issue, the types of occasional transactions covered by this provision are comprehensive. An occasional transaction is a financial transaction carried out without using an account opened at a financial institution (Article 10-2(2) of the *Enforcement Decree of the FTRA*). It includes, for example, receiving and paying cash without use of an account (including remittance or deposit without a passbook); obtaining or cashing a check to bearer, cashier's check or a certificate or coupon of a public or corporate bearer bond; foreign currency transfers or

---

<sup>43</sup> Customers were given a one month grace period after the *Real Name Financial Transactions Act* came into effect to convert their existing financial assets into their real names (Article 6(2)).

<sup>44</sup> The authorised documents for individual identification and verification all contain photos.

<sup>45</sup> Financial transactions include: transactions in which reporting entities receive, sell and purchase, repurchase, mediate, discount issue, redeem, are entrusted with, register, or exchange financial assets; pay interest, money discounted, or dividends of financial assets or act for such payment; other transactions involving financial assets; financial transactions in the derivatives market; and exchange of cash into instruments used as substitutes for cash or checks in a casino, and vice versa (FTRA Article 2(2)). Financial assets, in turn, are defined comprehensively, and include: cash and securities, such as demand deposits, instalment deposits, instalments, fraternity dues, depositary receipts, investments, trust property, stocks, bonds, beneficiary certificates, contribution quotas, bills, checks and debt certificates dealt with by financial institutions, and similar items.

<sup>46</sup> Article 6 of the *Enforcement Decree of the FTRA* sets these thresholds.

<sup>47</sup> By the end of the period of time considered in this report (14 January 2009), changes in currency rates resulted in KRW 20 million being equivalent to USD 14 780.

exchanges; purchases or sales of traveller's checks; safeguard deposit; buying and selling prepaid cards; and, wire transfers<sup>48</sup>.

338. There is no provision in law or regulation requiring CDD in cases where several transactions below the designated threshold appear to be linked. The *AML Enforcement Guidelines* advise that in determining whether the threshold for CDD has been met, the amount of an occasional transaction is calculated by accumulating linked transactions, and the period for accumulating linked transactions should be established in light of the financial institution's business environment and risk. The guidelines recommend that "more than one day at least" should be considered. During the on-site visit however, officials and private sector representatives stated that occasional transactions are accumulated only within a single day. Korean officials explain that this is due to the high volume of occasional transactions that are conducted daily. This volume of occasional transactions stems from the fact that occasional transactions are not only those involving non-customers, but also include transactions by customers which do not involve their accounts (Article 10-2(2)). The one-day calculation period for identifying structured transactions is intended to keep institutions from becoming overwhelmed by the requirement to conduct CDD on occasional transactions. The failure to explicitly frame in law or regulation an obligation to conduct CDD on linked transactions, and the acceptance that linking can occur over such a limited period of time is of concern, especially in the context of TF, which may often involve numerous small transactions.

339. Korea does not expressly require CDD for wire transfers. However, under Article 3(1) of the *Real Name Financial Transactions Act* and Articles 3 and 4 of the *Enforcement Decree of the Real Name Financial Transactions Act*, financial institutions are required to obtain and verify customers real names and unique identification numbers for financial transactions above KRW 1 million (USD 862) – including wire transfers. In addition, CDD is required by law or regulation for wire transfers that qualify as occasional transactions above the designated threshold – USD 10 000 for wire transfers in foreign currency; KRW 20 million for domestic currency wire transfers – under Article 5-2(1)(1) of FTRA. For these wire transfers, financial institutions are required to identify occasional customers and verify the identification documents provided. The *AML Enforcement Guidelines* (Section IV 6.3, 6.4) purport to set out requirements for cross-border wire transfers. While this effort is noteworthy, it does not satisfy the requirement that the CDD obligation be explicitly addressed in law or regulation.

340. Article 5-2(1)(2) of FTRA requires customer identification and verification; identification of beneficial owners; and, determination of the purpose of the transaction whenever there is a suspicion of ML or TF. Financial institutions are also required to conduct CDD when they have found possible discrepancies in information or have any doubts about the veracity of previously obtained customer identification data (Article 10-5(2) of the *Enforcement Decree of the FTRA*).

### **Required CDD measures**

#### *Identification and verification*

341. Article 10-4 of the *Enforcement Decree of the FTRA*, in conjunction with Article 3 of the *Enforcement Decree of the Real Name Financial Transactions Act* and Article 3 of the *Ministerial Enforcement Decree of the Real Name Financial Transactions Act*, require financial institutions to identify and verify the identification of natural and legal persons, using specified independent source documents. The documents permissible under law or regulation appear to be largely reliable, and with certain limited

---

<sup>48</sup> See *AML Enforcement Guidelines* Section IV.3.2 at p.27.

exceptions, are official government documents that have a unique identification number, and, for individuals, a photograph<sup>49</sup>. Only one form of documentation is required.

342. For individuals, financial institutions are required to determine and verify the customer's real name, resident registration number, address and contact information (phone number and e-mail address) by examining stipulated documents. The regulations specify, as preferred documents that are to be used when available, various government photo identification documents. For individuals, these preferred documents are (Article 10-4(1) of the *Enforcement Decree of the FTRA* and Articles 3(1) and 3(4) of the *Enforcement Decree of the Real Name Financial Transactions Act*):

- A resident registration card (which is kept up to date and provides current address).
- For Korean nationals residing abroad - passport or, if a passport has not been issued, a certified copy of the customer's national registration, containing name and registration number, from the register of the *Registration of Korean Nationals Residing Abroad Act*.
- For foreign nationals - the identification card of registered foreigners issued under the *Immigration Control Act* or, where that registration card has not been issued, the customer's passport or an alternative identification card authorised under the *Immigration Control Act*.

343. However, Article 3(1)(A) of the *Ministerial Enforcement Decree of the Real Name Transactions Act* provides that where there is no resident registration card, identification and verification of customers can be based on a certificate issued by a government agency, local government, or head of school recognised under the *Education Act* "or certificates such as a copy of resident registration". Allowing financial institutions to use a copy of a resident registration card, rather than the card itself, raises concerns about that document's reliability. Also, it is not clear that all of these secondary authorised identification documents are government-issued, nor is it clear that they have photos and measures to prevent counterfeiting. It appears that for Korean nationals who reside abroad, non-photo ID, in the form of a certified copy of the person's national registration, is sufficient. In addition, it is not known whether all of the forms of identification accepted for foreign nationals incorporate photographs. Institutions have uniformly confirmed to the evaluation team that only identification documents containing photographs are accepted by them.

344. Both Korean officials and private sector representatives asserted that the legally acceptable identification documents are difficult to counterfeit and that fraudulent documents are uncommon. Statistics provided suggest that the Korean authorities actively investigate and prosecute any cases of forgery of official documents, including identity documents.

345. For legal persons, institutions must obtain: the business name as per the business registration certificate; business registration number; type of business (*i.e.* small, medium, large enterprise, wholesale/retail, manufacturing, foreign trade); location of headquarters and business; and, contact information and real name of a representative. This information must be verified using the business registration certificate or, if that type of certificate has not been issued, the title and tax code number recorded in another document granted pursuant to the *Corporate Tax Act* (Article 10-4(2) of the *Enforcement Decree of the FTRA*, Article 3(2) of the *Enforcement Decree of the Real Name Financial Transactions Act* Article 3(2) of the *Ministerial Enforcement Decree of the Real Name Financial Transactions Act*).

---

<sup>49</sup> While the *FATF Methodology* does not expressly require jurisdictions to limit identification documents to those bearing photographs, the Basel Committee's *General Guide to Account Opening and Customer Identification* encourages their use.

346. With respect to CDD for non-profit corporations and other organisations, financial institutions are required to obtain: the real name; purpose (e.g. academic research, religion, education, charity); location of main office; and, contact information and real name of a representative. This information is verified by reference to the corporate registration certificate or title and identification number/tax code number of a document granted and recorded pursuant to the *Income Tax Act* (Article 10-4(3) of the *Enforcement Decree of the FTRA* and Article 3(3) of the *Enforcement Decree of the Real Name Financial Transactions Act*).

347. For foreign natural or legal persons (including foreign non-profit organisations), in addition to verifying the above information, financial institutions are required to determine and verify nationality and a Korean address (individuals) or office location (legal persons) (Article 10-4(4) of the *Enforcement Decree of the FTRA*).

348. These verification requirements are interpreted to require face-to-face identification and verification for account opening or conducting an occasional transaction, so that the photo identification document relied upon can be checked against the natural person who is the customer or a legal entity customer's representative.

349. No secondary verification of customer identification information (for both natural and legal persons) is prescribed by law or regulation. There is no general requirement to verify customer information by requesting secondary identification or to independently verify customer address by reference to a utility bill, tax statement or other information. There is no obligation to authenticate customer identification documents by contacting the issuing agency or through notarisation. There is no requirement to develop independent contact with the customer via telephone, postal or electronic mail to verify the veracity of contact information. The verification procedures for legal persons suggested by the Basel Committee - such as reviewing articles of incorporation, annual reports, and commercial business databases, and company site visits - are not requirements in Korea.

350. While not required by law or regulation (or other enforceable means), in practice, financial institutions report that they conduct secondary verification of individual customer identification information by contacting a government phone service provided by the Ministry of Public Administration and Security or by reference to the e-Government website to authenticate resident registration cards. In addition, securities and insurance companies routinely send mail to the domiciliary or main address of the customer and treat any undeliverable mail as indication that the customer may have provided false address information. In addition, financial institutions appear routinely to review articles of incorporation, annual reports, and commercial business databases in conducting CDD for legal persons.

351. It should also be noted that the *AML Enforcement Guidelines* (Section IV.5.2 at p.32) calls for secondary verification and provide examples of verification methods, including checking utility bills or receipts with name and address, calling the 1382 phone line, checking the e-Government website, verifying driver's licence information on the NPA website, checking credit services, and attempting to develop independent contact with the customer via telephone to verify contact information<sup>50</sup>.

---

<sup>50</sup> The *AML Enforcement Guidelines* states "Financial institutions should identify customer referring to certificate of real name verification (primary document) and verify the identification information in document (secondary document) or other methods" (Section IV.5.2 at p.32). It then states, "[V]erification may be skipped ... where the risk level of a customer is considered to be fairly low" e.g. "when the customer's identification is verified by certificate of real name verification which contains photo and other essential identification information such as resident registration card or driver's license (emphasis added)." KoFIU officials confirmed during the on-site visit that a "certificate of real name verification" is any document recognised by the *Real Name Financial Transactions Act* which, for individuals, is normally the resident registration card (primary identification document). The driver's license would be a secondary identification document. The *AML Enforcement Guidelines* creates some confusion as it appears to suggest that the certificate of real name verification is something other than the resident registration card.

352. Customer identification and verification represents a strength in Korea's AML/CFT system. Most of the recommendations in the Basel Committee's *General Guide to Account Opening and Customer Identification* are observed, including limiting acceptable identification documents to those issued by government authorities and which bear, for the most part, photographs and unique identification numbers. Korea's customer identification and verification system provides reasonable assurance about the quality of the information upon which financial institutions are permitted to rely. Nevertheless, the reliability of the CDD process could be further strengthened by requiring secondary verification of customer identification information.

#### *Additional requirements for legal persons and arrangements*

353. Article 10-4(2) of FTRA requires financial institutions to perform CDD on the representative agent acting on behalf of a legal person. However, there is no provision stipulating that the financial institution must verify whether or not the representative agent is so authorised. KoFIU officials and private sector representatives explain that it is common practice for a legal person to provide documentation, in the form of a document bearing the corporate seal or a proxy document indicating that the representative or agent is authorised to act on behalf of the company or institution. In their view, financial institutions will naturally discover if the purported agent is authorised to act on behalf of the legal person. While this may be true in many instances, and while it may also be common practice for financial institutions to use other contact with the legal person to verify a representative's authority, there should nevertheless be an express obligation for financial institutions to seek this information.

354. FATF standards require financial institutions to obtain information on a legal person's name, legal form and address, the entity's director(s) and on the power to bind the legal person or arrangement. As discussed above, Article 10-4 of the *Enforcement Decree of the FTRA*, together with Article 3 of the *Enforcement Decree of the Real Name Financial Transactions Act*, requires institutions to verify the name and location of the head or main office of a legal person by inspecting the business registration certificate or a document that contains the taxpayer's identification number. However, no provision in law, regulation or other enforceable means explicitly requires financial institutions to obtain information on the entity's legal form, directors, or provisions regulating the power to bind the legal person or arrangement. The business registration certificate or the official document that contains the taxpayer's identification number also does not contain these additional details.

355. Banking sector representatives assured the assessment team that under their financial institutions' internal policies and practices, it is standard account opening procedure to conduct due diligence on legal persons that includes reviewing articles of incorporation, shareholder and director information, capital and other corporate legal and financial records<sup>51</sup>.

356. There is no obligation in Korean law or regulation to identify the beneficial owners of legal persons or arrangements and take reasonable steps to verify the identity of the beneficial owners as a routine matter. Article 5-2(1)(2) of FTRA requires identification and verification of beneficial owners only if there is suspicion that the customer is engaged in ML or TF. There is no requirement in law or regulation that financial institutions determine whether the customer is acting on behalf of another person and take reasonable steps to verify the identity of that other person, absent suspicion of ML or TF. There is no requirement for institutions to understand the ownership and control structure of a legal person customer,

---

<sup>51</sup> The assessment team was provided with a sample of a bank's internal AML/CFT policy guidelines. Citing Article 10-4 of the *Enforcement Decree of the FTRA*, the document identifies various matters to be verified as part of CDD. For legal persons, they include type of business described in trader's license, but do not stipulate reviewing such things as articles of incorporation, company website, shareholder and director information, and other information that would enable the financial institution to verify fully the legal status of the legal person or arrangement.

nor is there an obligation to determine who is/are the natural person(s) who ultimately own(s) or control(s) the legal person or arrangement.

357. Although not law, regulation, or other enforceable means, it should be noted that the *AML Enforcement Guidelines* also does not treat beneficial ownership in a way consistent with Recommendation 5. The guidelines (Section IV.5.2.2 at p.32) state a presumption for individual customers that “the customer and beneficial owner are basically considered to be the same.” This presumption is lifted only if there is a suspicion of ML or TF, which requires that financial institutions check if the customer if the beneficial owner.

358. Moreover, the *AML Enforcement Guidelines* defines beneficial owner in a way that would not be compliant under the *FATF Methodology*, as a “natural person or legal person who ultimately controls the customer.” The glossary to the 40 Recommendations clearly specifies that beneficial owner refers to the natural person(s) who ultimately own or control a customer and/or a person on whose behalf a transaction is being conducted. The approach taken in the guidelines is of some concern because it would appear not to require piercing multiple layers of corporate forms and agency in order to determine the ultimate *natural* person who owns or controls the customer.

#### *Purpose and nature of the business relationship*

359. Financial institutions are not expressly obliged to obtain information on the purpose and intended nature of the business relationship unless there is a suspicion of ML or TF (Article 5-2(1)(2) of FTRA). However, Article 5-2(1)(2) of FTRA requires institutions to apply internal guidelines that establish adequate measures to prevent ML and TF, according to types of customers or types of financial transactions. The provision’s reference to establishing internal AML/CFT guidelines based on an understanding the type of customer implies an understanding of the customer’s attributes and business profile, which in turn implies some level of investigation into the purpose and nature of the business relationship. While these indirect references do not fully meet the FATF requirement that institutions be required to obtain information on the purpose and intended nature of the business relationship, they do suggest an indirect expectation that financial institutions are obligated to understand the intended nature and purpose of the business relationship.

360. The notion that this provision expresses a general, if indirect, expectation with respect to all customers is reinforced by an acknowledgement of the general context of the Korean government’s work with the financial sector associations and financial institutions to help them implement an AML/CFT system that includes obtaining information on the purpose and intended nature of the customer’s business relationship in line with the new requirement of Article 5-2(2) of FTRA, which came into force on 22 December 2008. This requires financial institutions to establish and operate business guidelines to comply with the CDD obligation, and provides that these guidelines should include appropriate measures, procedures and methods *specific to types of customer and financial transaction* in order to prevent ML and TF. In this regard, the *AML Enforcement Guidelines* instruct (Section IV.5.2.3) that, based on the risk level of the customer, product, and service, financial institutions should obtain information on an individual or business entity customer’s source of funds, business type, transaction purpose, expected number and amount of transaction by product and transaction type, and financial status. Although not legally mandated, obtaining this information would go a long way toward enabling financial institutions to understand the purpose and intended nature of the business relationship with customers. The assessment team recognises that the amendments to the FTRA are intended to establish CDD that includes the requirement to obtain information on the purpose and intended nature of the business relationship. However, it is recommended that this requirement be directly and explicitly set forth in law, regulation or other enforceable means.

### *Ongoing due diligence*

361. There is no direct obligation in law or regulation for financial institutions to conduct ongoing due diligence on the business relationship. There is no direct, express requirement in law or regulation for institutions to scrutinise transactions undertaken throughout the course of the business relationship to ensure that the transactions are consistent with the institution's knowledge of the customer, their business and risk profile, and the source of funds. There is no requirement in law or regulation that financial institutions ensure that documents, data or information collected under the CDD process is kept up-to-date and relevant by undertaking reviews of existing records, particularly for higher risk categories of customers or business relationships.

362. The *Real Name Financial Transactions Act* (Article 3(2)(1)) expressly provides that, notwithstanding the provisions requiring financial institutions to conduct financial transactions under customer's real names,

[F]inancial institutions may decide not to verify real names of the customers concerned in case of ... continuous transactions by accounts in which the real names of the persons concerned have been verified...

363. Similarly, Article 10-5(2) of the *Enforcement Decree of the FTRA* provides that "After checking the identity of a customer ... can skip customer identification when they engage in financial transactions with the same customer."

364. Article 10-5(2) of the *Enforcement Decree of the FTRA* requires financial institutions to verify customer identity in situations where there are *ex post* concerns about the validity of the identity (*i.e.* concerns about the authenticity of previously provided identification documents or other reasons for suspicion that the customer is disguising his/her identity). This appears to constitute a specific, reactive requirement that is only triggered when a specific suspicion of false identity arises. Similarly, where there is a suspicion of ML or TF, Article 5-2(1)(2) of FTRA provides that financial institutions' internal AML/CFT guidelines should require that checks be conducted on whether the customer is the beneficial owner and information be obtained regarding the purpose of the transaction.

365. The suspicious transaction reporting regime could be viewed as creating some indirect *de facto* ongoing customer and transaction monitoring requirements. Article 4 of FTRA clearly obliges financial institutions to submit STRs to KoFIU. Compliance with this obligation presupposes the existence of ongoing CDD in order for the institution to distinguish suspicious activity from the customer's normal pattern of behaviour. Even so, there is no obligation explicitly framed in law or regulation to conduct ongoing CDD and no obligation for financial institutions to understand a customer's business and risk profile, and source of funds.

366. The *AML Enforcement Guidelines* (Section IV.4.3, 'Ongoing CDD' at p.30), which is in the nature of non-binding guidance, states that financial institutions should "continuously review and compare documents, data or information collected in the process of customer identification and verification as well as their customer identification information and risk evaluation results." The guidelines also direct financial institutions to conduct ongoing monitoring of certain high risk customers, including private banking customers and non-profit organisations (NPOs) (Section V.2.3.2 at p.48; 4.3.2 at p.51).

### **Risk**

367. Currently, there is no provision in law, regulation or other enforceable means that expressly requires enhanced CDD on high risk customers, business relationships or transactions. However, Article 5-

2(2) of FTRA, which came into force on 22 December 2008, requires financial institutions to establish and operate business guidelines to comply with the CDD obligation, and provides that these guidelines should include appropriate measures, procedures and methods specific to types of customer and financial transaction in order to prevent ML and TF. By setting forth a requirement that a financial institution will establish 'appropriate measures' specific to categories of customers and transactions, the provision implicitly mandates a level of additional diligence and scrutiny for higher risk categories of customers and transactions. Korean authorities have been very actively engaged in implementing the new, risk-based AML/CFT regime, and have been working with sector associations and financial institutions to facilitate their introduction of risk-based CDD and monitoring/reporting systems.

368. That Article 5-2(2) establishes a general expectation of enhanced due diligence for higher risk customers, business relationships or transactions is borne out by the treatment of this issue in the *AML Enforcement Guidelines*. Article 10-6 of the *Enforcement Decree of the FTRA* authorises the Commissioner of KoFIU to provide "appropriate measures according to a type of customer and financial transactions to financial institutions". KoFIU has issued the *AML Enforcement Guidelines* that includes information and advice on how to identify and assess high risk customers. Although not constituting other enforceable means, the substantial information in the *AML Enforcement Guidelines* on enhanced CDD supports the proposition that Article 5-2(2) establishes a general expectation of enhanced due diligence for higher risk customers, business relationships or transactions.

369. The *AML Enforcement Guidelines* explicitly states that "in order to perform CDD efficiently, financial institutions are required to establish and operate internal guidelines that include...[r]isk-based procedures for customer identification and verification" (Section IV.1.1 at p. 23). The guidelines further explains that a risk-management system consists of "procedures that financial institutions should follow to identify and evaluate money-laundering risks" according to three categories: country, customer, and products/services (at p.24). The guidelines then identifies risks associated with each of these categories, providing examples that largely track the Basel CDD paper, and suggest ways of evaluating these risks (at pp. 24-26). Section V of the guidelines (at pp.43-55) calls for enhanced CDD for customers that fall into these "major high-risk categories" – including correspondent banking; private banking; politically exposed persons (PEPs); non-profit organisations; countries that do not adequately comply with the *FATF Recommendations*; and customers identified/restricted as terrorists, terrorist facilitators/financiers.

370. The industry associations for banking, securities, and insurance all interpret the FTRA and the *AML Enforcement Guidelines* as requiring financial institutions to implement a risk-based approach to CDD, including application of enhanced due diligence. Institutions have already or are currently incorporating risk-based CDD into their compliance programs.

371. There is some concern that Korea's treatment of high-risk categories for enhanced CDD is not sufficiently comprehensive. For example, high-risk legal persons or arrangements, such as trusts that are personal assets holding vehicles, and companies that have nominee shareholders or bearer shares, have not been identified as high risk. There is also some concern about the scope of measures that should be included as part of enhanced due diligence, in contrast to regular CDD. Enhanced due diligence is not defined in any of the relevant laws or decrees and the *AML Enforcement Guidelines* provide guidance as to what forms of enhanced due diligence might be appropriate in each of the six high risk categories.

372. Article 5-2(2) of FTRA also implicitly authorises reduced or simplified CDD measures for lower risk categories of customers, business relationships, and transactions. Article 10-2(1) of the *Enforcement Decree of the FTRA* explicitly provides for reduced CDD in low risk circumstances. It states (emphasis added):

Financial institutions . . . *do not need to verify the identity of customers* in accordance with Article 5-2 1 *when it is not desirable to apply customer due diligence* to financial transactions, or financial transactions are *highly unlikely to be used for money laundering activities and act of financing for offences of public intimidation* as determined by the Commissioner.

373. Pursuant to Article 10-2(1), Article 21 of the *Enforcement Regulation of the FTRA*, referencing Article 3(1) of the *Real Name Financial Transactions Act* and Article 4(2) of the *Enforcement Decree of the Real Name Financial Transactions Act*, exempts from all CDD requirements – including baseline verification of customer identification – a limited number of transaction types, such as receipt of public impositions and transfers of not more than KRW 1 million; payment of court fees; transactions in specific bonds; and signing an insurance contract where there is no payout at maturity on the grounds that they are low risk. This elimination of all customer identification requirements creates a vulnerability, albeit a limited one, in the due diligence regime.

374. In addition, Article 5 of FTRA provides for entities specified in the *Presidential Enforcement Decree of the FTRA* to be exempt from certain AML/CFT measures and some small institutions have received these exemptions (Article 18(2) of the *Financial Transaction Reports and Supervisory Regulation*).

375. The *AML Enforcement Guidelines* identify other low risk examples for simplified/reduced CDD that include: government administrations or enterprises at various levels (“country, local governments”) and public organisations; UN-affiliated international charities; and, publicly listed companies subject to regulatory disclosure requirements. Korean authorities have provided a rationale for each exemption, primarily focussing on the types of products offered by the institutions, and there are grounds for considering these categories of customers and transactions as lower risk and hence subject to reduced due diligence.

376. There is no provision in law, regulation or other enforceable means that allows simplified or reduced CDD measures to be applied to customers resident in another country. Further, Section V.5 of the *AML Enforcement Guidelines* specifies countries not in compliance with the *FATF Recommendations* are high-risk. Therefore, CDD procedures cannot be simplified for them.

377. There is no express prohibition in law, regulation, or other enforceable means on reduced CDD when there is a suspicion of ML or TF. For those transactions exempted from CDD under the law, there is no exception requiring CDD when there is a suspicion of ML or TF. However, Article 5-2 of FTRA sets forth a requirement to check the beneficial owner and purpose of the transaction when there is a suspicion of ML or TF. Korean authorities argue that since this provision requires enhanced CDD (checking beneficial ownership and transaction purpose information) when there is suspicion of ML or TF, it is clear that that normal CDD must also be performed. While this is a reasonable reading of Article 5-2, the assessment team recommends that Korea make the prohibition against reduced CDD in situations where there is a suspicion of ML or TF explicit in law, regulation or other enforceable means.

378. In establishing and preparing to implement risk-based CDD, Korean authorities have made clear that financial institutions’ risk-based CDD measures must be consistent with the *AML Enforcement Guidelines* issued by KoFIU. The authority for this requirement is embodied in law and regulation. Article 5-2(3) of FTRA provides that “Specific matters regarding the customer due diligence measures . . . shall be prescribed in the *Presidential Enforcement Decree*.” Article 10-6(1) of the *Enforcement Decree of the FTRA* authorises the Commissioner of KoFIU to “provide appropriate measures according to a type of a customer and financial transaction to financial institutions”. Article 10-6(2) provides that “financial institutions shall follow work instructions pursuant to Article 5-2(1) [of the FTRA] that contain details on measures for customer identification where they are given details on measures for customer identification”

as prescribed in 10-6(1). Thus financial institutions are permitted to determine the extent of the CDD measures on a risk sensitive basis but must do so consistent with the guidance provided in the *AML Enforcement Guidelines*.

### ***Timing of verification***

379. Article 10-5(1) of the *Presidential Enforcement Decree of the FTRA* provides that as a general matter, financial institutions “shall verify customer identification before financial transactions are initiated”. However, CDD may be conducted at a later date when the Commissioner of KoFIU stipulates that the situation is unavoidable due to characteristics of the financial activity (Article 10-5(1) of the *Presidential Enforcement Decree of the FTRA*). Article 23 of the *Enforcement Regulation of the FTRA* authorises post-transaction completion of CDD in the three situations noted below<sup>52</sup>:

- Account opening by employees or students in group. In these cases customer identification is required at the time of the first financial transaction after opening account.
- Establishment of insurance for another person (under Article 639 of the *Commercial Act*). In these cases customer identification is required when insurance money, refunds of maturity and other payments are claimed or made to claimant.
- Linked occasional transactions each below the threshold. In these cases, CDD should occur for the first transaction that occurs over the threshold.

380. Nothing in law, regulation, or other enforceable means requires financial institutions to complete CDD as soon as reasonably practicable in these situations. Similarly, Korea does not require financial institutions to effectively manage ML/TF risks involved in post-transaction completion of CDD.

381. Article 23 of the *Enforcement Regulation of the Financial Transaction Reports Act* makes it clear that customers are not permitted to use the business relationship prior to verification. In addition, the very limited nature of the circumstances in which post-transaction completion of CDD is authorised in Korea means the risks posed are very low. The first two situations involve account opening only (no conduct of transactions) and the final situation involves low value linked transactions where CDD could be expected to have been conducted at account opening and is required once the linked transactions reach the KRW 1 million (USD 862) threshold. No provisions in law, regulation or other enforceable means, or even in the *AML Enforcement Guidelines*, requires financial institutions to identify and verify the beneficial owner before or during the course of establishing a business relationship or conducting transactions for occasional customers.

382. Korea permits verification of customer identity to be completed after the business relationship has been established and a financial transaction has been conducted when this is essential not to interrupt normal business, but does not expressly require that the verification be completed as soon as reasonably practicable. In addition, as discussed above, there is no requirement for identification and verification of beneficial owners unless there is a suspicion of ML or TF.

383. Korea should make explicit, in law, regulation or other enforceable means a requirement that post-transaction verification of customer identity should be completed as soon as reasonably practicable and should include verification of beneficial ownership. In addition, there should be an explicit requirement in law, regulation or other enforceable means that financial institutions must effectively manage the AML/CFT risks presented by post-transaction verification by adopting risk-management

---

<sup>52</sup> The *AML Enforcement Guidelines* also notes that post-transaction completion of CDD may be allowed in these three situations.

procedures. The failure to require these protective measures could allow an account to be operated, albeit possibly for a relatively limited period of time, for an unidentified accountholder, creating a gap in the CDD regime that could be exploited by criminal elements.

### ***When CDD is not satisfactorily completed***

384. As previously described, with certain specified exemptions, the CDD requirement is universal, but does not include a requirement to identify beneficial owners. Article 5-2 of FTRA, together with Article 3(1) of the *Real Name Financial Transactions Act*, effectively prohibits financial institutions from opening an account or commencing a business relationship without identifying and verifying the identity of the customer. Institutions which violate these provisions are subject to a range of administrative and criminal penalties. For example, under Article 7(1) of the *Real Name Financial Transactions Act*, financial institutions, their executives and employees are subject to a fine of up to KRW 5 million if they open an account or conduct an occasional transaction without identifying and verifying the customer's real name.

385. No provision in law, regulation or other enforceable means requires financial institutions to consider filing a suspicious transaction report when they cannot: identify and verify the customer's identity; verify the authority and identity of a person purporting to act on behalf of a legal person or arrangement; identify the beneficial owner; verify the legal status of a legal person or arrangement; or, obtain information on the purpose and intended nature of the business relationship.

386. The *AML Enforcement Guidelines* (Section IV at p.41) advises financial institutions that they "should consider filing [an] STR" when they "deem that customer identification and verification are not satisfactory...".

387. Nothing in law, regulation or other enforceable means creates an affirmative obligation for a financial institution that has already commenced a business relationship to terminate the business relationship and consider making a STR when the institution: has doubts about the veracity or adequacy of previously obtained customer identification data; is unable to satisfactorily complete post-transaction or post-account opening; or, is unable to satisfactorily complete CDD on existing customers.

388. Financial institutions are required to file a suspicious transaction report when there is a suspicion that a transaction involves criminal proceeds (FTRA Article 4(1)). However, there is no specific provision instructing financial institutions to consider failure to complete CDD as part of the STR decision-making process.

389. Financial institutions that establish and maintain an account without satisfactorily completing the customer identification process are subject to a range of administrative and criminal penalties under the FTRA and the *Real Name Financial Transactions Act*, but there is no requirement to consider filing an STR when an institution cannot complete customer identification.

### ***Existing customers***

390. There is no provision in law, regulation or other enforceable means that expressly requires financial institutions to apply CDD to pre-existing customers. However, Article 5-2(2) of FTRA mandates risk-based CDD, which implicitly requires institutions to apply CDD on the basis of materiality and risk to existing customers.

391. There is no requirement in law, regulation or other enforceable means expressly requiring CDD be conducted on existing relationships at appropriate times, for example when a significant transaction takes place, customer documentation standards change substantially, or, there is a material change in the

way an account is operated. Equally, there is no requirement to conduct CDD on existing customers if/when the institution becomes aware that it lacks sufficient information about a customer. Article 10-5 of the *Enforcement Decree of the FTRA* states: “Financial institutions ... shall verify the identity of a customer when they suspect its validity and when the identification is found to be not true.” Thus, verification is required when an institution has doubts about the validity of identification but not when the institution has doubts about the adequacy of the identification provided.

392. Section IV.3.5 of the *AML Enforcement Guidelines* does ask institutions to apply CDD to existing customers. It recommends that financial institutions conduct CDD “at an appropriate point of time if they deem that there is high risk of money laundering based on risk evaluation of existing customers or that transaction activities are unusual based on results of transaction monitoring”.

393. Anonymous accounts or accounts in fictitious names are prohibited in Korea. The 1993 *Real Name Financial Transactions Act* (Article 3(1)) requires financial institutions to conduct financial transactions in customers’ real names. For accounts existing before that act, Article 5(1) requires financial institutions to verify that the name is real when the first financial transaction is executed after the act becomes effective.

## **Recommendation 6**

394. There is no requirement in law, regulation or other enforceable means for a financial institution to: (a) have appropriate risk management systems to determine whether a customer is a politically exposed person (PEP); (b) obtain senior management approval to establishing a business relationship with a PEPs or to continue a business relationship with a PEP, where a customer or beneficial owner is subsequently found to be, or subsequently becomes, a PEP; (c) take reasonable measures to establish the source of wealth and funds of customers and beneficial owners identified as PEPs; and, (d) conduct enhanced ongoing monitoring of business relationships with PEPs. There is also no specific guidance concerning what additional steps an institution must take to mitigate the risk of doing business with PEPs.

395. Article 5-2(2) of FTRA requires financial institutions to establish and apply internal guidelines that include “adequate measures designed to prevent money laundering and financing for offences of public intimidation according to types of customers or types of financial transactions” and Article 5-2(1) requires institutions to apply these risk-based internal guidelines in conducting customer identification and verification. However, while requiring general risk-based AML/CFT measures, these provisions do not explicitly address what financial institutions are expected to do concerning PEPs.

396. Although not constituting other enforceable means, the *AML Enforcement Guidelines* provides guidance on how to identify PEPs and how to deal with the higher risks they present. The guidelines (Section IV.2.2 at pp.24-25) instruct financial institutions to establish a risk-management system to identify and evaluate ML risks by country, customer and product/service, and “politically exposed persons in foreign countries” are provided as an example of a high risk customer category. The *AML Enforcement Guidelines* addresses enhanced CDD for PEPs, describes what kinds of people are considered PEPs, and states that financial institutions “should pay special attention to PEPs since they have high risk of money laundering associated with corruption and bribery” (Section V.3.2, at p.49). The guidelines further states that financial institutions “should establish procedures and control measures necessary to prevent and mitigate money laundering risk” associated with PEPs (Section V.3.3, at p.49). The only measure the *AML Enforcement Guidelines* states that financial institutions “are required” to take is to obtain review or approval from executives or senior management if a customer is identified as a PEP. While this guidance is useful, in many areas the *AML Enforcement Guidelines* presents too narrow an understanding of this category of high-risk customer.

### ***Additional elements***

397. Korea does not apply any particular CDD requirements to domestic PEPs. It is unclear whether financial institutions will voluntarily treat domestic PEPs as high-risk customers, under the general risk-based CDD requirements.

398. Korea signed the *UN Convention Against Corruption* on 10 December 2003. To implement the convention, Korea's Justice Ministry enacted the *Special Act on Confiscation and Recovery of Corruption Benefits* which stipulates the reinforced internal co-operation for confiscation and recovery of assets or properties obtained through corruption.

### **Recommendation 7**

399. In Korea, the financial institutions allowed to have correspondent relationships include banks defined in the *Banking Act* (commercial banks, local banks, the credit business unit of the National Agricultural Cooperative Federation, and the credit business unit of the National Federation of Fisheries Cooperatives), the Korea Development Bank, the Export-Import Bank of Korea, and the Industrial Bank of Korea (Article 8(2) of the *FETA* and Article 14(1) of the *Presidential Enforcement Decree of the Foreign Exchange Transactions Act*).

400. There is no express requirement in law, regulation or other enforceable means for financial institutions to understand fully the nature of a respondent institution's business and to determine the reputation of the institution and quality of supervision, including whether it has been subject to a ML or TF investigation or regulatory action. Nor is there any provision in law, regulation or other enforceable means that requires financial institutions to obtain senior management review before establishing correspondent banking relationships.

401. As noted previously, Article 5-2(2) of FTRA requires financial institutions to establish and apply internal guidelines that include "adequate measures designed to prevent money laundering and financing for offences of public intimidation according to types of customers or types of financial transactions" and Article 5-2(1) requires financial institutions to apply these risk-based internal guidelines in conducting customer identification and verification. These provisions require general risk-based AML/CFT measures, and could in practice require financial institutions to understand fully the nature of a respondent institution's business, determine the reputation of the institution and quality of its supervision, and obtain senior management approval as part of the obligation to establish and apply risk-based measures to correspondent relationships. However, the broad requirement for risk-based AML/CFT does not explicitly address correspondent relationships or requisite obligations for financial institutions. That said, Korean officials have informed the evaluation team that there are currently no nested accounts or payable-through accounts in Korea. During the on-site visit, financial institutions confirmed to the evaluation team that they do not operate payable-through accounts since such accounts present a high risk of ML.

402. The *AML Enforcement Guidelines* discusses enhanced CDD for correspondent banking (Section V.1 at pp.43-46). The guideline states that financial institutions "should establish procedures and control measures necessary for preventing and mitigating risks of money laundering related to correspondent banking service[s] when entering into [a] correspondent relationship". The *AML Enforcement Guidelines* then sets forth customer identification and verification obligations for respondent banks. In this regard, the guideline advises that before entering into a correspondent banking relationship, a correspondent bank should, in addition to standard customer identification and verification, use a questionnaire to "verify the respondent bank's authenticity, ownership, structure, main services offered, customer type," and other matters "in order to ascertain respondent bank's AML compliance." The *AML Enforcement Guidelines* also states that the correspondent bank should obtain additional information on major shareholders at the

time of signing a correspondent banking contract, or when there are changes in management/directors, and that a correspondent bank is “prohibited from establishing or continuing [a] correspondent banking relationship with a shell bank”, and provides suggestions on how to determine if a correspondent bank is a shell bank. Even though the discussion of correspondent banking in the guideline is only in the nature of guidance, its approach raises concerns as it does not recommend action in line with Recommendation 7.

403. Financial institutions interviewed during the on-site visit confirmed that they perform due diligence on respondent banks, but indicated that they relied on the standard form questionnaire and correspondent banking contract to satisfy their due diligence obligations. It appears that financial institutions do not independently investigate and assess whether a respondent has been subject to ML or TF enforcement action or the adequacy of the respondent institution’s AML/CFT controls. The institutions also explained that they use the correspondent banking questionnaire and contract to document the respective AML/CFT responsibilities of each institution. However, the KYC/AML questionnaire reviewed by the assessment team does not appear adequate for that purpose. It merely inquires as to, for example, whether the respondent bank has AML/CFT policies and procedures; if so, whether they apply to all operations covered by the questionnaire; whether the respondent bank verifies the identity of all customers before providing accounts; whether it filters international telegraphic transfers for terrorist names; whether it has AML/CFT training for all staff; and whether it has independent auditing of AML compliance. Moreover, it does not document the respective AML/CFT responsibilities of each financial institution.

## **Recommendation 8**

404. In Korea, electronic financial transactions mainly involve: money transfers using electronic means, such as on-line banking or telephone banking; cash deposits/withdrawals, using an ATM; credit and debit cards; pre-paid “smart cards”; securities trading on the Internet; and, increasingly, mobile-phone based financial services (m-fs).

405. Korea appears to effectively address the risk of the above non-face-to-face transactions by requiring all electronic financial services and products, including those noted above, to be based on ongoing business relationships - *i.e.* accounts - established with financial institutions through face-to-face identification (*Real Name Financial Transactions Act* Article 3(1)).

406. There are no specific requirements in law, regulation or other enforceable means for financial institutions to establish countermeasures to prevent the misuse of technological developments in ML or TF. To some extent, such a requirement may be implicit in Articles 5-2(1) and 5-2(2) of FTRA, which require financial institutions to establish and apply internal risk-based guidelines as risks associated with new products/services/technologies would be expected to constitute one form of risk considered in such guidelines.

407. The *AML Enforcement Guidelines* (Section III.6 at p.21) advises financial institutions to “establish and operate measures for evaluating risks of money laundering before selling new products and services” in order to prevent/mitigate AML risks arising from new products, such as electronic banking, based on developing technology. The guidelines further state (Section IV.7) that “Financial institutions are required to have policies and procedures in place to address any specific risks associated with non-face-to-face transaction[s]. They should implement them when establishing ...new business relationships and conducting ongoing CDD.”

408. With respect to non-face-to-face ongoing relationship, financial institutions have voluntary industry policies and procedures in place to manage risks of non-face-to-face business such as imposing withdrawal limits on ATM transactions and restricting the number of non-face-to-face transactions.

## Effectiveness of CDD measures

409. The concerns identified above present potential obstacles to effective implementation of CDD measures. As a more general matter, the fact that Korea's revised CDD requirements did not come into force until 22 December 2008 makes it too early to assess the implementation and effectiveness of the new CDD elements. The assessment team, however, notes that Korean authorities have been working with the private financial sector to facilitate implementation of the new AML/CFT regime. In addition, the assessment team noted from the on-site interviews that there is a strong compliance culture in Korea throughout the financial industry. During the site visit, financial institutions invariably expressed an intention to comply with the *AML Enforcement Guidelines*, which in many instances recommend measures that would appear to go beyond the requirements set forth in the applicable laws, regulations, and other enforceable means. Casinos, as the first DNFPB to be covered by Korea's new AML/CFT regime, and their professional association, expressed similar commitment to implement the new CDD requirements. While the implementation and effectiveness of the new AML/CFT regime remain untested, the government's efforts and the private sector's commitment to comply with the new AML/CFT requirements should help promote the implementation and effectiveness of the new CDD measures.

### 3.2.2 Recommendations and Comments

410. The *AML Enforcement Guidelines* are in many areas, particularly with respect to CDD, broader than the provisions found in Korea's laws, decrees and regulations. It is strongly recommended that Korean authorities either transpose these areas of the guidelines into law, decree or regulation and conduct a review of their scope to ensure that all of the obligations of relevant *FATF Recommendations* are implemented in this new law/decreet/regulation..

#### *Recommendation 5*

411. Since Korea's revised CDD requirements came into force on 22 December 2008 it is not possible to assess the implementation and effectiveness of these new elements of Korea's CDD regime. It is clear, however, that the threshold above which CDD is required for occasional transactions is only just below the threshold of EUR 15 000 / USD 15 000 amount allowed for in the *FATF Recommendations* and it is recommended that this threshold be lowered to a level than is reliably under EUR 15 000 / USD 15 000 even when currency fluctuations occur. Also, there are no requirements in law, regulation or other enforceable means for financial institutions to:

- Conduct CDD when there are doubts as to the veracity or adequacy of previously obtained customer identification data.
- Verify the authority of persons purporting to act on behalf of customers which are legal persons or arrangements.
- Identify beneficial owners.
- Obtain information on the intended nature and purpose of the business relationship.
- Conduct ongoing due diligence on all customers.
- Conduct enhanced CDD on PEPs and correspondent relationships.

412. Korea should require, in law or regulation, that financial institutions conduct CDD in cases where several transactions below the designated threshold appear to be linked (*e.g.* structuring) and that the

period of time over which transactions should be linked should be greater than 24 hours in order to identify structured transactions intended to avoid the threshold for occasional transactions.

413. In addition, the assessment team recommends that Korea:

- Expressly limit the customer identification documents upon which financial institutions are permitted to rely, in the case of natural persons, to documents which include photographic identification, or, in situations when photographic identification is not practicable, require additional secondary measures to mitigate the increased risk accompanying such situations.
- Require secondary verification of customer identification information (for both natural and legal persons) by law or regulation. In this respect, authorities should consider creating a legally binding obligation to authenticate identification documents by contacting the issuing agency or through notarisation, and/or requirements to develop independent contact with the customer via telephone, post or electronic mail to verify the veracity of contact information. Korea should also consider adopting the verification procedures for legal persons suggested by the Basel Committee.
- Expressly provide in law or regulation that financial institutions must verify whether or not the representative agent of a legal person is authorised to act for the legal person.
- Establish an obligation to identify and verify beneficial ownership information. The definition of beneficial owners should be changed, so that it includes only natural persons who ultimately own or control a customer or the person(s) on whose behalf a transaction is being conducted, not legal persons who “ultimately” control a customer.
- Make the prohibition against reduced CDD in situations where there is a suspicion of ML or TF explicit in law, regulation or other enforceable means.

#### ***Recommendation 6***

414. Korean authorities should adopt a broader understanding of PEPs in order to deal effectively with the higher risk this customer category presents, particularly with respect to former officials and close associates. The limitation to those who officially conduct transactions for or on behalf of PEPs is too narrow. In addition, it is unclear what is meant by conducting a “special money transaction” with a PEP. It is recommended that Korea establish requirements in law, regulation or other enforceable means for financial institutions to:

- Have risk management systems to determine whether a potential customer, a customer or the beneficial owner is a PEP.
- Obtain senior management approval for establishing business relationships with PEPs.
- Take reasonable measures to establish the source of wealth and source of funds of customers and beneficial identified as PEPs.
- Conduct enhanced ongoing monitoring of business relationships with PEPs.

#### ***Recommendation 7***

415. Rather than allowing them to rely on a questionnaire and contract, financial institutions should be directed to conduct independent investigations of a respondent institution in order to understand fully the

nature of the respondent's business and to determine its reputation and quality of supervision (including whether it has been subject to a ML or TF financing investigation or regulatory action). Institutions should be required to independently assess, including with onsite visits where appropriate, the respondent institution's AML/CFT controls, and ascertain that they are adequate and effective. They should also be required to obtain senior management approval before establishing correspondent banking relationships and should be required to document the responsibilities of each institution. While use of payable-through accounts appears not to be common in Korea, this practice should either be prohibited by law or should have obligations attached to it to ensure that appropriate CDD is conducted and institutions share relevant information.

### **Recommendation 8**

416. While there is no explicit requirement for financial institutions to develop policies and procedures to mitigate the use of technological developments for the purposes of ML and TF, Korea effectively addresses the risk of the electronic banking and other new non-face-to-face technologies by requiring all electronic financial services and products to be based on ongoing business relationships (accounts) established with financial institutions through face-to-face identification.

### **3.2.3 Compliance with Recommendations 5 to 8**

|     | RATING | SUMMARY OF FACTORS UNDERLYING RATING                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
|-----|--------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| R.5 | PC     | <p><i>When CDD is required</i></p> <ul style="list-style-type: none"> <li>Financial institutions are only expected to discover linked transactions over a twenty-four hour period, which is not sufficient to identify structured transactions intended to avoid the threshold for occasional transactions.</li> <li>Institutions are not expressly required to conduct CDD when they have doubts about the veracity or adequacy of previously obtained customer identification data.</li> </ul> <p><i>Required CDD measures</i></p> <ul style="list-style-type: none"> <li>Financial institutions are not required to verify whether the natural person acting for a legal person is authorised to do so.</li> <li>For customers who are legal persons or arrangements, financial institutions are not required by law, regulation or other enforceable means to obtain information on the customer's legal form, director(s) and provisions regulating the power to bind the legal person or arrangement.</li> <li>There is no requirement for financial institutions to identify and verify the identity of the beneficial owner except where there is a suspicion of money laundering or terrorist financing.</li> <li>In the case of legal persons or arrangements, institutions are not obliged to understand the ownership and control structure of the customer or to determine who are the natural persons who ultimately own or control the customer, other than when there is a suspicion of money laundering or terrorist financing.</li> <li>Financial institutions are not explicitly required to obtain information on the purpose and intended nature of the business relationship.</li> <li>Ongoing due diligence on the business relationship is not expressly required in law, regulation or other enforceable means.</li> <li>There is no express requirement for financial institutions to scrutinise transactions throughout the course of the business relationship to ensure they are consistent with the institution's knowledge of the customer, their business and risk profile, and the source of funds.</li> <li>There is no explicit requirement that financial institutions ensure documents, data or information collected as part of CDD is kept up-to-date and relevant.</li> <li>There is no prohibition on institutions opening accounts, commencing business relations or performing transactions when they are unable to: verify that any person</li> </ul> |

|     | RATING | SUMMARY OF FACTORS UNDERLYING RATING                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
|-----|--------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|     |        | <p>purporting to act on behalf of a customer that is a legal person or legal arrangement is so authorised and identify and verify the identity of that person; verify the legal status of the legal person or arrangement; or, identify and verify beneficial owners.</p> <ul style="list-style-type: none"> <li>Financial institutions are not required to consider filing an STR when they are unable to complete all CDD as detailed in the <i>FATF Standards</i>.</li> </ul> <p><i>Timing of verification</i></p> <ul style="list-style-type: none"> <li>There is no explicit requirement for institutions to develop internal controls to mitigate the risk posed by transactions undertaken before the completion of the CDD process.</li> </ul> <p><i>Existing customers</i></p> <ul style="list-style-type: none"> <li>There is no provision expressly requiring CDD be applied to pre-existing customers.</li> <li>There is no express requirement that financial institutions conduct CDD on pre-existing customers at appropriate times or when the institution becomes aware that it lacks sufficient information about an existing customer.</li> <li>There is no requirement that financial institutions terminate an existing business relationship and consider filing an STR when: the institution has doubts about the veracity or adequacy of previously obtained customer identification data; it is unable to satisfactorily complete post-transaction or post-account opening; or is unable to satisfactorily complete CDD on existing customers.</li> </ul> <p><i>Scope issue</i></p> <ul style="list-style-type: none"> <li>Scope limitation: no formal assessment has been undertaken to justify exclusion of some smaller financial institutions, money changers and certain investment-related companies from the requirement to have internal AML/CFT monitoring/reporting, which may prevent them from conducting effective CDD.</li> </ul> |
| R.6 | NC     | <ul style="list-style-type: none"> <li>Financial institutions are not required to determine whether a customer is a PEP.</li> <li>There is no provision requiring financial institutions to obtain senior management approval to establishing business relationships with PEPs or to continue business relationships with PEPs.</li> <li>Financial institutions are not required to establish the source of wealth and funds of customers and beneficial owners identified as PEPs.</li> <li>Financial institutions are not required to conduct enhanced ongoing monitoring of business relationships with PEPs.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| R.7 | NC     | <ul style="list-style-type: none"> <li>There are no obligations for financial institutions to: determine whether a respondent institution has been subject to money laundering or terrorist financing enforcement action; assess the adequacy of the respondent's AML/CFT controls; require senior management approval before establishing the relationship; or document the respective AML/CFT responsibilities of each institution.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| R.8 | C      | <i>This Recommendation is fully observed.</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |

### 3.3 Third parties and Introduced Business (R.9)

#### 3.3.1 Description and Analysis

417. Financial institutions in Korea are permitted to rely upon intermediaries or other third parties to perform CDD. Korean authorities advise that third parties perform CDD on behalf of financial institutions in three circumstances, when:

- A securities firm and bank have signed a consignment contract, so that customers of the securities firm can open securities accounts at the bank without visiting the securities firm.

- A bank forms a business alliance with an insurance company and sells bancassurance.
- An insurance company enters into contracts through insurance collectors.

418. The first two situations appear to fall outside the scope of Recommendation 9 as in Korea these seem to be outsourcing/agency relationships. Korean authorities informed the evaluation team that the insurance/insurance collector relationship is also invariably an agency relationship to which Recommendation 9 does not apply. However, during discussions with institutions, it became clear that in fact, in addition to the three circumstances outlined above, financial institutions also rely on third party CDD where introductions are made by another member of the same financial services group or by another financial institution.

419. No provision in law, regulation or other enforceable means requires financial institutions relying on a third party to immediately obtain necessary information from the third party concerning the CDD process, particularly information relating to: identification and verification of the customers' and beneficial owners' identity; verification of the authority and identity of persons purporting to act on behalf of legal persons or arrangements; identification of beneficial owners; verification of the legal status of legal persons or arrangements; and, information on the purpose and intended nature of the business relationships.

420. There is no provision in law, regulation or other enforceable means that requires financial institutions to take adequate steps to satisfy themselves that copies of identification data and other relevant documentation relating to CDD requirements will be made available from the third party upon request without delay. Nor is there any requirement that financial institutions satisfy themselves that the third party is regulated and supervised and has measures in place to comply with CDD requirements.

421. During the on-site visit, the assessment team was told that financial institutions do not currently rely on third parties in a foreign country to conduct CDD for them. However, there appears to be no prohibition on that practice. There is no provision in law, regulation or other enforceable means which deals with how institutions should determine in which countries the third party that conducts CDD may be based.

422. Under the *Real Name Financial Transactions Act* (Article 3(1)) and Article 5-2(1) of FTRA, the ultimate responsibility for customer identification and verification remains with the financial institution relying on the third party.

423. The *AML Enforcement Guidelines* (Section IV.8 at pp.40-41) deals with third party CDD, stating that "Financial institutions should establish procedures and control measures necessary to prevent and manage" AML/CFT risks "when allowing a third party to perform CDD." The guidelines further advises<sup>53</sup> financial institutions to verify a third party's capability to perform CDD by: checking documents that "show the identity of a third party"; using a questionnaire to determine the third party's compliance with AML requirements before signing a contract to entrust the third party with CDD obligations; and, checking the third party's AML/CFT compliance again when there are changes in major stockholders, executives or directors. The *AML Enforcement Guidelines* also states that a financial institution may perform simplified CDD on the third party, when it is a bank of a FATF member country, an international regional development bank, or a trade bank.

424. Finally, the *AML Enforcement Guidelines* stipulate that financial institutions are required to: (1) include provisions in the third party CDD contract that require the third party to provide information

---

<sup>53</sup> It is not clear that the guidelines treat verification of a third party's capability to perform CDD as mandatory. The document merely states that "To verify a third party's capability of performing CDD, financial institutions should check the following information...". It does not expressly require verification of capacity.

specified by the relying financial institution, as well as information or documents the third party obtained in performing CDD, upon request without delay; (2) obtain senior management review and approval before entering into a contract for third party CDD; and (3) perform additional CDD when they determine that the third party's CDD is not satisfactory.

425. Apart from the problem of not constituting other enforceable means, the *AML Enforcement Guidelines*' approach to third party CDD raises several of the same concerns noted in the discussion of Recommendation 7. Relying on a questionnaire is insufficient to determine the third party's compliance with AML/CFT requirements and capacity to conduct CDD. Similarly, the guidelines' suggestion that CDD on the third party may be simplified when the third party is a bank from a FATF member country... creates an AML/CFT vulnerability in third party CDD, since the fact that a bank conducting third party CDD is from a FATF member country does not ensure that it presents a low AML/CFT risk. In addition, the guidelines advise institutions to have a contractual obligation in place for the third party to provide information and documents obtained when performing CDD "upon request without delay", which does not satisfy the requirement that institutions immediately obtain necessary information from the third party.

### Effectiveness

426. While there is a strong compliance culture in Korea throughout the financial industry, it appears that financial institutions are not fully aware of their responsibilities regarding third party CDD. This lack of awareness of the issue, together with the fact that the new CDD requirements did not come into effect until 22 December 2008, and therefore remain untested, raises questions about the eventual effectiveness of this aspect of Korea's CDD system.

427. In interviews during the site visit, financial institutions routinely answered that they were aware that under the new AML/CFT regime coming into effect in December 2008, each financial institution has ultimate responsibility for conducting customer identification and verification. However, while financial institutions regularly referred to their CDD obligations under the *Real Name Financial Transactions Act* and the FTRA, they generally appeared less familiar with the concept and practice of third party CDD. In several cases, financial institutions clearly did not realise that third party CDD is involved when another member of the same financial services group or another financial institution refers a client and the financial institution relies on CDD conducted by another member of the same financial services group or by an unrelated financial institution.

### 3.3.2 Recommendations and Comments

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

### 3.3.3 Compliance with Recommendation 9

|     | RATING | SUMMARY OF FACTORS UNDERLYING RATING                                                                                                 |
|-----|--------|--------------------------------------------------------------------------------------------------------------------------------------|
| R.9 | NC     | <ul style="list-style-type: none"> <li>Financial institutions relying on a third party to perform CDD are not required to</li> </ul> |

|  | RATING | SUMMARY OF FACTORS UNDERLYING RATING                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|--|--------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|  |        | <p>immediately gain from the third party the necessary information concerning elements of the CDD process.</p> <ul style="list-style-type: none"> <li>• There is no requirement for financial institutions to take adequate steps to satisfy themselves that copies of identification data and other relevant CDD documentation will be made available from the third party upon request without delay.</li> <li>• Financial institutions are not required to satisfy themselves that the third party is regulated and supervised and has measures in place to comply with CDD requirements.</li> <li>• There is no provision requiring financial institutions relying on CDD conducted by third parties in foreign countries to take into account whether those countries adequately apply the <i>FATF Recommendations</i>.</li> </ul> |

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

#### 3.4.1 Description and Analysis

429. Financial institutions are obliged to keep financial information confidential pursuant to Article 4-3(1) of the *Real Name Financial Transactions Act* (guarantee of secrecy of financial transactions), Article 22 of the *FETA* (guarantee of secrecy of foreign exchange transactions), Article 23 of the *Use and Protection of Credit Information Act* (consent regarding provision and use of personal credit information), and Article 27 of the same act (prohibition of disclosure of secrets for non-business purposes). However, Article 4(1) of the *Real Name Financial Transactions Act* and Article 24(1) of the *Use and Protection of Credit Information Act* stipulate that financial institutions must provide financial transaction information to others as provided in a court order or judge-issued warrant. In addition, financial institutions are required to provide financial transaction information when competent authorities request the information, following the procedures specified in other acts.

430. Importantly, Article 12 of FTRA provides that some of its obligations (the STR and CTR process (Article 4 and 4(2)); the obligation for authorities and persons to provide information to KoFIU (Article 6); the dissemination of information from KoFIU to Law Enforcement Agencies (Article 7); KoFIU's international exchange of information (Article 8); and, KoFIU's requests to authorities and institutions for information (Article 10)) take priority over the articles in the abovementioned laws which establish financial institution secrecy.

431. With respect to financial institutions, this means that they are obliged to provide KoFIU with all information related to STRs and CTRs, identification and CDD information and documents, and financial transaction records. Similarly, government authorities are able to share necessary information. During the on-site visit, KoFIU and other government authorities confirmed that they have no difficulties obtaining information they need for their AML/CFT work. Similarly, it appears that KoFIU and other authorities are able to share information internationally to perform their AML/CFT functions.

432. There is however one financial secrecy provision which limits sharing of information between financial institutions which has particular relevance to correspondent banking and wire transfers. Article 4(1) of the *Real Name Financial Transactions Act* allows general information (*e.g.* name of account holder and account number) to be provided to other financial institutions involved in the transactions without restriction. It does not allow customer identification information (*e.g.* address and the resident registration number) to be provided unless consent is obtained from the customer. This represents a limitation to the sharing of information between financial institutions required under Recommendation 7 and Special Recommendation VII.

### 3.4.2 Recommendations and Comments

433. Overall, Korea has a strong legal framework which ensures that no financial institution secrecy law inhibits implementation of the *FATF Recommendations*. A system is in place to ensure that competent authorities have access to the information they need to conduct their AML/CFT activities. One provision does exist however which limits the sharing of customer identification information between financial institutions in such a way as to impact full implementation of Recommendation 7 and Special Recommendation VII and it is recommended that this obstacle be removed.

### 3.4.3 Compliance with Recommendation 4

|     | RATING | SUMMARY OF FACTORS UNDERLYING RATING                                                                                                                                                                                                                                                   |
|-----|--------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| R.4 | LC     | <ul style="list-style-type: none"><li>A financial secrecy provision exists which limits the sharing of customer identification information between financial institutions in such a way as to impact full implementation of Recommendation 7 and Special Recommendation VII.</li></ul> |

## 3.5 Record keeping and Wire Transfer Rules (R.10 & SR.VII)

### 3.5.1 Description and Analysis

#### Recommendation 10

434. There is no specific law or regulation that establishes a general record keeping obligation for the purposes of AML/CFT. Nevertheless, record keeping obligations exist in several laws, primarily those concerning commercial and taxation activities, and these apply to those institutions which are subject to AML/CFT obligations.

435. With respect to the preventative measures in place for ML/TF, Article 4(4) of the FTRA establishes an obligation for reporting entities, when an STR has been reported to KoFIU, to keep documentation concerning customer identification, transaction records and the grounds for suspicion for five years from the date the STR was filed.

436. Article 33(1) of the *Commercial Act* provides that ‘merchants’ (which is defined as persons who engage in commercial activities and thus covers all financial institutions as defined by the FATF), must keep their ‘trade books’ (company accounts and balance sheets) and all important business documents for ten years and must keep ‘slips or similar documents’ for five years. Article 33(2) provides that the ten years applicable to trade books is calculated from the date of closure of the books. The result of these provisions is that financial institutions are obliged to maintain customer identification records, account information and business letters. There is some question remaining as to whether these provisions require that the transaction records to be kept be sufficient to allow for reconstruction of transactions conducted by the institutions’ customers.

437. Similar requirements with respect to keeping accounts and business correspondence exist in the *Corporate Tax Act* (e.g. Article 116) and in the *Income Tax Act* (e.g. Articles 160-2 and 160-4), though neither of these pieces of legislation require that customer transaction records or CDD documentation be kept.

438. In section VIII, the *AML Enforcement Guidelines* details the records that financial institutions should keep in line with the Article 33 of the *Commercial Act*. As this document does not have the status of law or regulation, it is useful only as an aid to understanding the provisions in the *Commercial Act*. The guideline states that “Information on customer identification and verification should be kept for over five

years after the end of business relationship with customer... Record of financial transaction with customer should be kept for more than five years after the day of transaction.” The interpretation outlined in the guideline supports the assertions of Korean authorities that the provisions in the *Commercial Act* substantially meet the record-keeping requirements of Recommendation 10.

439. Korean authorities argue that an indirect record keeping obligation can also be read into the requirement outlined in Article 4(1) of the *Real Name Financial Transactions Act* that, when requested by competent authorities, financial institutions provide financial transaction records that the financial institutions have stored, following methods and procedures stipulated in relevant laws. This includes customer identification information and financial transaction records. However, there is a small exception to this provided for in Article 6 of the *Enforcement Decree of the Real Name Financial Transactions Act* – financial transaction records need not be provided where it is impossible to determine who conducted the transaction. This exception presents a possible limitation the provision of information to competent authorities.

440. Article 4(1) provides a clear and detailed requirement for financial institutions to provide a wide range of competent authorities with information when requested to do so. There is a limitation in this obligation however; there is no requirement that the information be provided to the requesting authority ‘on a timely basis’. Indeed, there is no particular timeframe within which the information must be provided by the institutions.

441. When financial institutions have disseminated financial transaction information to competent authorities pursuant to the Article 4(1), they should keep the information for five years from the date of the dissemination or, where the institution refused to supply information to the competent authority, for five years from the date the information request was received (Article 4(2)). Information or documents may be stored as originals, duplicates, as microfilm, as scanned documents or images, or electronically, following the institution’s internal procedures for record keeping (Article 33(3) of the *Commercial Act* and Article 2-2 of the *Presidential Enforcement Decree of the Commercial Act*).

442. In addition, the *AML Enforcement Guidelines* recommend that financial institutions maintain information and relevant documents covering customer identification and verification records, financial transaction records, internal & external reports including STR, and other relevant documents for more than 5 years (Section VIII). Further, these guidelines recommend that financial institutions preserve information and documents to make them available for reference or reproduction upon request by the Commissioner of KoFIU.

### ***Statistics and effectiveness***

443. Overall, the record keeping requirements are being implemented effectively. During on-site inspections, FSC examiners review the record keeping policies and procedures that are in place.

**Disseminations to competent authorities under the *Real Name Financial Transactions Act***

|                                                                     | 2003   | 2004    | 2005    | 2006    | 2007    | JAN-JUNE 2008 |
|---------------------------------------------------------------------|--------|---------|---------|---------|---------|---------------|
| <b>Investigative Bodies including Court and Prosecutor's Office</b> | 87 655 | 112 695 | 127 780 | 136 171 | 156 052 | 94 313        |
| <b>Korea Exchange</b>                                               | -      | -       | -       | 42 702  | 135 793 | 56 921        |
| <b>NTS</b>                                                          | 66 956 | 99 130  | 71 194  | 76 249  | 88 831  | 41 875        |
| <b>Government Officials Ethics Committee</b>                        | 15 151 | 19 751  | 15 886  | 19 564  | 23 843  | 14 138        |
| <b>Local Governments</b>                                            | 57 018 | 46 079  | 25 588  | 21 948  | 23 281  | 8 249         |

|                                               | 2003           | 2004           | 2005           | 2006           | 2007           | JAN-JUNE 2008  |
|-----------------------------------------------|----------------|----------------|----------------|----------------|----------------|----------------|
| <b>FSC and FSS</b>                            | 9 047          | 11 042         | 13 769         | 13 929         | 17 584         | 5 493          |
| <b>Korea Deposit Insurance Corporation</b>    | 4 709          | 6 106          | 4 661          | 6 260          | 5 965          | 2 438          |
| <b>Others</b>                                 | 1 152          | 733            | 841            | 1 347          | 1 491          | 2 866          |
| <b>KCS</b>                                    | 101            | 263            | 224            | 253            | 271            | 8 106          |
| <b>KoFIU</b>                                  | 101            | 62             | 53             | 178            | 230            | 179            |
| <b>NEC</b>                                    | 129            | 833            | 167            | 704            | 193            | 488            |
| <b>Board of Audit and Inspection of Korea</b> | 554            | 728            | 208            | 332            | 131            | 176            |
| <b>Ministry of Strategy and Finance</b>       | 379            | 390            | 83             | 97             | 83             | 43             |
| <b>Fair Trade Commission</b>                  | 40             | 2              | -              | 2              | -              | 32             |
| <b>TOTAL</b>                                  | <b>242 992</b> | <b>297 814</b> | <b>260 454</b> | <b>319 736</b> | <b>453 748</b> | <b>235 317</b> |

## Special Recommendation VII

444. In Korea, the financial institutions allowed to conduct domestic wire transfers are banks (commercial banks, local banks, the credit business unit of the National Agricultural Cooperatives Federation, and the credit business unit of the National Federation of Fisheries Cooperatives), the Korea Development Bank, the Industrial Bank of Korea, the National Credit Union Federation of Korea, mutual savings banks, community credit co-operatives and the post office. The financial institutions permitted to conduct cross-border wire transfers are: banks, the Korea Development Bank, the Export-Import Bank of Korea, and the Industrial Bank of Korea (Article 8(2) of the *FETA* and the Article 14.1 of the *Presidential Enforcement Decree of the Foreign Exchange Transactions Act*).

445. Under Article 3(1) of the *Real Name Financial Transactions Act* and Articles 3 and 4 of the *Enforcement Decree of the Real Name Financial Transactions Act*, financial institutions are required to obtain and verify customers' real names and unique identification numbers for all transactions above KRW 1 million (USD 862). In addition, CDD is required by law or regulation for wire transfers that qualify as occasional transactions above the designated threshold – USD 10 000 for wire transfers in foreign currency and KRW 20 million for domestic currency wire transfers (Article 5-2(1)(1) of the *FTRA*). For these wire transfers, financial institutions are required to identify occasional customers and verify the identification documents provided.

446. As noted under Recommendation 4, Article 4(1) of the *Real Name Financial Transactions Act* provides that ordering financial institutions may (not must) provide beneficiary financial institutions with general information (*e.g.* name and account number) without any restriction. However, information (*e.g.* resident registration number and address) that can be used for identification is only provided after the customer's consent to do so is obtained. Korean authorities and institutions informed the evaluation team that for cross-border wire transfers this consent is obtained when the customer orders the wire transfer and the institution then sends complete information on the originator to the beneficiary financial institution(s) when processing the transfer instruction. This does not result in incomplete identification information (*e.g.* resident registration number and address) in wire transfers however, since if the consent is not obtained the wire transfer is not sent.

447. Section IV.6 of the *AML Enforcement Guidelines* purports to set out obligations for institutions conducting cross-border wire transfers and does so in a way that follows the requirements of Special

Recommendation VII. While this guidance is useful and on point, it does not constitute law, regulation or other enforceable means and thus does not establish requirements to be met by financial institutions.

448. With respect to domestic wire transfers, there are no requirements as to the information to be provided to the recipient institutions. Indeed the *AML Enforcement Guidelines* notes that obligations will be applied to domestic wire transfers “... when relevant laws such as the *Financial Transaction Reports Act* are revised.” Ordering financial institutions are required to provide originator information to competent authorities, including law enforcement agencies, whenever requested to do so (Article 4 of the *Real Name Financial Transactions Act*).

449. While measures are in place for monitoring institutions’ compliance with AML/CFT obligations these do not relate to institutions’ compliance with the requirements of Special Recommendation VII, as very limited obligations exist in law, regulation or other enforceable means. Sanctions are available in relation to the obligations under Special Recommendation VII which exist in law, regulation or other enforceable means.

### ***Statistics and effectiveness***

450. Institutions visited by the evaluation team during the on-site visit confirmed that they use the SWIFT system for cross-border transfers and thus are required by this system to provide certain information as part of their wire transfer instructions. In addition, as institutions consider the *AML Enforcement Guidelines* to be mandatory and enforceable, they have already or are in the process of bringing their practices into compliance with the guidelines. Thus, while limited obligations relation to Special Recommendation VII exist in law, regulation or other enforceable means, there is positive practice across the industry implementing many elements of this Special Recommendation.

## **3.5.2 Recommendations and Comments**

### ***Recommendation 10***

451. While there is no a AML/CFT law or regulation that imposes a record keeping obligation, obligations which largely meet the record keeping requirements of Recommendation 10 can be found in the *Commercial Act*. The provisions of this act do not clearly require that institutions keep transaction records sufficient to permit reconstruction of individual transactions so as to provide, if necessary, evidence for prosecution of criminal activity. It is recommended that Korea consider placing clear record keeping requirements, including with respect to reconstruction of transactions, within the *Real Name Financial Transactions Act* or one of the other acts related to AML/CFT. Details provided in the *AML Enforcement Guidelines* would be useful in that regard. It is further recommended that Article 4(1) of the *Real Name Financial Transactions Act* be amended to ensure that institutions are obliged to provide the information to authorities ‘on a timely basis’ and the *Enforcement Decree of the Real Name Financial Transactions Act* be amended so as to remove the exception within Article 6.

### ***Special Recommendation VII***

452. Some limited obligations are in place in Korea with respect to wire transfers. Useful guidance exists within the *AML Enforcement Guidelines* and institutions treat this document as if it were mandatory. It is therefore recommended that the contents of the guideline be transposed into law or regulation in order to establish requirements for financial institutions and that these are reviewed to ensure they fully implement Special Recommendation VII.

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

|        | RATING | SUMMARY OF FACTORS UNDERLYING RATING                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
|--------|--------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| R.10   | LC     | <ul style="list-style-type: none"> <li>• There is no specific requirement that the transaction records kept by institutions be sufficient to permit reconstruction of individual transactions.</li> <li>• There is no overall and general requirement that the information which must be provided to competent authorities be available on a timely basis.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| SR.VII | PC     | <ul style="list-style-type: none"> <li>• Ordering financial institutions are not required by law, regulation or other enforceable means to include full originator information in messages accompanying cross-border or domestic wire transfers, though the institutions do in fact appear to be including full originator information in the messages.</li> <li>• There is no requirement that each intermediary or beneficiary institution in the payment chain be required to ensure that all originator information that accompanies a wire transfer is transmitted with the transfer.</li> <li>• Beneficiary institutions are not required to adopt effective risk-based procedures for identifying and handling wire transfers that are not accompanied by complete originator information.</li> <li>• As limited obligations exist in law, regulation or other enforceable means with respect to wire transfers (these are primarily found in guidance), there is limited corresponding monitoring or sanctions by supervisory authorities in this area.</li> </ul> |

### Unusual and Suspicious Transactions

#### 3.6 Monitoring of Transactions and Relationships (R.11 & 21)

##### 3.6.1 Description and Analysis

#### Recommendation 11

453. There is no explicit requirement in law, regulation, or other enforceable means for financial institutions to pay special attention to all complex, unusual large transactions, or unusual patterns of transactions, that have no apparent or visible economic or lawful purpose.

454. Korean officials argue that Article 5-2 of FTRA, which requires financial institutions to develop and apply risk-based AML/CFT policies and procedures according to customer and transaction risk and the requirement that institutions have systems for ongoing customer monitoring, establish an implicit requirement for institutions to pay special attention to all complex, unusual large transactions, or unusual patterns of transactions that have no apparent or visible economic or lawful purpose. While in practice it could be expected that internal systems to identify and report suspicious transactions will often uncover unusual account or transaction activity, there is no requirement that institutions pay special attention to unusual transactions.

455. Financial institutions are not obliged to examine the background and purpose of such transactions and set forth findings in writing, nor are there related record-keeping requirements, except where there is a suspicion of ML or TF (FTRA Article 5-2(1)(2)). Similarly, Articles 3 and 6 of the *Financial Transaction Reports and Supervisory Regulations* only require setting forth findings in writing if the financial institutions form a suspicion of ML or TF. Institutions' reporting officers are required to document reasonable grounds of suspicion in the SR form or record them in an electronic format.

456. As noted previously, Article 33 of the *Commercial Act* requires institutions to "maintain relevant information to meet the general obligation of record keeping". In addition, Article 7 of the *Presidential*

*Enforcement Decree of the FTRA* authorises dissemination of specific financial transaction information to enforcement agencies and Article 4 of the *Real Name Financial Transactions Act* provides that institutions should provide information to competent authorities when requested to do so. Financial institutions are thus required to maintain important business documentation and provide it to competent authorities, but since they are not required to document findings of analysis of the purpose and background of unusual transactions, information on examination of unusual transactions does not exist and thus is not available for competent authorities and auditors.

457. Article 4(4) of FTRA requires institutions to keep records of reasons for reporting STRs, and information written in STR form for five years from the date of report. In such cases, where a suspicion of ML or TF exists, the provisions of the *Commercial Act*, *Real Name Financial Transactions Act* and the *Presidential Enforcement Decree of the FTRA* establish a requirement that the written findings be kept available for competent authorities and auditors for at least five years.

458. The *AML Enforcement Guidelines* does not directly discuss paying special attention to complex, unusual large transactions, or unusual patterns of transactions, that have no apparent or visible economic or lawful purpose. It does discuss risk-based transaction monitoring systems (Section VI, at pp.55-56). That portion of the document suggests various measures that “financial institutions may take” in order “[t]o effectively monitor unusual transaction or transaction pattern...”. The specific examples provided in the guideline expressly relate to “high risk transaction[s]”, and do not encompass a full range of unusual activities. Section VIII of the *AML Enforcement Guidelines* suggests that financial institutions keep detailed records related to AML activities for more than five years, and to ensure they can be made available for reference or reproduction upon request from the commissioner of FIU.

459. Since relevant provisions of the revised FTRA only came into effect on 22 December 2008, the evaluation team could not determine whether supervisors, in assessing the adequacy of the internal control environment of financial institutions, will also indirectly require financial institutions to identify complex, unusual, or large transactions or patterns of transactions.

## **Recommendation 21**

460. There is no requirement in law, regulation or other enforceable means for financial institutions to pay special attention to business relationships and transactions with persons from countries which do not or insufficiently apply the *FATF Recommendations*. Financial institutions are, however, required to establish and implement their own risk management systems for AML/CTF (Article 5-2(2) of FTRA) and these systems should include procedures for assessing ML and TF risks of other countries. It is expected that these risk management systems would classify transactions with jurisdictions considered to be a high risk as high risk transactions to which enhanced CDD and monitoring would be applied. Since the requirement to conduct enhanced CDD was only implemented on 22 December 2008, it is not yet possible to determine whether enhanced CDD is in fact being conducted on transactions with persons from or in jurisdictions which do not or insufficiently apply the *FATF Recommendations*.

461. It should be noted that the *AML Enforcement Guidelines* (Section IV.2.2.1.1 at p.24) specifically identifies ‘country risk’ as a factor financial institutions are required to consider in evaluating AML/CTF risks. In this regard, the guidelines notes that country risk “may be evaluated” using the “List of FATF’s non-cooperative countries and territories”.

462. Through the various financial sector associations, KoFIU notifies financial institutions of jurisdictions and areas identified by FATF as having AML/CFT deficiencies. For example, in response to the *FATF Statements* issued in February, June and October of 2008 expressing concern about the lack of comprehensive AML/CFT systems in certain locations, KoFIU forwarded the *FATF Statement* to the

Korea Federation of Banks, the Korea Securities Dealers Association, the Korea Life Insurance Association, the General Insurance Association of Korea, the National Credit Union Federation of Korea, the Korea Futures Association, the Investment Banks Association of Korea, the National Forestry Cooperatives Federation, the Korean Federation of Community Credit Cooperatives, the National Agricultural Cooperative Federation, the National Federation of Fisheries Cooperatives, the Korea Federation of Savings Banks, and to Korea Post. The covering correspondence asked these associations to “pass the statement onto financial institutions associated with your organization so that the financial institutions will pay attention to transactions with financial institutions of countries mentioned above”. The dissemination mechanism appears to be effective, as the financial institutions the assessment team met with were familiar with these statements and with the earlier NCCT Statements issued by the FATF.

463. However, the assessment team was not made aware of any specific provisions describing the legal impact of these notifications and the procedures to be employed by institutions receiving these advisories is unclear.

464. The circulation of advisories in response to FATF actions, coupled with the guidance contained in the *AML Enforcement Guidelines* concerning non-cooperative countries, suggests that transactions with such jurisdictions will be viewed with increased scrutiny by financial institutions as part of their risk-based monitoring obligations under Article 5-2 of the FTRA.

465. While there are demonstrated means of notifying financial institutions of weaknesses in the AML/CFT systems of other countries (primarily those identified publicly by the FATF), no further measures are required to be taken beyond including transactions with such jurisdictions in the AML/CFT monitoring and STR reporting systems. There is no requirement that institutions examine the transactions to determine whether they have an apparent economic or visible lawful purpose, examine the purpose and background of such transactions or document the findings of such examinations of transactions.

466. Financial institutions are required to have their own risk management systems for AML/CTF (Article 5-2(2) of FTRA) and it is expected that these risk management systems would classify transactions with jurisdictions considered to be a high risk as high risk transactions to which enhanced CDD and monitoring would be applied. However, the requirement to conduct enhanced CDD was only implemented on 22 December 2008 and thus it is not yet possible to determine whether enhanced CDD is in fact being conducted on transactions with persons from or in jurisdictions which do not or insufficiently apply the *FATF Recommendations*. There are no other counter-measures available in instances where a jurisdiction continues not to apply or continues to insufficiently apply the *FATF Recommendations* (e.g. reporting or limiting the range of transactions or services provided to persons in high-risk jurisdictions or requirements for supervisory agencies to take significant AML/CFT deficiencies into account when considering requests from financial institutions to open subsidiaries, branches, or representative offices in problematic jurisdictions).

### **3.6.2 Recommendations and Comments**

#### **Recommendations 11 and 21**

467. There are significant shortcomings in Korea’s compliance with Recommendations 11 and 21. Laws, regulations and decree pay very limited attention to these matters and there is an over-reliance on internal guidelines and transaction monitoring to deal with unusual transactions and transactions with jurisdictions which insufficiently apply the *FATF Recommendations*.

468. It is recommended that Korean authorities conduct a review of this area and introduce a direct obligation in law, regulation or other enforceable means for financial institutions to pay special attention to

all complex, unusual large transactions, as called for under Recommendation 11. Financial institutions should also be required to examine the background and purpose of such transactions, set forth findings in writing and maintain records for competent authorities and auditors for at least five years.

469. While transactions with jurisdictions that either do not or insufficiently apply the *FATF Recommendations* would likely be subject to internal monitoring under the general risk-based AML/CFT obligation, it is recommended that Korean authorities implement a direct obligation in law, regulation or other enforceable means requiring special attention to business relationships and transactions with high-risk jurisdictions. This special attention should include a requirement to investigate such transactions and prepare written records to assist competent authorities.

470. Competent authorities could also provide more clear guidance to financial institutions concerning the actions to be taken with respect to the advisories issued with respect to insufficient application of the *FATF Recommendations* in certain jurisdictions or regional areas.

### 3.6.3 Compliance with Recommendations 11 & 21

|      | RATING | SUMMARY OF FACTORS UNDERLYING RATING                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|------|--------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| R.11 | NC     | <ul style="list-style-type: none"> <li>There is no explicit requirement in law, regulation or other enforceable means for financial institutions to pay special attention to complex, unusual large transactions, or patterns of transactions.</li> <li>Financial institutions are not required to examine the background and purpose of such transactions and set forth findings in writing except where there is a suspicion of money laundering or terrorist financing.</li> <li>Institutions are not required to make findings of their examinations of unusual transactions available to competent authorities.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                |
| R.21 | NC     | <ul style="list-style-type: none"> <li>There is no requirement in law, regulation or other enforceable means for financial institutions to pay special attention to business relationships and transactions with persons from countries which do not or insufficiently apply the <i>FATF Recommendations</i>.</li> <li>Where transactions have no apparent economic or lawful purpose, there is no requirement to examine the background and purpose of the transactions, set forth findings in writing and make them available to assist competent authorities.</li> <li>While there are demonstrated means of notifying financial institutions of weaknesses in the AML/CFT systems of other countries, institutions are not provided clear advice on what action should be taken.</li> <li>The only possible counter-measure is application of enhanced customer due diligence and as this was only implemented on 22 December 2008 it is too early to assess the effectiveness of this measure.</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

471. Under Article 4 of FTRA, financial institutions are required to report to the KoFIU immediately under the following conditions:

- If it has a reasonable grounds to suspect that the funds received in relation to a financial transaction is an illegal asset or that the customer is engaged in ML or TF and the amount involved in the transaction equals or exceeds the threshold prescribed in the *Presidential*

*Enforcement Decree of the FTRA* (currently USD 10 000 or equivalent in other foreign currencies for foreign currency transactions and KRW 20 million for transactions in local currency).

- If it has a reasonable grounds to suspect that the customer is making financial transactions divided into smaller amounts to evade the reporting provision and the total amount of such related transactions equals or exceeds the threshold.
- If it has filed a report to the competent law enforcement agency pursuant to Article 5(1) of POCA or Article 5(2) of the *Prohibition of Financing for Offence of Public Intimidation Act* (i.e. reports of suspected criminal / terrorist proceeds or offences).

472. In this context, "illegal assets" include (Article 2(3) of FTRA):

- Criminal proceeds and related properties as defined in POCA Article 2(4).
- Illegal profits pursuant to the Article 2(5) of the *Act on Special Cases Concerning the Prevention of Illegal Trafficking in Narcotics*.
- "Funds for public intimidation offences" as is defined in Article 2(1) of the *Prohibition of Financing for Offences of Public Intimidation Act*.

473. While this is a broad range of types of funds, the reporting provision does not cover the proceeds of all predicate offences as designated by the FATF as Korea has not made terrorism, TF<sup>54</sup> or environmental crimes predicates to ML. In addition, as noted previously in Section 2.1 of this report, there is an inadequate range of predicate offences within some of the designated categories.

474. Article 17 of FTRA stipulates that any person who fails to fulfil his/her obligation to file reports may be subject to an administrative fine not exceeding KRW 10 million (USD 8 612). Article 14 further provides for penal sanctions (imprisonment for a period not exceeding 1 year or a fine not exceeding KRW 5 million) for false reporting and tipping off.

#### ***STRs related to terrorism, terrorist acts, terrorist organisations and terrorist financiers***

475. Article 4 of FTRA makes it obligatory for financial institutions to file a STR when they suspect the transaction is related to financing for offences of public intimidation (i.e. terrorism<sup>55</sup>). The scope of Korea's STR obligation was broadened to include this in December 2008 and this it is too early to gauge the effectiveness of this element of the reporting obligation. As noted previously, in Section 2.2 of this report, the TF offence suffers from some limitations. These limitations also limit the scope of the STR reporting requirement as it relates to terrorism, terrorist acts, terrorist organisations and those who finance terrorism.

---

<sup>54</sup> Amendments to POCA, which include addition of the terrorist financing offences to the list of predicates, were passed by the National Assembly on 2 March 2009. As these amendments occurred outside the period of time considered by this evaluation, they have not been taken into account in this report.

<sup>55</sup> "Funds for public intimidation offences" means any funds or assets collected, provided, delivered, or kept for use in any of the following acts committed with the intention to intimidate the public or to interfere with the exercise of rights of a national, local, or foreign government or to force by intimidation such a government to do something that is outside its duty (Article 2(1) of the *Prohibition of Financing for Offences of Public Intimidation Act* and Article 2(5) of FTRA).

### ***Reporting of attempted transactions***

476. The FTRA stipulates that financial institutions are obliged to file STRs. Under Article 4(1) of the FTRA, financial institutions are required to report STRs when they suspect money laundering or terrorist financing. While this provision does not state that transactions must be completed before the STR obligation applies, there is no explicit requirement in law, regulation or other enforceable means that STRs be reported for attempted transactions and the *AML Enforcement Guidelines* provide no guidance with respect to attempted transactions. There is however a tick box in the STR reporting form, which is annexed to the FTRA Regulation, for reporting entities to indicate whether the STR relates to an attempted transactions. Therefore, Korean authorities and institutions consider that financial institutions should submit STRs with respect to attempted transactions, and indeed approximately 4 000 STRs were submitted during 2008 which related to attempted transactions.

### ***STR reporting should occur regardless of the amount of the transaction***

477. As mentioned above, Article 6 of the *Presidential Enforcement Decree of the FTRA* establishes an STR reporting threshold of USD 10 000 (or equivalent) for transactions in foreign currencies and KRW 20 million (USD 17 224) for transactions in local currency.

478. Article 4(2) of FTRA does however provide that even if amount of the transaction is less than the reporting threshold, the financial institution may still submit an STR if it has reasonable grounds to suspect that the funds involved are illegal assets or that the party involved in financial transaction is engaged in ML or TF. As may be seen in the table below, STRs are being reported where the transaction amount is below the reporting threshold.

### ***STR reporting should apply regardless of whether tax matters may be involved***

479. When financial institutions have reasonable grounds to suspect that assets received are illegal or that a party involved in a financial transaction is engaged in ML or TF, they are required to file an STR irrespective of whether they suspect the activity involves tax matters.

480. Under Article 2(4)(c) of FTRA, ML covers disguising of facts related to acquisition or disposition of assets or the origin of assets, or concealing such assets with the intention of committing offences prescribed in Article 9 of the *Punishment of Tax Evaders Act*. Thus, tax evasion is considered a predicate offence for the purpose of STR reporting under the FTRA and financial institutions are required to report STRs when they suspect the transaction relates to tax evasion.

## **Special Recommendation IV**

481. Article 4 of FTRA makes it obligatory for financial institutions to file STRs on transactions related to financing of offences for public intimidation but this extension of the STR reporting obligation to encompass a TF reporting requirement only came to effect on 22 December 2008, making it too early to assess its effectiveness.

482. As noted previously, in Section 2.2 of this report, the TF offence suffers from some limitations. These limitations also limit the scope of the STR reporting requirement as it relates to terrorism, terrorist acts, terrorist organisations and those who finance terrorism.

483. The thresholds of KRW 20 million (USD 17 224) and USD 10 000 above which STR reporting is mandatory, also apply to STRs related to TF, as does the option of reporting transactions of values less than the thresholds. This reporting threshold represents a serious limitation in the reporting obligation with

respect to TF as the amounts involved in TF, and the amounts of individual transactions involved, have been demonstrated to be very low.

484. As with STRs related to ML, reporting entities are obliged to submit STRs with respect to attempted transactions and reporting entities should report STRs even where they suspect the transaction is related to tax matters.

#### **Recommendation 14**

##### ***Protection for liability where reporting suspicions in good faith***

485. Reporting entities and their employees are not liable for damages to parties involved in the financial transaction or others related to the transaction, unless the report is not submitted in good faith or the institution/employee displays gross negligence (Article 4(7) of FTRA). Representatives from reporting entities who met with the evaluation team did not express concern that they could be held liable as a result of reporting STRs.

##### ***Prohibition on ‘tipping off’***

486. When employees of financial institutions are filing or have already filed an STR, they are prohibited from disclosing to anyone, including parties involved in transaction, the fact that the STR ‘has been or will be filed’ (Article 4(6) of FTRA). In addition, they should not make known the fact that information related to the STR was provided. Tipping off is a criminal offence in Korea subject to punishment of less than one year imprisonment or a fine not exceeding KRW 5 million (USD 4 306).

##### ***Additional elements***

487. Under Article 9 of FTRA, KoFIU officials are prohibited from providing or disclosing information related to STRs, or using information related to STRs for any purpose other than that stipulated by law.

#### **Recommendation 25 (guidance and feedback related to STRs)**

488. Article 8 of the *Presidential Enforcement Decree of the FTRA* notes that the Commissioner of KoFIU can provide examples of transactions that are highly suspicious of ML or TF such as large amounts of currency transactions or transactions using accounts under the name of others that have no economic rationality or legitimate purpose to help financial institutions determine whether financial transactions are suspicious.

489. Korea has five mechanisms for providing guidance and feedback related to STRs and STR reporting:

- *Notification of receipt of report:* KoFIU provides confirmation to reporting entities on receipt of each STR.
- *Web portal for reporting entities:* Through a secure portal accessed via the KoFIU website, reporting entities can look through statistics on the STRs and CTRs they have submitted to KoFIU including number of reports and date of submission. This web portal also provides general information on AML matters and has answers to frequently asked questions.

- *Reporting Entities Council*: The Reporting Entities Council was established in March 2007 as a mechanism by which KoFIU could meet regularly with reporting officers from banks and securities companies as well as the Korea Federation of Banks. The council considers the STR and CTR reporting systems and devises strategies to improve the quality of reporting.
- *KoFIU Annual Report*: KoFIU provides STR and CTR statistics, information on disseminations made to enforcement agencies and information on results achieved from STRs in its annual report, which is distributed to financial institutions and published on the KoFIU website.
- *Suspicious Transaction Reference Book and Casebook of Analysis*: KoFIU has produced two publications drawing directly from its analysis of STRs. The reference book and the casebook provide financial institutions with information on the techniques, trends and patterns of ML seen in STRs. Much of the material is sector-specific and is designed to aid financial institutions' identification and submission of STRs as well as to provide general feedback on the information and insights gained from STRs.

490. In addition, in consultation with relevant institutions, KoFIU is planning to improve the existing feedback system by providing reporting entities with information on results from STRs that financial institutions have filed.

## **Recommendation 19**

491. On 18 January 2006, Korea implemented a cash transaction reporting (CTR) system under which reporting entities are required to report to KoFIU all cash transactions above a designated threshold. Reporting entities should report to KoFIU when the amount of cash paid or received in transactions conducted in one trading day on the same name is above the threshold. These reports must be made within 30 days of the transaction (Article 4(2) of FTRA and Article 8-2 of the *Presidential Enforcement Decree of the FTRA*).

492. For the purposes of this obligation, cash payment or receipt means physical movement of cash between financial institutions and customers. Thus any transaction at the counter, cash deposits or withdrawals at ATMs, and cash deposits at night safes are subject to reporting. Originally the CTR reporting threshold was KRW 50 million (USD 43 060), but this was reduced to KRW 30 million (USD 25 836) in January 2008. Authorities plan to further reduce the CTR threshold to KRW 20 million (USD 17 224) in 2010 (Addendum Article 2 of the *Presidential Enforcement Decree of the FTRA*).

493. For those institutions which have a large number of CTRs, this information is submitted via a system-to-system report through a dedicated network operated by intermediary organisations such as the Korea Federation of Banks and the Korea Securities Dealers Association. Financial institutions with a small number of CTRs report directly to the FIU by using the KoFIU secure network.

494. In addition to financial institutions, casinos have CTR obligations with respect to their currency exchange activities.

## **Additional elements**

495. CTRs are reported online and stored in KoFIU's database. Analysts refer to CTRs when analysing STRs. CTRs are encrypted with digital signatures to ensure the security of electronic document and to identify the reporting entity. They are received through a dedicated line, SSL or VPN. Security has been further strengthened by using F/W and IPS to block unauthorised access or illegal traffic.

496. If necessary, the Commissioner of KoFIU can disseminate information derived from CTRs to law enforcement agencies (Article 7 of FTRA).

#### Statistics<sup>56</sup> and effectiveness

497. Due to the fact that the amendments to the FTRA which established the STR reporting requirement for TF only came into effect on 22 December 2008, KoFIU has not yet received any STRs related to TF. It is too soon to assess the effectiveness of this obligation.

#### Monthly STR filings

| YEAR | JAN   | FEB   | MAR   | APR   | MAY   | JUN   | JUL   | AUG   | SEP   | OCT   | NOV   | DEC   | TOTAL  |
|------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|--------|
| 2002 | 16    | 11    | 11    | 14    | 13    | 11    | 8     | 15    | 21    | 38    | 64    | 53    | 275    |
| 2003 | 74    | 92    | 75    | 105   | 77    | 94    | 184   | 133   | 162   | 247   | 195   | 306   | 1 744  |
| 2004 | 270   | 203   | 318   | 356   | 411   | 442   | 305   | 337   | 403   | 508   | 550   | 577   | 4 680  |
| 2005 | 602   | 370   | 674   | 937   | 941   | 1 425 | 1 466 | 1 551 | 1 518 | 1 411 | 1 210 | 1 354 | 13 459 |
| 2006 | 1 945 | 2 014 | 1 513 | 1 553 | 1 610 | 1 751 | 1 813 | 2 094 | 2 114 | 2 180 | 2 667 | 2 895 | 24 149 |
| 2007 | 3 009 | 3 245 | 4 378 | 4 215 | 4 566 | 4 033 | 3 956 | 4 776 | 3 945 | 4 347 | 6 769 | 5 235 | 52 474 |
| 2008 | 6 745 | 6 780 | 8 179 | 7 867 | 7 020 | 7 421 | -     | -     | -     | -     | -     | -     | 44 012 |

#### STR filings by sector

|                                       | 2002 | 2003  | 2004  | 2005   | 2006   | 2007   | JAN-JUNE 2008 |
|---------------------------------------|------|-------|-------|--------|--------|--------|---------------|
| <b>Banks</b>                          | 243  | 1 623 | 4 380 | 12 941 | 23 522 | 51 330 | 43 097        |
| <b>Farming Co-operatives</b>          | 0    | 1     | 34    | 144    | 320    | 841    | 658           |
| <b>Securities</b>                     | 30   | 101   | 225   | 260    | 199    | 218    | 213           |
| <b>Insurance</b>                      | 0    | 6     | 9     | 51     | 58     | 56     | 28            |
| <b>Postal Service</b>                 | 0    | 10    | 7     | 11     | 5      | 9      | 5             |
| <b>Forestry Co-operatives</b>         | 0    | 0     | 1     | 0      | 0      | 0      | 4             |
| <b>Community Credit Co-operatives</b> | 1    | 3     | 5     | 28     | 33     | 13     | 2             |
| <b>Mutual Savings Banks</b>           | 1    | 0     | 3     | 13     | 5      | 3      | 2             |
| <b>Credit Unions</b>                  | 0    | 0     | 1     | 2      | 2      | 0      | 2             |
| <b>Fisheries Co-operatives</b>        | 0    | 0     | 13    | 7      | 5      | 4      | 1             |
| <b>Futures Companies</b>              | 0    | 0     | 2     | 2      | 0      | 0      | 0             |
| <b>TOTAL</b>                          | 275  | 1 744 | 4 680 | 13 459 | 24 149 | 52 474 | 44 012        |

498. These statistics show a significant increase in the total number of STR received by KoFIU. The number of STRs received has almost doubled every year since 2005. No explanation has been provided for the negligible filings from the forestry co-operatives or the decline in STRs from the community credit co-operatives and from the mutual savings banks. It is recommended that more attention be paid to ensuring that these sectors are reporting effectively.

<sup>56</sup> As related to R.32; see s.7.2 for the compliance rating for this Recommendation.

**STRs re transactions under the reporting threshold**

| YEAR          | KRW    | USD | MIXED | TOTAL  |
|---------------|--------|-----|-------|--------|
| 2002          | 13     | 1   | -     | 14     |
| 2003          | 96     | 1   | -     | 97     |
| 2004          | 347    | 9   | -     | 356    |
| 2005          | 270    | 210 | -     | 480    |
| 2006          | 969    | 130 | 4     | 1 103  |
| 2007          | 10 646 | 461 | 5     | 11 112 |
| Jan-June 2008 | 8 732  | 238 | 7     | 8 977  |

499. Korean authorities insist that reporting entities do not consider the reporting threshold as the main determinant when deciding whether to submit STRs. In 2007 it can be seen that 15% of the total number of STRs received by KoFIU relate to transactions below the threshold of KRW 20 million / USD 10 000.

**CTR filings by sector**

| YEAR          | BANK             | SECURITIES     | INSURANCE  | OTHERS*          | TOTAL             |
|---------------|------------------|----------------|------------|------------------|-------------------|
| 2006          | 3 322 837        | 70 636         | 246        | 1 617 802        | 5 011 521         |
| 2007          | 2 624 935        | 22 407         | 259        | 1 220 469        | 3 868 070         |
| Jan-June 2008 | 1 849 919        | 13 193         | 257        | 1 384 303        | 3 247 672         |
| <b>TOTAL</b>  | <b>7 797 691</b> | <b>106 236</b> | <b>762</b> | <b>4 223 151</b> | <b>12 127 840</b> |

\* Includes post office, mutual savings bank, community credit co-operatives, and mutual finance services.

500. The number of CTRs received by KoFIU has decreased since the establishment of the CTR reporting system in 2006. While it appears no analysis has been performed to determine the reasons behind this, some officials observed to the evaluation team that there is decreasing reliance on cash in Korea and increasing adoption of electronic banking and payment systems.

### 3.7.2 Recommendations and Comments

501. As noted previously in Section 2.1 of this report, the list of predicate offences in POCA does not cover all the categories of offences required by the FATF, notable omissions being terrorism, TF and environmental crimes. Amendments to POCA, which include addition of the TF to the list of predicates, were passed by the National Assembly on 2 March 2009. As these amendments occurred outside the period of time considered by this evaluation, they have not been taken into account in this report. As this limitation in scope of predicate offences has the potential to limit the scope of the STR reporting obligation, it is recommended that POCA be amended to incorporate these offences as predicates and to ensure that predicate offences in Korea include a range of offences in each of the designated categories of offences.

502. The existing reporting threshold of USD 10 000 / KRW 20 million prescribed in the *Presidential Decree of the FTRA* is not compliant with the *FATF Recommendations* and, while some reports are being received on transactions below the threshold, this significantly undermines the STR reporting obligation, particularly with respect to STR reporting related to suspicions of TF. It is recommended that Korea remove this threshold as a matter of priority.

503. As the obligation to submit STRs does not explicitly apply to attempted transactions, the Korean Government should consider amending the FTRA or the *Presidential Decree of the FTRA* to explicitly require that STRs be submitted even for attempted transactions.

504. The obligation to file STRs should apply to funds where there are reasonable grounds to suspect or they are suspected to be linked or related to, or to be used for terrorism, terrorist acts or by terrorist organisations or those who finance terrorism. As noted previously in Section 2.2 of this report, there are limitations in the scope of the TF offence. These limitations have the potential to consequentially limit the scope of the STR reporting requirement related to TF and should therefore be addressed. Due to the fact that the PFOPIA and relevant amendments to the FTRA which established the STR reporting obligation with respect to TF only came into force on 22 December 2008, the effectiveness of the implementation of the STR obligation for TF cannot be evaluated at this time.

505. No explanation has been provided for the negligible filings from the forestry co-operatives or the decline in STRs from the community credit co-operatives and from the mutual savings banks. It is recommended that more attention be paid to ensuring that these sectors are reporting effectively.

506. The *AML Enforcement Guidelines* issued by the KoFIU serve as very useful guidance which assists financial institutions to develop their own AML policies and procedures and their STR reporting systems. Reporting entities would benefit from further guidelines specific to their sectors, in particular for the securities companies, insurance companies and currency changers.

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

|       | RATING | SUMMARY OF FACTORS UNDERLYING RATING                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
|-------|--------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| R.13  | PC     | <ul style="list-style-type: none"> <li>The suspicious transaction reporting requirement does not apply to funds that are the proceeds of all offences that are required to be included as predicate offences under Recommendation 1.</li> <li>Limitations in the criminalisation of terrorist financing impact on the scope of the suspicious transaction reporting requirement.</li> <li>The STR obligation is only mandatory above a transaction threshold of KRW 20 million (for transactions in Korean Won) / USD 10 000 (for transactions in foreign currencies).</li> <li>It is too soon to determine the effectiveness of the new obligation to report suspicious transactions related to terrorist financing.</li> </ul> |
| R.14  | C      | <i>This Recommendation is fully observed.</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| R.19  | C      | <i>This Recommendation is fully observed.</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| R.25  | LC     | <ul style="list-style-type: none"> <li>No sector-specific guidance has been issued on the STR reporting obligation.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| SR.IV | NC     | <ul style="list-style-type: none"> <li>The suspicious transaction reporting requirement does not apply to funds linked to or related to, or to be used for, terrorist organisations or those who finance terrorism.</li> <li>The STR obligation is only mandatory above a transaction threshold of KRW 20 million (for transactions in Korean Won) / USD 10 000 (for transactions in foreign currencies) and this is of particular concern when the nature of terrorist financing is considered.</li> <li>It is too soon to determine the effectiveness of the new obligation to report suspicious transactions related to terrorist financing.</li> </ul>                                                                       |

## **Internal controls and other measures**

### **3.8 Internal Controls, Compliance, Audit and Foreign Branches (R.15 & 22)**

#### **3.8.1 Description and Analysis**

##### **Recommendation 15**

507. Key pieces of legislation require financial sector organisations to establish and maintain internal procedures policies and controls. These include Article 23-3(1) of the *Banking Act*, Article 17(1) of the *Insurance Business Act*, Article 54-4(1) of the *Securities and Exchange Act*, Article 22-3(1) of the *Mutual Savings Banks Act*, Article 50-6(1) of the *Specialized Credit Financial Business Act*, Article 5-3(1) of the *Merchant Banks Act* and Article 11(1) of the *Indirect Investment Asset Management Business Act*. They are all written in almost identical terms. For example the relevant provision of the *Banking Act* provides that “Each financial institution shall set standards (hereinafter referred to as the “internal controls”) which the officers and employees of such financial institution must follow when performing their duties to observe Acts and subordinate statutes, manage its assets soundly and protect its depositors.” While none of these provisions explicitly require that internal procedures, policies and controls be established to prevent ML and TF, all of them establish a requirement for institutions to have internal procedures, policies and controls applicable to their duties under “Acts and subordinate statutes” which includes legislation imposing AML/CFT obligations on these institutions. Thus it appears there is an indirect requirement that financial institutions establish and maintain internal policies which would cover matters such as CDD, record retention and the detection and reporting of suspicious transactions.

508. According to Article 81(1)-5 of the *Detailed Regulation on Banking Supervision by the FSS*, officials of financial institutions are prohibited from getting involved in money laundering, directly or indirectly. Article 92 of the same regulation establishes that financial institutions must “inspect suspicious transactions related to activity specified in Article 81(1)-5 with special attention and establish and follow internal control procedures for AML.” None of these provisions explicitly require that the internal procedures, policies and controls be communicated to their employees, though it is a requirement that the internal controls be mandatory for the officers and employees of the financial institutions and all of these provisions are accompanied by a related requirement that the institutions have at least one compliance officer who is responsible for ensuring that the internal controls are followed by employees.

509. In addition to these requirements for internal controls, Article 5 of FTRA provides that reporting entities must *inter alia* (1) designate persons responsible for establishment of an internal reporting system, (2) establish and implement internal AML/CFT guidelines, and (3) train and educate employees on AML/CFT. Section III of the *AML Enforcement Guidelines* provides relevant guidance to support implementation of Article 5 of FTRA, noting that internal controls for AML should address:

- Role and responsibilities of the AML compliance officer and other appropriate staff.
- Training and education of executives.
- KYE (Know Your Employee) system.
- Independent audit system.
- Establishment of procedures for risk-based AML.
- Establishment of procedures for customer risk assessment.

- Establishment of policy for risk-based CDD.
- Establishment of procedures for risk-based account and transaction monitoring.
- Establishment of internal and external reporting system.
- Establishment of system for record retention.

510. Financial institutions are required to have at least one compliance officer responsible for overseeing compliance with the internal controls and for examining possible breaches of the controls (Article 23-3(2) of the *Banking Act*, Article 17-3 of the *Enforcement Decree of the Banking Act*, Article 17(2) of the *Insurance Business Act*, Article 54-4(2) of the *Securities and Exchange Act*, Article 22-3(2) of the *Mutual Savings Banks Act*, Article 50-6(2) of the *Specialized Credit Financial Business Act*, Article 5-3(2) of the *Merchant Banks Act*, Article 11(2) of the *Indirect Investment Asset Management Business Act*). There is no requirement however that these compliance officers be appointed at a management level. There is in each of these provisions a clear reporting from the compliance officer to the institution's audit committee.

511. In addition, Article 5 of FTRA requires that all reporting entities (which includes all financial institutions as defined by the FATF) have designated reporting officers. The role of a reporting officer under that provision is however limited compared to that of a compliance officer. Reporting officers must be responsible for the STR and CTR reporting systems, they must establish and implement internal AML/CFT guidelines, and they must ensure AML/CFT training is provided to employees.

512. During the on-site visit the evaluation team confirmed that the financial institutions it met have indeed appointed compliance officers and reporting officers as required and have implemented internal AML/CFT procedures, policies and controls. These internal controls vary in sophistication depending on the size of the institution.

513. Executives and employees of financial institutions are required to provide compliance officers with any data or information the compliance officer requests (Article 17-3(5) of the *Presidential Enforcement Decree of the Banking Act* and Article 37-5(5) of the *Enforcement Decree of the Securities and Exchange Act*, Article 12-2(3) of the *Enforcement Decree of the Mutual Savings Banks Act*, Article 6-2(5) of the *Enforcement Decree of the Merchant Banks Act*, Article 11(8) of the *Indirect Investment Asset Management Business Act* and Article 19-11 of the *Enforcement Decree of the Specialized Credit Financial Business Act*). There is no specification in these provisions as to the acceptable timeframe within which the information must be provided to the compliance officer.

514. Financial institutions are required to have an audit committee under the board of directors (Article 23-2 of the *Banking Act*, Article 16 of the *Insurance Business Act*, Article 54-6 of the *Securities and Exchange Act*, Article 10-4 of the *Mutual Savings Bank Act*, Article 50-5(1) of the *Specialized Credit Financial Business Act*, Article 5-2 of the *Merchant Banks Act*, Article 12(1) of the *Indirect Investment Asset Management Business Act*). At least two thirds of the members of the audit committee must be outside directors (i.e. persons from outside the organisation who are not involved in the general affairs of the board of directors). None of these acts specify that the audit committees have a role in testing compliance, rather that role is given to the compliance officer who must report any breaches of internal controls to the audit committee. All of these acts have provisions which strictly regulate the number of persons on the audit committee, the systems for appointment of members and procedures designed to ensure independence of the committees. Other than with respect to personnel, the resourcing of the committees is not addressed in any of the laws or decrees.

515. Pursuant to the Article 5 of FTRA, supported by guidance in Section III.3 of the *AML Enforcement Guidelines*, financial institutions should conduct AML training and education for their executives and employees. That Article simply obliged institutions to establish “Training and education of employees regarding prevention of money laundering and financing for offences of public intimidation.” It does not specify whether such training should be ongoing and/or ad hoc. Nor does it specify the matters which, at a minimum, should be covered by the training (e.g. CDD, record retention, detection of suspicious transactions, current ML/TF techniques and trends).

516. Representatives of financial institutions who met with the evaluation team provided detailed information on their training programs provided via online systems and seminars to employees at all levels. These programs primarily provided ad hoc sessions, rather than ongoing structured programs and were not linked to a system for evaluating the implementation of the learning. In addition, it appears a minority of employees have received AML/CFT training in the past couple of years, which is a particular concern considering the important changes which have occurred in Korea’s AML/CFT system during that time. To supplement the internal training programs, KoFIU provides an annual "education program on the AML system in provincial areas" and assists with internal training organised by small institutions. This assists institutions with relatively limited resources to provide internal training on Korea’s AML system and on recent ML techniques and patterns.

517. There is no obligation in law, regulation or other enforceable means for financial institutions to have screening procedures to ensure high standards when hiring employees. There is however guidance in this area which seems to be closely followed, at least by the larger institutions. When hiring employees, Section III.4 of the *AML Enforcement Guidelines* recommends that financial institutions establish and implement screening procedures to check their background and quality. The guideline recommends that this involve name checks, background checks and credit checks. When hiring experienced employees, it recommends that institutions ask the applicants to submit a certificate of career that includes information on any disciplinary measures taken against them in their previous workplace. Information gained in discussions held with representatives of financial institutions during the on-site visit suggests that most institutions do not have screening procedures of this type, though financial institutions are actively working towards reaching compliance with all elements of the *AML Enforcement Guidelines*.

## **Recommendation 22**

518. Article 2(1) of the *Financial Transactions Report and Supervision Regulation* provides that the FTRA and its enforcement decree apply to foreign branches – though not to subsidiaries – of the financial institutions to which the act and its decree apply. Article 2(2) provides an exception to this; the CTR obligation does not apply if the cash payment or receipt occurs at an overseas branch.

519. Not all of Korea’s AML/CFT measures can be found in the FTRA and its enforcement decree however. Notably, some CDD obligations are found in the *Real Name Financial Transactions Act* and that act does not have a corresponding provision detailing that its obligations apply to institutions’ foreign branches and subsidiaries. In addition, the AML/CFT obligations as described in the FTRA and its enforcement decree are not fully consistent with the *FATF Recommendations*. Thus, foreign branches – but not subsidiaries – are required to comply with some but not all of Korea’s AML/CFT obligations and not with all of the requirements of the *FATF Recommendations*.

520. There is no requirement that financial institutions pay particular attention that these AML/CFT obligations are implemented by branches and subsidiaries in jurisdictions which do not or insufficiently apply the *FATF Recommendations*. Similarly, there is no explicit provision requiring that where the minimum AML/CFT requirements of the host country differ from Korea’s AML/CFT requirements then

the branches/subsidiaries should apply the higher standard to the extent permitted by host country laws and regulations.

521. Financial institutions' overseas branches – but not subsidiaries – are required to inform KoFIU when they are unable to comply with their obligations to report STRs or to conduct CDD due to local laws of the host country (Article 2(3) of the *Financial Transaction Reports and Supervisory Regulations*). As with the application of Korea's AML/CFT obligations to overseas branches more broadly, this requirement to report to KoFIU only arises with respect to some, but not all, AML/CFT obligations.

522. During the on-site visit it was apparent that institutions apply their internal AML/CFT systems to their foreign branches as well as branches within Korea. Some confirmed that indeed the systems are applied to subsidiaries as well as branches. Reports have been submitted to KoFIU when overseas branches were unable to comply with their AML/CFT obligations under Korean law due to restrictions imposed by the laws of the host country.

### Statistics and effectiveness

**Domestic financial institutions' overseas presence, 30 June 2008**

| TYPE OF INSTITUTION           | BRANCH    | SUBSIDIARY | OFFICE     | TOTAL      |
|-------------------------------|-----------|------------|------------|------------|
| <b>Bank</b>                   | 63        | 32         | 26         | 121        |
| <b>Securities</b>             | 1         | 35         | 32         | 68         |
| <b>Non-Life Insurance</b>     | 7         | 9          | 23         | 39         |
| <b>Life Insurance</b>         | 0         | 8          | 16         | 24         |
| <b>Lease</b>                  | 0         | 5          | 1          | 6          |
| <b>Credit Card</b>            | 0         | 0          | 1          | 1          |
| <b>Instalment Finance</b>     | 0         | 0          | 4          | 4          |
| <b>New Technology</b>         | 0         | 1          | 3          | 4          |
| <b>Financial Intermediary</b> | 1         | 0          | 0          | 1          |
| <b>Exchange</b>               | 0         | 0          | 1          | 1          |
| <b>TOTAL</b>                  | <b>72</b> | <b>90</b>  | <b>107</b> | <b>269</b> |

### 3.8.2 Recommendations and Comments

523. While the requirement for institutions to have internal procedures, policies and controls and for their compliance officers and audit committees exist in the laws concerning the financial sector, these are not sufficiently specific. This is complemented by provisions in the FTRA which deal with some matters concerning internal controls, though the interplay between the requirements in that act and in the other laws regulating the financial sector is unclear. It is recommended that legislative amendments be made which ensure explicitly that:

- The internal controls which must be established include internal controls for AML/CFT.
- Institutions must communicate the internal controls to their employees.
- Compliance officers are appointed at a management level.

- One role of the audit function is to test compliance (including sample testing) with the internal AML/CFT procedures, policies and controls.
- Institutions are required to have ongoing internal AML/CFT training to ensure that employees are kept informed of new developments.
- Institutions are required to have screening procedures to ensure high standards when hiring employees.

524. Korean financial institutions are required to ensure that their foreign branches observe the AML/CFT measures in the FTRA and its enforcement decree consistent with home country requirements. It is recommended that legislative amendments be made to apply this requirement to subsidiaries as well as to foreign branches and to ensure that AML/CFT measures contained in other pieces of legislation are also applicable to overseas branches and subsidiaries.

525. There is no requirement that institutions pay particular attention that AML/CFT measures are applied in overseas branches and subsidiaries located in jurisdictions which insufficiently apply the *FATF Recommendations* and there is no requirement that where the home and host country requirements differ, the higher of the two standards be applied wherever possible. In that respect, it is recommended that:

- Korean authorities and institutions ensure that information is provided to the foreign branches and subsidiaries about jurisdictions which insufficiently apply the *FATF Recommendations*.
- Financial institutions be required to implement systems that pay special attention to the application of AML/CFT measures in branches and subsidiaries located in jurisdictions which insufficiently apply the *FATF Recommendations*.
- Financial institutions be required, where the home and host country requirements differ, to apply the higher of the two standards wherever possible.

### 3.8.3 Compliance with Recommendations 15 & 22

|      | RATING | SUMMARY OF FACTORS UNDERLYING RATING                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|------|--------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| R.15 | PC     | <ul style="list-style-type: none"> <li>• It is not explicitly required that the internal AML/CFT procedures, policies and controls be communicated to employees.</li> <li>• There is no requirement that compliance officers be appointed at a management level.</li> <li>• Audit committees are not explicitly required to test compliance with AML/CFT procedures, policies and controls.</li> <li>• The obligation for institutions to have AML/CFT training for employees is very general and not well implemented in practice.</li> <li>• Financial institutions are not required to have screening procedures to ensure high standards when hiring employees.</li> </ul> |
| R.22 | PC     | <ul style="list-style-type: none"> <li>• Foreign subsidiaries are not required to observe AML/CFT measures consistent with Korean requirements.</li> <li>• Not all Korean AML/CFT measures must be observed by foreign branches.</li> <li>• Financial institutions are not required to pay special attention to the application of AML/CFT measures in branches and subsidiaries located in jurisdictions which insufficiently apply the <i>FATF Recommendations</i>.</li> <li>• Financial institutions are not required, where the home and host country requirements</li> </ul>                                                                                              |

|  | RATING | SUMMARY OF FACTORS UNDERLYING RATING                                |
|--|--------|---------------------------------------------------------------------|
|  |        | differ, to apply the higher of the two standards wherever possible. |

### 3.9 Shell Banks (R.18)

#### 3.9.1 Description and Analysis

526. Shell banks cannot legally operate in Korea. Although there are no specific provisions in the *Banking Act* or elsewhere prohibiting the establishment of shell banks, the requirements for establishing a bank set forth in the *Banking Act* and related regulations, the licensing process established by the FSC and the public disclosure requirements for banks ensure that shell banks do not operate in Korea.

527. The *Banking Act* establishes several requirements that effectively prohibit shell banks from operating in Korea. Article 3 provides that all financial institutions in Korea must operate under the *Banking Act*, the *Bank of Korea Act*, the *Act on the Establishment of the Financial Services Commission* and regulations and orders issued thereunder. Article 8(1) provides that all persons engaged in banking must be authorised and Article 8(2) requires that the FSC, in determining whether to grant authorisation to operate a “commercial financial business” (i.e. a bank), must “confirm the feasibility of a business project, the appropriateness of capital stock, stockholders’ composition and stock subscription capital, managerial abilities and probity of the organizers or management, and the public-interest.” Article 9 sets minimum capital requirements of KRW 100 billion (USD 86.12 million) for banks operating nationwide, and KRW 25 billion (USD 21.53 million) for local/regional banks. Article 7 provides that the FSC may require any relevant legal person to submit books and other documents as necessary to determine whether a legal person is a financial institution, which under Article 2(1)(1), is defined as “legal persons other than the Bank of Korea regularly and systematically engaged in the banking business.” Article 22(2) requires banks to appoint at least three outside directors, and ensure that at least half the total members of their boards are outside directors. Article 23-2(1) requires financial institutions to establish an audit committee composed of at least two-thirds outside directors. Article 23-2(2) requires financial institutions to appoint a compliance officer to monitor whether required internal controls are observed, and stipulates certain qualifications for the compliance officer. And finally, Article 30 of the *Banking Act* and Chapter IV Section 2 of the *Bank of Korea Act* establish minimum ratios of reserves to deposits for banks operating in Korea.

528. The *Banking Act* (Chapter VII) requires the FSS to supervise whether financial institutions observe it and related acts, and FSS regulations, orders, and instructions. As part of this supervision, banks must submit reports of business operations to the Governor of the FSS on a monthly basis (Article 47). Moreover, the FSS is required to “inspect the business and current assets of a financial institution (Article 48). Article 53 authorises the FSC to impose sanctions for violating the *Banking Act* or its regulations, and orders or instructions, and may suspend or revoke a banking business license where a financial institution has, for example, obtained the banking license in a fraudulent and unlawful manner or violates the conditions and terms of its license (Article 53(2)).

529. The application process for a banking license in Korea is set out in Article 8 of the *Banking Act* and Article 1-7 of the *Enforcement Decree of the Banking Act*. This application process further ensures that the substantive requirements of the *Banking Act*, which in effect mandate that a bank must be an actual, operating physical entity, are met. Under Article 1-7 of the *Enforcement Decree of the Banking Act*, in deciding whether to authorise a banking business pursuant to Article 8(1) of the *Banking Act*, the FSC must verify various matters, all of which help address whether a bank is a shell bank. These factors include:

- Whether the business plan is appropriate for a sustainable business operation for its main target market and whether the estimated financial statements and profitability projections are reasonable in view of the business plan.
- Whether the organisational structure and management and operational systems are in line with the business plan.
- Whether the procurement plan for financial resources (*e.g.* capital) is realistic.
- Whether the proposed bank will be equipped with computer systems sufficient to carry on its banking business.
- Whether the corporate governance plan complies with the *Banking Act* (Articles 15 and 16-2).

530. The FSC has set forth detailed standards for the verification of these matters. In addition, the license application must be signed by all directors. The application process requires the proposed bank to submit documents, including the applicant's articles of incorporation, certificate of registered matters, minutes of the initial meeting, detailed business plan, resumes of all directors, company auditors and accounting advisors, locations of each business office.

**Documents to be submitted for application of preliminary banking license / banking license**

| CATEGORY OF LICENSE                                                                | DOCUMENTS FOR PRELIMINARY LICENSE APPLICATION                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | DOCUMENTS FOR LICENSE APPLICATION                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Provision of banking services through establishment of a new financial institution | <ul style="list-style-type: none"> <li>• Preliminary license application letter signed by all promoters.</li> <li>• Articles of Incorporation (draft).</li> <li>• Plan for establishment of head office and branch (name, address, etc).</li> <li>• Shareholder structure and funding plan.</li> <li>• Corporate governance plan.</li> <li>• Business plan (estimated financial statements three years since establishment, human resources and organisation plan, operation scope and business strategy, additional capital procurement plan, etc).</li> <li>• Resumes of all promoters (when the promoter is a legal person, corporate history, recent 3 year financial statements, and resume of representative).</li> <li>• Minutes of general meeting of promoters.</li> <li>• Schedule.</li> <li>• When the applicant is a foreign financial institution (including holding companies):               <ol style="list-style-type: none"> <li>a. Document proving that the signed representative of the applying financial institution has the legal authority as the representative.</li> <li>b. Document proving that a banking license has been acquired from the home country.</li> <li>c. List of the members of the senior management and CV.</li> <li>d. Document proving that the establishment of a branch within Korea does not breach any laws or regulations of the home country of the applying financial institution, approval documentation from home country's supervisory authority.</li> <li>e. Balance sheets, income statement, annual reports, and</li> </ol> </li> </ul> | <ul style="list-style-type: none"> <li>• License application letter.</li> <li>• Articles of Incorporation.</li> <li>• Minutes of the inaugural general meeting.</li> <li>• Shareholders list.</li> <li>• Receipt of the paid-in capital.</li> <li>• Documents proving compliance with relevant laws and regulations, including Article 15 (Ceiling on holding of shares by single entity), Article 16-2 (Restriction, etc. on Stockholding by Non-Financial Business Operator), Article 18 (Qualifications for executives), and Articles 22-26 (composition of board of directors) of the <i>Banking Act</i>.</li> <li>• Other documents proving implementation of matters required for preliminary license.</li> <li>• When the applicant is a foreign financial institution (including holding company):               <ol style="list-style-type: none"> <li>a. Document proving that the signed representative of the applicant has the legal authority</li> </ol> </li> </ul> |

| CATEGORY OF LICENSE | DOCUMENTS FOR PRELIMINARY LICENSE APPLICATION                                                                                                                                                                                                                                                                                                                                                         | DOCUMENTS FOR LICENSE APPLICATION                                                                                                                                                                                                                                      |
|---------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                     | audit reports for the past three years.<br>f. BIS capital adequacy ratio and other indicators of capital adequacy.<br>g. Status of international operations of applying financial institution, domestic and overseas affiliated companies, transactions between the applying financial institution and the affiliates.<br>h. Applying financial institution's transaction in relationship with Korea. | as the representative.<br>b. Pledge vowing to comply with the relevant laws and other statutes, orders and directions from financial supervisory authorities such as the FSC and the FSS and agreements among financial institutions.<br>c. Articles of Incorporation. |

531. In terms of applications from foreign institutions, under Article 58 of the *Banking Act* and the FSC's *Banking Business License Handbook* the FSC also verifies:

- The existence of a banking license in the home country and systematic supervision by home country supervisor.
- The legal consent from the home country supervisor of the applicant bank for establishment of banking business in Korea.
- Sound financial and management status and international credibility.
- Experience in international operations and business capacity necessary for operation of and management of the branches.

532. In addition, Article 24-3 of the *Enforcement Decree of the Banking Act* requires financial institutions to publish specified matters, including information concerning finance, profit and loss, and raising and operation of funds - again, requiring an actual, operating bank.

533. The *Regulation on Supervision of Banking Business* (Article 4) defines representative offices of foreign banks so as to require actual facilities "where resident staffs conduct representational and administrative functions, such as collection and supply of ...banking business information, investigation of financial and economic developments, liaison between headquarters and branches, and customer relations." Article 41 requires banks to publish specified matters, generally on a quarterly basis, that presuppose an operating, physical bank. These include information about: organisation and manpower; financial statement, profit and loss; financing and operation of funds; management indicators pertaining to soundness, profitability, productivity, and risk management and other management policies. Article 61 requires banks that deal with foreign exchange to register pursuant to Article 8(1) of the *FETA*, and sets forth registration requirements, including minimum capital and equity capital pursuant to Articles 9 and 26 of the *Banking Act*.

534. There is no prohibition in law, regulation or other enforceable means on financial institutions from entering into or continuing correspondent banking relationships with shell banks.

535. There is no requirement in law, regulation or other enforceable means that financial institutions must satisfy themselves that foreign respondent institutions do not permit their accounts to be used by shell banks.

536. As noted previously, Article 5-2(2) of the *FTRA* requires financial institutions to establish and apply internal guidelines that include "adequate measures designed to prevent money laundering and financing for offences of public intimidation *according to types of customers or types of financial*

transactions” (emphasis added), and Article 5-2(1) requires financial institutions to apply these risk-based internal guidelines in conducting customer identification and verification. These provisions require general risk-based AML/CFT measures, and could in practice require financial institutions to take steps to determine whether a respondent bank is shell bank in order to ensure that the financial institution did not enter into or continue business relationships with a shall bank. These provisions could also in practice require financial institutions to take steps to determine whether a respondent financial institution in a foreign country permits its accounts to be used by shell banks. However, the broad requirement for risk-based AML/CFT does not explicitly address correspondent relationships or require the measures stipulated by Recommendation 11.

537. The *AML Enforcement Guidelines* discuss enhanced due diligence for correspondent banking (Section V.1 at pp.43-46). With respect to shell banks in particular, the guidelines state that a correspondent bank “is prohibited from establishing or continuing correspondent banking relationship with shell bank”, and sets out various factors for banks to consider in seeking to determine if a respondent is a shell bank. The guidelines also provide information on adequate factors for identifying shell banks, including whether a financial institution: has a permanent establishment where it is licensed; has more than one full-time employee; maintains business records; and is inspected by financial authorities that approved its financial activities. The *AML Enforcement Guidelines* do not, however, expressly suggest that financial institutions conduct independent investigations of respondent institutions in order to establish that they are not shell banks and do not conduct business for shell banks. Instead, the guidelines appear to suggest that financial institutions are permitted to rely wholly on the respondent’s answers to the questionnaire, and on contract provisions.

### **Effectiveness**

538. While there is no prohibition in law, regulation or other enforceable means on financial institutions from entering into or continuing correspondent banking relationships with shell banks, financial institutions in Korea, in the course of conducting their due diligence on respondent banks, send detailed questionnaires to the respondent banks seeking information to ensure that they will not conduct transactions with or on behalf of shell banks. All institutions appear to be working actively towards compliance with the recommendations in the *AML Enforcement Guidelines* (Section V.1 at pp.43-46) that Korean banks not enter into or continue banking relationships with shell banks.

### **3.9.2 Recommendations and Comments**

539. While there is no express prohibition on establishment or operation of a shell bank in Korea, the licensing process and ongoing monitoring by the supervisory authorities appear adequate to ensure that shell banks do not operate in Korea. It is recommended that the *Banking Act* be amended to prohibit financial institutions to enter into or continue correspondent banking relationships with shell banks. Further, a requirement should be established that financial institutions satisfy themselves that respondent financial institutions in foreign countries do not permit their accounts to be used by shell banks.

### **3.9.3 Compliance with Recommendation 18**

|      | RATING | SUMMARY OF FACTORS UNDERLYING RATING                                                                                                                                                                                                                                                                                                                                                                                                                              |
|------|--------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| R.18 | PC     | <ul style="list-style-type: none"> <li>There is no prohibition in law, regulation or other enforceable means on financial institutions from entering into or continuing correspondent banking relationships with shell banks.</li> <li>There is no requirement in law, regulation or other enforceable for financial institutions to satisfy themselves that respondent financial institutions do not permit their accounts to be used by shell banks.</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)**

#### **3.10.1 Description and Analysis**

540. KoFIU is the primary competent authority responsible for supervision of financial institutions' compliance with AML/CFT obligations. Under Article 11(1) and 11(2) of FTRA, the Commissioner of KoFIU is empowered to supervise and inspect financial institutions. If inspection results demonstrate non-compliance with the law or orders or instructions given pursuant to the law, KoFIU may issue an order for correction, take disciplinary measures against executives or employees involved or impose administrative fines.

541. In accordance with Article 11(3) and Article 15 of the *Presidential Enforcement Decree of the FTRA*, the Commissioner of KoFIU has entrusted the FSS, Bank of Korea and some other authorities and self-regulatory organisations to carry out the AML/CFT supervision.

**Institutions entrusted with AML/CFT inspection, 2007**

| ENTRUSTED INSTITUTION                           | RESPONSIBILITY                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
|-------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Ministry of Knowledge Economy</b>            | Companies specialising in corporate restructuring and corporate restructuring association governed by the <i>Industrial Development Act</i> .<br>Post offices governed by the <i>Postal Savings and Insurance Act</i> .                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| <b>Small and Medium Business Administration</b> | Company investing in the small and medium businesses and its association governed by the <i>Small and Medium Business Support Act</i> .                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| <b>Bank of Korea</b>                            | Money-changing businesses except businesses in an open port pursuant to the <i>Foreign Exchange Transactions Act</i> .                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| <b>Financial Supervisory Service</b>            | Korea Development Bank, Export-Import Bank of Korea, Industrial Bank of Korea, and other banks governed by the <i>Banking Act</i> .<br>Merchant banks governed by the <i>Merchant Banks Act</i> .<br>Mutual savings banks and their federation governed by the <i>Mutual Savings Bank Act</i> .<br>Trust companies pursuant to the <i>Trust Business Act</i> .<br>Securities companies pursuant to the <i>Securities and Exchange Act</i> .<br>Insurers pursuant to the <i>Insurance Business Act</i> .<br>Futures traders pursuant to <i>Futures Trading Act</i> .<br>Investment consulting companies which advise on financial investment pursuant to the <i>Act on Business of Operating Indirect Investment and Assets</i> .<br>Specialised credit financial companies and new technology investment association governed by the <i>Specialized Credit Financial Business Act</i> .<br>The National Agricultural Cooperatives Federation governed by the <i>Agricultural Cooperatives Law</i> .<br>The National Federation of Fisheries Cooperatives governed by the <i>Fisheries Cooperatives Law</i> .<br>The National Credit Union Federation of Korea governed by the <i>Credit Union Law</i> .<br>The National Forestry Cooperatives Federation governed by the <i>Forestry Cooperatives Law</i> . |
| <b>National Agricultural Co-operative</b>       | The National Agricultural Co-operatives Federation governed by the <i>Agricultural</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |

| ENTRUSTED INSTITUTION                                      | RESPONSIBILITY                                                                                        |
|------------------------------------------------------------|-------------------------------------------------------------------------------------------------------|
| <b>Federation</b>                                          | <i>Cooperatives Law.</i>                                                                              |
| <b>National Federation of Fisheries Co-operatives</b>      | The National Federation of Fisheries Co-operatives governed by the <i>Fisheries Cooperatives Law.</i> |
| <b>National Forestry Co-operatives Federation</b>          | The National Forestry Co-operatives Federation governed by the <i>Forestry Cooperatives Law.</i>      |
| <b>National Credit Union Federation of Korea</b>           | The National Credit Union Federation of Korea governed by the <i>Credit Union Law.</i>                |
| <b>Korean Federation of Community Credit Co-operatives</b> | Community credit co-operatives governed by the <i>Saemaul Savings Depository Act.</i>                 |

#### **Authorities/SROs Roles and Duties & Structure and Resources: R.23, 30**

542. Pursuant to the Article 10-6 of the *Presidential Enforcement Decree of the FTRA*, FIU may establish and offer appropriate procedures depending on type of customer and transaction that financial institutions should follow when they perform CDD. To that effect, KoFIU established the *AML Enforcement Guidelines* and provided it to all financial associations. The *AML Enforcement Guidelines* includes basic principles and specific standards and cases necessary for financial institutions to establish and manage the AML system reasonably and efficiently. Individual financial associations set out their own AML business manuals specific to their business area so that financial institutions implement their specific manuals by including them into their own corporate bylaws or internal guidelines.

#### ***Measures to prevent criminals/their associates from influence in a financial institution***

543. All financial institutions should be registered or licensed pursuant to relevant laws as below:

- Financial holding company: Article 3 of the *Financial Holdings Companies Act*.
- Commercial bank: Article 8 of the *Banking Act* (Article 58 of the *Act for Foreign Financial Institution*).
- Specialised bank: laws that govern individual banks (Korea Development Bank Act, the Industrial Bank of Korea Act, the Export-Import Bank of Korea Act, etc.).
- Trust company: Article 3 of the *Trust Business Act*.
- Credit information business: Article 4 of the *Use and Protection of Credit Information Act*.
- Securities firm: Article 28 of the *Securities and Exchange Act*.
- Futures trading company: Article 37 of the *Futures Trading Act*.
- Asset management company: Article 4 of the Act on Business of Operating Indirect Investment and Assets.
- Private equity fund: Article 144-6 of the Act on Business of Operating Indirect Investment and Assets.

- Investment consulting company: Article 145 of the Act on Business of Operating Indirect Investment and Assets.
- Insurance company: Article 4 of the *Insurance Business Act*.
- Merchant bank: Article 3 of the *Merchant Banks Act*.
- Credit card company: Article 3 of the Specialized Credit Financial Business Act.
- Instalment finance company: Article 3 of the *Specialized Credit Financial Business Act*.
- Finance company for new technology project: Article 3 of the *Specialized Credit Financial Business Act*.
- Mutual savings bank: Article 6 of the *Mutual Savings Bank Act*.
- Credit union: Article 7 of the *Credit Union Law*.

544. The FSC acts as the central administrative agency with authority to licence financial institutions. However, under Article 24 of the *Act on the Establishment of the Financial Services Commission*, it is the FSS which is empowered to inspect and supervise financial institutions, under the guidance of the FSC.

545. The Minister of Strategy and Finance entrusts the Bank of Korea, the FSS and the KCS to perform inspections of foreign exchange businesses including currency changers, foreign exchange agencies, and currency changers in open ports (FETA Articles 20 and 33).

546. When a financial institution is established, its supervisory authority must examine the qualifications of shareholders and management to help the institution to establish sound management (Articles 8 and 18 of the *Banking Act*, Articles 32, 32-3 and 33 of the *Securities and Exchange Act*; Articles 17-2, 18 and 18-2 of the *Presidential Enforcement Decree of the Securities and Exchange Act*, Articles 38, 38-2 and 39-3 of the *Futures Trading Act*, Articles 10, 10-3 and 10-6 of the *Presidential Enforcement Decree of the Futures Trading Act*, Article 13 of the *Insurance Business Act*, Articles 5-1, 8-1 and 148 of the *Act on Business of Operating Indirect Investment and Assets*, Articles 3 and 3-4 of the *Merchant Banks Act*, Articles 3, 3-3 and schedule 1 of the *Presidential Enforcement Decree of the Merchant Banks Act*, Articles 6, 6-2, 10-2, 10-4(3), and 35-2 of the *Mutual Savings Bank Act*, Articles 6-2, 7, schedule 1, and schedule 2 of the *Presidential Enforcement Decree of the Mutual Savings Bank Act*, Articles 14, 19 and 28 of the *Credit Union Act*, and, Article 15 of the *Presidential Enforcement Decree of the Credit Union Act*).

547. Any person who intends to be a major shareholder of a financial institution should report to the FSC in advance or obtain prior approval from the FSC. In examining the qualifications of shareholders, consideration should be paid to major shareholders' investment capacity, financial status, social reputation, and any breaches of law and sound business practice, and, legality and appropriateness of investment funds. This examination is conducted for all major shareholders, any shareholders or investors who have a special relationship with a major shareholder, and owners of financial institutions who have a significant influence or control on management of the institution.

548. In examining the qualifications of management, consideration should be paid to the experience and knowledge the person holds, whether s/he is likely to threaten public interest, and, the reasons for any prior disqualification if relevant. Any persons who fall on the categories below may not become, or should be disqualified if any of these factors arise after commencement of appointment:

- Those who are minors, incompetent, quasi-incompetent or legally incapable.
- Persons who are insolvent.
- Those who are on probation with confinement or more severe punishment.
- Executives or employees who were responsible for a company's business license being repealed (within 5 years after the license was repealed).
- Those who are dismissed or removed from office as disciplinary measure pursuant to relevant financial laws (within 5 years after the dismissal or removal).

549. In addition, when financial institutions appoint and dismiss executives, their qualifications are also subject to review by the FSS. Besides strict qualifications, executives of financial institutions are prohibited from working full time in other profit-making organisations.

550. Mutual savings banks, credit co-operatives and credit unions are also subject to licensing requirements under their respective acts and authorisation must be obtained from the FSC as part of the licensing procedure. However, the senior management of these institutions are not appointed but are nominated by means of election and this is subject to review by the Government Audit Committee.

#### ***Licensing and registration of money/value transfer services, currency changing services***

551. The *Electronic Financial Transactions Act* was enacted in April 2006 and came into force in January 2007. Pursuant to Article 28-2, any person who intends to provide electronic funds transfer services must register with the FSC as an electronic financial service provider. Failing to register with the FSC before providing electronic funds transfer services is an offence punishable by imprisonment of up to three years or a fine up to KRW 20 million (USD 17 227) under Article 49. Currently, there are no electronic financial service providers registered for electronic funds transfer business in Korea.

552. Natural or legal persons other than financial institutions intending to operate as currency changers are required to register their business with the Bank of Korea pursuant to Article 8 of the *FETA* and Article 15 of the *Presidential Enforcement Decree of the Foreign Exchange Transactions Act*. It is an offence punishable by imprisonment of up to three years or a fine up to KRW 200 million (USD 172 270) to conduct such business without being registered (FETA Article 27(1)5).

553. Any person who intends to make some changes in details registered or intends to close their business should report to the governor of the Bank of Korea. Failures to so report changes to registered details is an offence punishable by imprisonment of up to one year or a fine up to KRW 50 million (USD 43 068). Failure to notify the Bank of Korea of closure of a registered money change business is an offence punishable by a fine up to KRW 5 million (USD 4 307) (FETA Articles 29(1)(1) and 32(1)(1)).

#### ***Supervision and monitoring of financial institutions***

##### ***KoFIU***

554. As mentioned above, KoFIU is the primary competent authority responsible for the supervision of the AML/CFT areas of financial institutions but this supervisory function has been entrusted to the FSS, Bank of Korea and some SROs. However, when the need arises, KoFIU's officials may provide the entrusted institutions with support for inspections (Article 15(5) of the *Presidential Enforcement Decree of the FTRA*).

555. According to Article 15(3) to 15(6) of the *Presidential Enforcement Decree of the FTRA*, the head of an agency entrusted to perform AML/CFT supervision may determine the standards, plan and procedures for carrying out inspections as well as take measures based on the inspection result. When an entrusted agency has conducted an inspection which has focussed in whole or in part on AML/CFT, the head of the entrusted agency must notify the Commissioner of KoFIU of the result of the inspection, including rectification measures or disciplinary action taken as a result of the inspection. In practice, entrusted agencies notify KoFIU of their inspection plans, inspection results and subsequent actions to be taken on a quarterly basis.

556. When inspection results show any violation which is punishable by a fine (failing to file a STR or CTR attracts a fine of up to KRW 10 million), the entrusted institution will report the matter to KoFIU and KoFIU will impose and collect the fine (Article 17(2) of the *FTRA*). In addition, the FSS has a sanctioning power under the *Regulation on Examination and Sanctions Against Financial Institutions*. Sanctions can be imposed for illegal or improper acts which hinder sound business practice or operation of financial institutions or damage or bring material loss to the management of the financial institution concerned. The available sanctions range from an institutional warning for a minor violation to suspension or even cancellation of licence in case of a serious offence (Article 17(1) of the *Regulation on Examination and Sanctions Against Financial Institutions*). In addition, sanctions ranging from cautions to dismissal from office are applicable to officers and employees of financial institutions for their illegal or improper acts (Article 18(1)).

#### *FSS*

557. Supervisory action taken by the FSS includes: review of licensing applications; suitability evaluations of ownership structures; fit and proper tests for senior management; reviews of internal control and risk management systems; and, conduct of on-going off-site surveillance and on-site inspections.

558. On-going supervision of financial institutions is conducted in accordance with the *Regulation on Examination and Sanctions Against Financial Institutions*. The regulation establishes: procedures and requirements for off-site surveillance; authority and responsibility of examiners; procedures for on-site examinations; process and content of reports of examination results; the notification to financial institutions of rectification measures to be taken; and, sanctions for any illegal or improper acts of examiners. In addition, the regulation provides for consolidated supervision, under which notice must be given to the Head Office of foreign financial institutions and to the home supervisory authority for sanctions imposed on their branches or subsidiaries in Korea (Article 46).

559. With respect to AML/CFT, the FSS also performs supervision in accordance with procedures prescribed in the *FTRA* and the *Presidential Enforcement Decree of the FTRA*. It is the primary agency entrusted by KoFIU to conduct AML/CFT inspections.

560. The FSS conducts AML/CFT inspections either as part of comprehensive inspections or as partial inspections focussing purely on the AML/CFT component. Regardless of which type of inspection is being conducted, the FSS examines the STR, CTR, CDD systems and record keeping practices. They also examine the internal audit functions to ensure the scope and frequency of internal audit is sufficient and to determine whether corrective actions have been taken for deficiencies found during internal audits.

#### ***Supervision and monitoring of money/value transfer services and currency changing services***

561. The Bank of Korea carries out on-going supervision of currency changers through off-site surveillance and on-site inspections. On-site inspections are conducted by the Bank of Korea's

International Department and domestic branches. These inspections include checks to determine institutions' compliance with the reporting and CDD obligations of the FTRA.

562. While the Bank of Korea has been entrusted this AML/CFT supervision role by KoFIU, currency changers when registering their business must also register the reporting officers with KoFIU. If the business does not notify KoFIU of its reporting officer, the Bank of Korea is required to inform KoFIU of this pursuant to Article 18(3) of the *Financial Transaction Reports and Supervisory Regulations*.

563. Due to the large number of currency changers (about 1 166 as at the end of 2008) the Bank of Korea's supervision program relies on off-site surveillance, with on-site inspections only occurring when irregularities or significant changes in business activities are detected during the off-site review. While the Bank of Korea was not able to provide statistics pertaining to its inspections, officials estimated that there are 200 on-site inspections (general scope) conducted each year, which means that a currency changer is likely to be inspected once every six years.

**Inspections of currency changers**

|                     | 2005 | 2006 | 2007 | JAN-JUNE 2008 |
|---------------------|------|------|------|---------------|
| INSPECTIONS         | 224  | 225  | 230  | 211           |
| VIOLATIONS DETECTED | -    | -    | -    | 2             |

564. In Korea, only financial institutions and Korea Post are permitted to conduct international remittances (FETA Article 8(2)). Korea Post is a government agency which operates under the *Postal Savings and Insurance Act*. Its financial services provided entail:

- Postal savings services (deposit and withdrawal, Postal Money Orders, alliance services with private financial institutions and electronic banking services).
- Postal insurance services.
- Policy loans.

565. The Ministry of Knowledge Economy is the designated supervisory authority for Korea Post, though in practice it requests the FSC to conduct inspections of the financial services provided by post offices when deemed necessary to maintain its soundness. In 2007, 8% of post office branches were inspected.

### ***Structure, funding, staffing and resources***

566. According to Article 3(1) of the *Act on the Establishment of Financial Services Commission*, the FSC is Korea's primary agency responsible for: financial policy; supervision of the soundness of foreign exchange business management institutions; and, financial supervision under the jurisdiction of the Prime Minister. Article 3(2) provides the FSC with the authority to perform its duties independently.

567. The FSC has 209 staff. It is run by a council in order to guarantee its independence in supervision of financial institutions and its commissioners have a defined term of office. The nine commissioners of the FSC include: the chairman and the vice chairman of the FSC; the vice minister of Strategy and Finance; the senior deputy governor of the Bank of Korea; the chairman and president of the Korea Deposit Insurance Corporation; the governor of the FSS; two persons recommended by the chairman of the FSC; and one person recommended by the chairman of the Korea Chamber of Commerce & Industry. The

chairman of the FSC is appointed by the President of Korea after a cabinet meeting. The chairman represents the FSC, presides over meetings and takes administrative responsibility.

568. The role of the FSS, established under Article 28 of the *Act on the Establishment of Financial Services Commission*, is to inspect and supervise financial institutions under the guidance and supervision of the FSC.

569. The FSS is a non-capital special corporation established for the purpose of ensuring a sound credit system and practice of fair financial transaction as well as protecting depositors, investors and financial consumers. The FSS has about 1 589 permanent staff, many of whom have expertise in supervision and inspection. The budget of the FSS comes from the contributions of financial institutions subject to their supervision and contributions from the Bank of Korea.

570. Other institutions entrusted with inspection powers include:

- The Bank of Korea which supervises currency exchangers (2 500 employees, 37 of whom are involved in inspections, including AML/CFT inspections).
- The Ministry of Knowledge Economy (740 employees, 16 of whom are involved in inspections, including AML/CFT inspections), which supervises post offices.
- The National Agricultural Cooperative Federation (17 800 employees, 318 of whom are involved in inspections, including AML/CFT inspections), which supervises Agricultural Cooperatives.
- The National Federation of Fisheries Cooperatives (2 700 employees, 57 of whom are involved in inspections, including AML/CFT inspections), which supervises Fisheries Cooperatives.
- The National Credit Union Federation of Korea (400 employees, 60 of whom are involved in inspections, including AML/CFT inspections), which supervises Credit Unions.

571. The Bank of Korea and the Ministry of Knowledge Economy are government funded. The budget of the Bank of Korea is confidential. The 2008 budget of the Ministry of Knowledge Economy was KRW 3.6 trillion. The National Agricultural Cooperative Federation, the National Federation of Fisheries Cooperatives and the National Credit Union Federation of Korea are funded from members' contributions and their own profit-making activities.

### ***Professional standards of staff of competent authorities***

572. Article 9 and 13 of FTRA provides that the staff of KoFIU or any persons who engage in investigation of specified offences related to financial transaction reports information shall keep confidential all information that they obtain in the course of performing their duties and they are not allowed to use such information for any purpose other than those for which such information was provided. It is an offence to violate this provision, punishable by imprisonment of up to five years or a fine of up to KRW 30 million (USD 25 836).

573. Officials of the Financial Supervisory Service (FSS) should perform their duty of integrity and confidentiality pursuant to Article 35 of the *Act on Establishment of Financial Services Commission*. The FSS also has a code of conduct for their employees to ensure fairness and integrity in their supervision activities.

574. In addition, all public servants should comply with Article 60 of the *State Public Officials Act* which requires all public officials to keep confidential all information gained in the course of carrying out their duties, not only during tenure of office, but also after retirement. Article 61 requires further that no public official may give or receive directly or indirectly any reward, donation or entertainment in connection with his duties. Similar provisions can also be found in the *Public Service Ethics Act*, the *Anti-Corruption Act* and the *Public Servant's Code of Conduct*.

#### *The FSS*

575. The FSS Bank Service Department (129 persons), Life Insurance Service Department (133 persons) and Financial Investment Service Department (197 persons) are responsible for supervision of banks, insurance firms and securities companies respectively. The departments have separate teams for on-going supervision and on-site inspections.

576. These departments conduct AML/CFT supervision in addition to general supervision of the soundness of these financial institutions. The Supervisory Service Coordination Department assists by providing planning and co-ordination of AML/CFT supervision and the Financial Risk Examination Support Department provides support where required.

577. At the beginning of each year the FSS establishes its annual inspection plan and this is revised each quarter to take account of changing demands for inspections in certain areas. Consolidated inspections are planned in accordance with the risk ratings of financial institutions, including the ratings of management given in previous inspections, while sector-specific inspections are planned when it is necessary for supervision policy.

**FSS inspection frequency determined by ratings of management status**

| RATING OF MANAGEMENT STATUS | INSPECTION PERIOD     |                       |
|-----------------------------|-----------------------|-----------------------|
|                             | UP TO 2007            | 2008                  |
| 1-2                         | 2 years or more       | 3 years or more       |
| 3                           | 1.5 years or more     | 2 years or more       |
| 4                           | 1 year                | Semi-annual or annual |
| 5                           | Semi-annual or annual |                       |

578. Over the past five years, the average frequency of consolidated inspections has been 2.4 years for banks, 2.3 years for insurance companies and 2.9 years for securities firms. From 2002 to June 2008, the FSS conducted 116 AML inspections of banks, 75 AML inspections of insurance companies and 71 AML inspections of securities companies. This represents a frequency for AML inspections of once every 2.6 years for banks, once every 4.5 years for insurance companies and once every five years for securities companies.

579. The most common issues detected during AML inspections have been failure to file STRs and failure to notify KoFIU of the institution's reporting officer. From 2002 to June 2008, the FSS conducted 419 inspections and took action with respect to 42 violations. These actions ranged from asking for correction during the on-site inspection through to censure. The most common sanctions imposed were cautions delivered during the on-site inspection and issuance of warnings. Actions taken by the FSS have for these matters have included asking for censure or a fine to be imposed by KoFIU, issuance of warnings,

warnings to management and on-the-spot measures. FSS also provided results to KoFIU on 15 occasions, seeking imposition of fines for non-reporting of STRs.

### ***Training of staff of competent authorities***

#### **FSS**

580. The FSS intensive job training for all staff includes three AML/CTF modules: introduction to the AML system and business procedures; the laws related to the AML system (including scope of predicate offences) and ML/TF patterns; and, AML inspections. In addition, the intensive training program provided to staff conducting inspections includes an AML module and provision to staff of the FSS AML inspection manual.

**Number of FSS staff receiving AML/CTF training**

|                               | 2005 | 2006 | 2007 | JAN-JUNE 2008 | TOTAL |
|-------------------------------|------|------|------|---------------|-------|
| <b>Intensive Job Training</b> | 245  | 51   | 41   | 133           | 470   |
| <b>Inspection Training</b>    | 307  | 263  | 131  | 213           | 914   |

581. The FSS AML inspection manual features: an introduction to the AML system in Korea; the financial transaction reporting system and financial institutions' role; the legal grounds for inspections and the scope and performance of AML inspections; an inspection checklist and internal report system; information on recent ML techniques and examples of suspicious transactions; and domestic and foreign examples of ML and subsequent sanctions imposed.

582. Some FSS staff also attend ML-related training provided by the OCC, FDIC and FRS in the US; the FSA in the UK; and other foreign supervisory organisations. This type of training is considered to be particularly useful as a way of understanding the ML patterns and supervision activities in other countries.

**Participation in overseas AML training courses**

|                                | 2003 | 2004 | 2005 | 2006 | 2007 | JAN-JUNE 2008 |
|--------------------------------|------|------|------|------|------|---------------|
| <b>Number of FSS attendees</b> | 1    | 1    | 1    | 3    | 3    | 2             |

583. The FSS has also sent some employees on one or two year attachments to the FRB, the IAIS, the SEC, the ECB and other international organisations as on the job training. These programs allow for direct participation in on-going supervision and on-site inspections and help staff to establish an international network.

**Number of FSS staff on overseas attachments**

|                         | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 | JAN-JUNE 2008 |
|-------------------------|------|------|------|------|------|------|---------------|
| <b>NO. OF FSS STAFF</b> | 4    | 3    | 3    | 5    | 7    | 8    | 8             |

584. In addition, during 2008 KoFIU provided supervision and inspection officials of the FSS with two AML courses:

- The Basic Course was provided to 31 supervision and inspection officials on 21-23 July 2008. Its topics included: features of the AML/CTF system and laws; international co-operation; accession to the FATF and the mutual evaluation; enhanced CDD; KoFIU's policy directions for

supervision and inspection; inspection systems of foreign countries; and, an on-site tour of the KOFIS.

- The Intensive Course was provided to 30 FSS inspection officials and 16 employees of relevant institutions on 20-21 August 2008. Its topics included: ML patterns; KoFIU's analytical methods for suspicious transactions; and, sanctions for AML breaches.

#### *Bank of Korea*

585. The Bank of Korea has 16 staff involved in inspections. These staff are brought together once a year for a one-day training inspections course which has an AML/CFT component.

### **Authorities powers and sanctions – R.29 & R.17**

#### *Inspections*

586. As noted previously, Article 11 of FTRA assigns KoFIU the responsibility for supervising financial institutions' compliance with AML/CFT obligations and KoFIU has entrusted a number of agencies with the inspection role. Korea thus has a sound system for monitoring compliance, though the breadth of this supervision is limited by the incomplete AML/CFT obligations in place in Korea.

587. The *Regulations on Examinations and Sanctions Against Financial Institutions* establishes the powers of the authorities and the scope of the inspections. The regulation recognises such competences as the inspection of trade books, commercial documents, sealing of safes and the request to the financial officers for testify. As noted previously in Section 3.4 of this report, financial institutions must comply when asked by competent authorities to produce information.

#### *Authority to inspect*

588. Pursuant to the *Regulation on Examination and Sanctions against Financial Institutions*, the FSS inspects financial institutions' AML activities and take sanctions accordingly. This may occur as part of a comprehensive inspection or as a partial inspection, focussing only on the AML/CFT component. These inspections may be on-site or off-site (Article 8(3) of the *Regulation on Examination and Sanctions against Financial Institutions*). This includes sample testing, using "techniques of sampling inspection of suspicious transactions", specified in inspection manual of the FSS. The FSS may take the following measures when performing an inspection (Article 6 of the *Regulation on Examination and Sanctions against Financial Institutions*):

- Requesting to submit certificate, written confirmation, written opinion, Q&A note or other related documents or stuff.
- Sealing of safe, account book, materials, or storage.
- Requesting for those from the financial institution to attend or testify.
- Taking other measures deemed to be necessary for inspection.

589. The FSS and other institutions entrusted with inspection duties use the same procedures and methods (Article 11 of FTRA, Article 15 of the *Presidential Enforcement Decree of the FTRA* and Article 4 of the Finance and Economy Ministry's *Guidelines for Entrusted Inspection*). This includes use of a checklist provided by KoFIU to examine financial institution's AML policy and procedures, account

books and records (Article 6 of the *Regulation on Examination and Sanctions against Financial Institutions*).

#### *Compelling production of documents / access to records*

590. When it is necessary to perform inspection pursuant to the *Regulation on Examination and Sanctions against Financial Institutions*, inspectors entrusted with inspection duty may request to submit certificate, written confirmation, written opinion, Q&A note, or other related documents or stuff; seal safe, account book, materials, or storage; ask for those from financial institution to attend or testify (Article 6(1) of the *Regulation on Examination and Sanctions against Financial Institutions*).

591. Based on procedures specified in the *Real Name Financial Transactions Act*, request for information on individual financial transaction should be made in a written form that includes personal information on account holder, duration of transaction, legal ground for request, purpose of request, contents of information requested, and name, job title and other personal information on those who asked for information. These procedures do not require court order to be effective.

#### *Sanctions*

592. If inspection results demonstrate noncompliance with the law or orders or instructions given pursuant to the law, the Commissioner of KoFIU may make an order for correction or take disciplinary measures on executives or employees involved in the violation (Article 11(2) of FTRA).

593. In accordance with the Ministry of Finance and Economy's *Guidelines for Entrusted Inspection*, other entrusted institutions may exercise authority to take sanctions such as censure, asking for improvement or correction, warning, and other necessary measures (on-the-spot measures, warning or advice to institutions, and notifications) (Article 25(3) of the *Financial Transaction Reports and Supervisory Regulations*).

594. The FSS may take measures against violation of relevant financial laws or negligence of compliance with those laws pursuant to the Article 5-1 of the *Regulation on Examination and Sanctions against Financial Institutions*. Article 3-16 specifies that relevant financial laws include the FTRA, the *Presidential Enforcement Decree of the FTRA* and its *Ministerial Enforcement Decree* as well as regulations, orders and instructions prescribed in the act.

595. Other institutions entrusted with inspection have similar authority to that of the FSS (Article 25(3) of the *Finance and Economy Ministry's Guidelines for Entrusted Inspection*).

596. While the scope of the inspection powers appears to be appropriately broad, the sanctions available are weak and thus could not be considered to be proportionate to the more severe forms of breaches that could occur.

#### **Recommendation 17**

597. In general terms, Korean regulation states a wide range of sanctions that can be applied as a consequence of the non compliance of the obligations established in the legislation or other regulation applicable to the financial institutions. The *Banking Act*, *Capital Market and Financial Investment Business Act* and the *Insurance Business Act* states several kinds of sanctions associated to the commission of fact against the precepts of that regulation. With the objective of a common application the supervisory process and the imposition of that sanctions, Korean authorities has approved the *Regulation on*

*Examination and Sanctions against Financial Institutions*, which established the rules of the inspection process and the disciplinary measures for all the legal and regulated frame applied to financial institutions.

598. The sanctions that can be imposed have different nature in function of the rate of the conduct punishable and the type applicable of each of that sanctions its different related with the gravity of the facts committed. So, there are penal (imprisonment) and administrative and civil sanctions (fines, suspension or withdrawal of the license...). These sanctions can be addressed either to civil or legal persons and there is the possibility to sanction to managers and employees of the financial institutions in order to punish the conducts developed.

599. The specific behaviours that can be sanctioned under the FTRA are:

- Any officer of a government authority who discloses, obtains, uses or demands information about financial transactions for any purpose other than that which the information was provided has committed an offence punishable by a maximum of five years' imprisonment or a fine of up to KRW 30 million (USD 25 836) (Article 13).
- Any employee in a reporting entity who files a false CTR or STR or divulges the fact that a report has been or is being made has committed an offence punishable by a maximum of one years' imprisonment or a fine of up to KRW 5 million (USD 4 306) (Article 4(1) and 4(2)).
- Any employee in a reporting entity who fails to file a CTR or STR or acts to avoid supervision is may be subject to an administrative fine of up to KRW 10 million (USD 8 612) (Article 4(1) and 4(2)).

600. Other breaches of AML/CFT obligations are sanctioned in POCA and in the *Prohibition of Financing for Offences of Public Intimidation Act* (PFOPIA):

- Any person who does not report to a law enforcement agency when s/he discovers that properties received in a financial transactions are criminal proceeds or that a customer is committing an offence has committed an offence punishable by imprisonment of up to two years or a fine of up to KRW 10 million (POCA Article 5).
- Any person who carries out a financial transaction with a restricted person without approval has committed an offence punishable by imprisonment for up to three years or a fine of up to KRW 30 million (Article 6(2)(3) of PFOPIA).

601. That system permits the dual punishment against the company and the employees or managers (FTRA Articles 14 and 16).

602. Article 6 of the PFOPIA provides that any persons who commit terrorism shall be subject to imprisonment of up to 10 years or a fine up to KRW 100 million; any persons who conduct financial transactions with those who are restricted from financial transactions shall be punished with imprisonment of up to three years or a fine up to KRW 30 million; any persons who receive funds for offences of public intimidation or fail to report financing for offences of public intimidation shall be subject to imprisonment of up to two years or a fine up to KRW 10 million.

603. The PFOPIA also specifies that a fine can be imposed on a legal person and also on the natural persons – employees, managers, directors etc – involved in the offence (Article 6). Further, any persons of financial institutions who carry out financial transactions with or make payment or receipt for those who are restricted from financial transactions may be punished with a fine up to KRW 20 million (Article 7).

604. If results of inspection or supervision on STR filing and internal control system demonstrate any violation, disciplinary measures should be taken on executives or employee as mentioned above (Article 11 of the FTRA).

*Competent authority responsible*

605. Article 17 of FTRA stipulates that the Commissioner of FIU should impose a fine in case of administrative sanctions. At the same time, the Article 7 of the PFOPIA provides that the FSC should impose and collect a fine.

606. Only courts may impose criminal penalties. In regard to request for personnel discipline, supervisory institutions have authority to take measures.

*Range of sanctions available*

607. The highest penalty available is for breaches by public officers (imprisonment not exceeding five years or a maximum fine of KRW 30 million) and the other conduct are punished with minor sanctions (imprisonment not exceeding one year or a fine of up to KRW 10 million). Clearly the range of sanctions is narrow and competent authorities do not have sufficient sanctions available which could be applied in cases of serious breaches of AML/CFT obligations. For example, the maximum fine for a person who deliberately acts to avoid supervision (hiding of documents, evasion of the orders given etc) is KRW 10 million (which is less than USD 10 000). Similarly, the *Regulation on Examinations and Sanctions Against Financial Institutions*, does not list breaches of the FTRA as being in the more serious category of breaches for which monetary penalties are available.

608. The last issue that may be haven in regard is the effectiveness of the punitive system. During the on site visit the team could verified that the inspections conducted didn't have AML/CFT measures as their main objective. As a consequence it is not surprising that very few sanctions have been imposed for AML/CFT violations. During the on-site visit Korean authorities were not able to say with any confidence that they know the sanctions applied have resulted in improved compliance in the institutions concerned.

**Guidance for financial institutions (other than on STRs) – R.25**

609. KoFIU created the *AML Enforcement Guidelines* and distributed these to all relevant associations and SROs (notably including the Korea Federation of Banks, the Korea Securities Dealers Association, the Korea Life Insurance Association, the General Insurance Association of Korea, and the Korea Casino Association) in November 2008. In its covering memo KoFIU clearly noted that financial institutions are expected to establish their own AML business manuals in accordance with the *AML Enforcement Guidelines*. In many sectors, the associations have also created sector-specific guidance to assist the institutions and KoFIU's officials have been involved in developing these guidelines with the business associations.

610. KoFIU has also formed various working groups in which working-level officials of financial institutions participate. Through these working groups, KoFIU has collected examples of suspicious transactions specific to various sectors and types of financial activities and these examples are incorporated in publications distributed to financial institutions.

611. Since 2005, KoFIU has published annual reports which contain information on KoFIU's major activities, ML cases and statistics. In addition, KoFIU has distributed its STR statistics and information on global ML trends and other materials to institutions through publications and e-mails. KoFIU has provided financial institutions with two publications, a reference book and a casebook, through the secure network

established for financial institutions. The publications provide information on the techniques, trends and patterns of ML drawing from STR received. In addition, KoFIU publishes an annual *Casebook of Analysis* and, in 2006, published the *Reference Book of Suspicious Transactions* in 2006, which is updated from time to time.

### Statistics<sup>57</sup> and effectiveness

612. Each year, competent authorities inspect about 30% of the 5 766 institutions which have AML/CFT obligations. The FSS inspects between 40 and 90 of the 457 institutions it supervises each year. These inspections are most commonly consolidated inspections which have an AML component.

613. The National Agricultural Cooperative Federation, the National Federation of Fisheries Cooperatives, the National Forestry Cooperatives Federation, the National Credit Union Federation of Korea, and the Korean Federation of Community Credit Cooperatives have inspected their institutions more than two times a year since 2002. As with the FSS, these inspections usually cover a range of matters, including AML.

**AML/CFT inspections by entrusted institutions**

|                               | MINISTRY OF<br>KNOWLEDGE<br>ECONOMY* | COMMUNITY<br>CREDIT CO-<br>OPERATIVES | AGRICULTURAL<br>CO-OPERATIVES | BANK OF KOREA | CREDIT UNION | FINANCIAL<br>SUPERVISORY<br>SERVICE | FORESTRY CO-<br>OPERATIVES | FISHERIES CO-<br>OPERATIVES | OTHERS** | TOTAL |
|-------------------------------|--------------------------------------|---------------------------------------|-------------------------------|---------------|--------------|-------------------------------------|----------------------------|-----------------------------|----------|-------|
| <b>NUMBER OF INSTITUTIONS</b> | 2 729                                | 1 552                                 | 1 199                         | 1 018         | 1 013        | 457                                 | 144                        | 92                          | 152      | 8 356 |
| <b>2002</b>                   | 18                                   | 236                                   | 756                           | 115           | 575          | 93                                  | 132                        | 23                          | 11       | 1 959 |
| <b>2003</b>                   | 77                                   | 486                                   | 691                           | 53            | 665          | 90                                  | 74                         | 35                          | 8        | 2 179 |
| <b>2004</b>                   | 61                                   | 552                                   | 630                           | 69            | 267          | 105                                 | 28                         | 43                          | -        | 1 741 |
| <b>2005</b>                   | 241                                  | 423                                   | 695                           | 64            | 180          | 47                                  | 144                        | 41                          | -        | 1 835 |
| <b>2006</b>                   | 283                                  | 442                                   | 613                           | 54            | 201          | 47                                  | 144                        | 50                          | 115      | 1 944 |
| <b>2007</b>                   | 230                                  | 480                                   | 609                           | 32            | 207          | 39                                  | 144                        | 49                          | 85       | 1 871 |
| <b>JAN-JUNE 2008</b>          | 147                                  | 252                                   | 287                           | 81            | 109          | 22                                  | 144                        | 23                          | 84       | 1 149 |

\* The number of institutions under inspection by the Ministry of Knowledge Economy is based on branch offices (*i.e.* branch offices of the post office).

\*\* Includes the Ministry of Commerce, Industry & Energy (corporate restructuring companies) and the Small and Medium Business Administration (venture investment companies).

614. The most common issues detected in inspections are failure to report STRs lack of internal education. Institutions usually take measures for immediate correction during the on-site inspection.

**AML/CFT inspections conducted by the FSS**

| Inspections |           |               | #  | Sanctions                                            |
|-------------|-----------|---------------|----|------------------------------------------------------|
| <b>2004</b> | Bank      | comprehensive | 19 | Caution (x6), Caution during on-site inspection (x2) |
|             |           | partial       | 11 | Caution (x1)                                         |
|             | Insurance | comprehensive | 17 | Warning to the management (x1)                       |

<sup>57</sup> As related to R.32; see s.7.2 for the compliance rating for this Recommendation.

| Inspections      |            |               | #  | Sanctions                                                                                                                  |
|------------------|------------|---------------|----|----------------------------------------------------------------------------------------------------------------------------|
|                  | Securities | partial       | 0  | -                                                                                                                          |
|                  |            | comprehensive | 16 | Caution during on-site inspection (x1)                                                                                     |
|                  |            | partial       | 0  | -                                                                                                                          |
|                  | others     | comprehensive | 39 | -                                                                                                                          |
|                  |            | partial       | 3  | Correction (x2)                                                                                                            |
| 2005             | Bank       | comprehensive | 11 | Asking for Taking Some Measures (x1), Caution (x1)                                                                         |
|                  |            | partial       | 1  | Caution (x1)                                                                                                               |
|                  | Insurance  | comprehensive | 8  | -                                                                                                                          |
|                  |            | partial       | 0  | -                                                                                                                          |
|                  | Securities | comprehensive | 6  | -                                                                                                                          |
|                  |            | partial       | 1  | -                                                                                                                          |
|                  | others     | comprehensive | 16 | Asking for correction (x1)                                                                                                 |
|                  |            | partial       | 4  | -                                                                                                                          |
| 2006             | Bank       | comprehensive | 13 | Asking for Taking Some Measures(1), Giving Caution during On-Site Inspection(2)                                            |
|                  |            | partial       | 5  | -                                                                                                                          |
|                  | Insurance  | comprehensive | 8  | -                                                                                                                          |
|                  |            | partial       | 6  | -                                                                                                                          |
|                  | Securities | comprehensive | 6  | Caution during on-site inspection (x1)                                                                                     |
|                  |            | partial       | 1  | -                                                                                                                          |
|                  | others     | comprehensive | 8  | -                                                                                                                          |
|                  |            | partial       | 0  | -                                                                                                                          |
| 2007             | Bank       | comprehensive | 10 | Asking for taking some measures (x1), Caution (x1), Warning to the management (x1), Caution during on-site inspection (x2) |
|                  |            | partial       | 2  | Censure (x1), Caution (x1)                                                                                                 |
|                  | Insurance  | comprehensive | 6  | -                                                                                                                          |
|                  |            | partial       | 1  | -                                                                                                                          |
|                  | Securities | comprehensive | 9  | -                                                                                                                          |
|                  |            | partial       | 0  | -                                                                                                                          |
|                  | others     | comprehensive | 11 | -                                                                                                                          |
|                  |            | partial       | 0  | -                                                                                                                          |
| 2008<br>JAN-JUNE | Bank       | comprehensive | 5  | Caution (x1)                                                                                                               |
|                  |            | partial       | 3  | Censure (x1)                                                                                                               |
|                  | Insurance  | comprehensive | 3  | -                                                                                                                          |
|                  |            | partial       | 1  | -                                                                                                                          |
|                  | Securities | comprehensive | 2  | -                                                                                                                          |
|                  |            | partial       | 3  | Caution (x1), Caution during on-site inspection (x1)                                                                       |

| Inspections |        |               | # | Sanctions                              |
|-------------|--------|---------------|---|----------------------------------------|
|             | others | comprehensive | 3 |                                        |
|             |        | partial       | 2 | Caution during on-site inspection (x1) |

615. From the information above it can be seen that few sanctions are imposed on institutions in the securities and insurance sectors. As there are no indicators of an extremely high compliance within these sectors, this low number of sanctions is unexplained and raises questions as to the effectiveness of supervision of these types of institutions.

**Actions taken by the FSS after AML/CFT inspections (banking, insurance and securities sectors)**

|               | NO. OF INSPECTIONS                    | CENSURE | REQUEST THAT MEASURES BE TAKEN | ASKING FOR CORRECTION | WARNING | WARNING TO MANAGEMENT | GIVING CAUTION DURING INSPECTION | ASKING FOR CORRECTION DURING INSPECTION | TOTAL |
|---------------|---------------------------------------|---------|--------------------------------|-----------------------|---------|-----------------------|----------------------------------|-----------------------------------------|-------|
| 2002          | 85<br>(Comprehensive 85)              | -       | -                              | -                     | -       | -                     | 1                                | 1                                       | 2     |
| 2003          | 89<br>(Comprehensive 79, Partial 10)  | 1       | -                              | 3                     | -       | 2                     | 2                                | 1                                       | 9     |
| 2004          | 105<br>(Comprehensive 91, Partial 14) | -       | -                              | 2                     | 7       | 1                     | 3                                | -                                       | 13    |
| 2005          | 54<br>(Comprehensive 49, Partial 5)   | -       | 1                              | 1                     | 2       | -                     | -                                | -                                       | 4     |
| 2006          | 47<br>(Comprehensive 41, Partial 6)   | -       | 1                              | -                     | -       | -                     | 3                                | -                                       | 4     |
| 2007          | 39<br>(Comprehensive 36, Partial 3)   | 1       | 1                              | -                     | 2       | 1                     | 2                                | -                                       | 7     |
| JAN-JUNE 2008 | 22<br>(Comprehensive 13, Partial 9)   | -       | -                              | -                     | 1       | -                     | 2                                | -                                       | 3     |
| TOTAL         | 419                                   | 2       | 3                              | 6                     | 12      | 4                     | 13                               | 2                                       | 42    |

**Imposition of fines, June 2004-June 2008**

| TYPE OF INSTITUTION | YEAR | VIOLATION                                                                                                                                                                                                                                       | AMOUNT (KRW) | NO. OF CASES |
|---------------------|------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------|--------------|
| Securities          | 2004 | Failing to report STRs such as deposit and withdrawal of share certificates in a large volume using another person's account, frequent deposit and withdrawal of money in a large volume, excessive buying orders during a short period of time | 2 million    | 2            |
| Bank                | 2004 | Failing to file STR in regard to overseas remittance that deems to be gift transaction                                                                                                                                                          | 9.5 million  | 9            |
| Bank                | 2004 | "                                                                                                                                                                                                                                               | 1 million    | 1            |

| TYPE OF INSTITUTION | YEAR | VIOLATION                                                                                                                                                                           | AMOUNT (KRW)        | NO. OF CASES |
|---------------------|------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------|--------------|
| Bank                | 2004 | "                                                                                                                                                                                   | 5 million           | 4            |
| Bank                | 2005 | Failing to report STRs such as overseas remittance through split transactions, frequent transaction of large amount of money (dealers in precious metal and stones, political fund) | 15 million          | 3            |
| Bank                | 2005 | Failing to report STRs such as overseas remittance through split transactions                                                                                                       | 5 million           | 1            |
| Bank                | 2005 | Failing to report STRs such as frequent transaction of large amount of money (dealers in precious metal and stones, political fund)                                                 | 5 million           | 1            |
| Securities          | 2006 | Failing to report STRs such as management of borrowed-name account, deposit of share certificates in a large volume, frequent deposit and withdrawal of money in a large volume     | 3 million           | 1            |
| Bank                | 2007 | Failing to report STRs such as management of borrowed-name account and frequent cash transaction in a large volume                                                                  | 2 million           | 1            |
| Securities          | 2008 | Failing to report STRs in a large volume related to financial fraud                                                                                                                 | 2 million           | 1            |
| Securities          | 2008 | Misreporting transfer transaction between customers as cash transaction                                                                                                             | 12 million          | 8            |
| Bank                | 2008 | Deposit and withdrawal of a large amount of funds in a short period of time                                                                                                         | 5 million           | 1            |
| Securities          | 2008 | Misreporting transfer transaction between customers as cash transaction                                                                                                             | 5.5 million         | 20           |
| Securities          | 2008 | "                                                                                                                                                                                   | 2.5 million         | 8            |
| <b>TOTAL</b>        |      |                                                                                                                                                                                     | <b>74.5 MILLION</b> | <b>61</b>    |

616. KoFIU provided inspection support to supervisory authorities from 2002 to 2006. Since 2007 KoFIU has performed AML inspections.

#### KoFIU's support for inspections

| YEAR        | INSTITUTIONS INSPECTED                                                                                                                                                                                                                                                                                                                                | PERSONS |
|-------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------|
| <b>2002</b> | Korea Investment & Securities, JayOne Mutual Savings Bank, Woori Bank, and SK Life Insurance (4 institutions).                                                                                                                                                                                                                                        | 4       |
| <b>2003</b> | Korea Exchange Bank, Shinhan Bank, Dongbu Securities, and Korea Life Insurance (4 institutions).                                                                                                                                                                                                                                                      | 7       |
| <b>2004</b> | Samsung Life Insurance, the National Agricultural Co-operatives Federation, Credit Union in Sae-o-san, Credit Union in Ansan, Credit Union in Daegu, Community Credit Co-operatives in Sok-cho, and Community Credit Co-operatives in In-cheon (7 institutions).                                                                                      | 14      |
| <b>2005</b> | Busan Bank, the National Federation of Fisheries Co-operatives, Korea Investment & Securities, Kyobo Life Insurance, LG Insurance, Community Credit Co-operatives in Gwangmyeong, Credit Union in Singil, Agricultural Co-operatives in Bukbu, Agricultural Co-operatives in Yeongdong, and Agricultural Co-operatives in Seongnam (10 institutions). | 20      |
| <b>2006</b> | SC First Bank, Daegu Bank, Gwangju Bank, the National Agricultural Co-operatives Federation, Shinhan Bank, and Daehan Investment & Securities (6 institutions).                                                                                                                                                                                       | 18      |
| <b>2007</b> | Gyeongnam Bank, Jeonbuk Bank, Solomon Savings Bank, Je-il Savings Bank, Credit Union Branch Office in Dorim, Seoul, Credit Union Branch Office in central Seongnam, Community Credit Co-operatives Branch Office in Ui-wang, Agricultural Co-operatives Branch Office in Gwanak, Seoul (8 institutions).                                              | 24      |

| YEAR                            | INSTITUTIONS INSPECTED                                                                                                                                                                                                                     | PERSONS |
|---------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------|
| <b>14Jan-<br/>June<br/>2008</b> | Busan Mutual Savings Bank, Wonju Credit Union, Cheongwoon Credit Union in Daegu, Masan Credit Union, NolMoi Community credit Co-operative in Nonsan, Dorayng-dong Community Credit Co-operative in Gumi, Hongcheon Fisheries Co-operative. | 14      |

**Results of KoFIU's inspections, up to June 2008**

| INSTITUTION          | INSPECTION RESULTS                                                                                                                                                        | NOTE                                 |
|----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------|
| <b>Institution A</b> | CTR: failing to report (1 case), false report (86 cases).<br>CDD: omission of representative's real name of (2 cases).                                                    | Correction during on-site inspection |
| <b>Institution B</b> | CTR: false report (1 929 cases).<br>CDD: omission of representative's real name and contact number (3 cases).                                                             | "                                    |
| <b>Institution C</b> | CTR: false report (320 cases).<br>CDD: omission of legal person's business type (1 cases) and contact number (4 cases), and agent's address and contact number (4 cases). | "                                    |
| <b>Institution D</b> | CTR: failing to report (3 cases).<br>CDD: omission of individual customer's contact number (47 cases).                                                                    | "                                    |
| <b>Institution E</b> | CTR: false report (135 cases).<br>CD: omission of legal person's business type (5 cases).                                                                                 | "                                    |
| <b>Institution F</b> | CTR: false report (2 cases).<br>CDD: omission of individual customer's contact number (16 cases).                                                                         | "                                    |
| <b>Institution G</b> | CTR: no report.<br>CDD: no report.                                                                                                                                        | "                                    |
| <b>Institution H</b> | CTR: false report (1 859 cases).<br>CDD: omission of representative's real name (14 cases).                                                                               | "                                    |

617. From the above statistics, it can be seen that:

- The on-site inspections carried out by FSS in the past few years were mainly comprehensive audits which had an AML component.
- The number of inspections carried out by other entrusted agencies is low in view of the large number of reporting entities under supervision. The scope of these inspections is also broad with an AML component.
- In the past 5 years, KoFIU has imposed fines totalling KRW 74.5 million (USD 64 224) in 61 cases (21 banks and 40 securities companies) and the most common violation detected is failure to report STRs.
- Regarding the actions taken by FSS, 42 actions have resulted from the 419 inspections and these were mainly in the nature of warnings or cautions given during the on-site inspections. The most common violation detected is failure to report STRs.
- The 10 to 20 inspections conducted by KoFIU each year identified deficiencies in financial institutions' implementation of CDD obligations.

### 3.10.2 Recommendations and Comments

#### *Recommendation 23*

618. All financial institutions in Korea are subject to AML/CFT obligations and supervision under the FTRA. While banks, securities companies and insurance companies which are under the prudential supervision of the FSS are subject to relatively frequent and in depth AML/CFT inspections, other types of financial institutions which are smaller in size and considered to present lower risks are only regulated with minimum measures by their supervisory authorities. In addition, as noted previously at the beginning of Section 3 of this report, a number of institutions enjoy exemptions from the obligations to: establish an internal reporting system; establish business guidelines; and, provide internal AML/CFT education and training. While the information to hand suggests that many of the entities concerned are engaged in lower risk activities, some AML obligations like education & training should not be entirely waived, and some entities such as currency changers and real estate trust companies are conducting activities which attract a degree of AML/CFT risk.

619. All financial institutions are subject to proper licensing and fit and proper tests for shareholders and management. The measures currently in place are generally adequate to prevent criminals or their associates for holding or being beneficial owner of a significant or controlling interest or holding or management functions. There are no explicit requirements in the respective acts or internal guidelines to assess whether the shareholders come from a country or territories which do not adequately apply the FATF Recommendations. However, the FSS does assess the capacity of the home supervisory authority in their suitability review of foreign shareholding financial institutions.

620. The FSS adopts the Core Principles in their on-going supervision of banks, insurance and securities companies. However, many of the important prudential management measures (including the need for risk management processes to identify, measure, monitor and control material risks) are recommended in the *AML Enforcement Guidelines* but have not been implemented in law, regulation or other enforceable means.

621. The FSS mainly performs its AML/CFT supervision through having an AML/CFT component, focusing on compliance with the FTRA, incorporated in consolidated inspections. These on-site inspections have a relatively narrow focus, looking into compliance with STR and CTR obligations, the appointment of reporting officers and the establishment of internal and external reporting systems. The scope of the inspections is expected to expand in the near future to encompass the new enhanced due diligence requirements which came into force on 22 December 2008.

622. With the exception of the FSS, the entrusted supervisory authorities lack the resources to perform AML/CFT supervision effectively for their sectors. Currency changers are only subject to on-site inspection once every six years and the scope of these inspections is relatively narrow, as for the inspections conducted by the FSS. The SROs similarly lack sufficient inspection resources and lack the resources to provide AML/CFT training to their sectors.

623. In an environment where multiple agencies and SROs are responsible for AML/CFT inspections, further support is necessary from the central agency. It is recommended that, in addition to providing assistance to inspections conducted by entrusted agencies, KoFIU should provide comments and feedback to the entrusted agencies regarding the scope of inspections, on-site inspection plans, common deficiencies found and actions taken for deficiencies.

624. Although the FTRA applies to overseas branches and subsidiaries, there is no clear guidance for situations where the local laws restrict the application of the AML/CFT obligation to those overseas

financial institutions. This may expose the financial institutions to ML/FT risks if the AML/CFT legislation in the host countries is at a standard lower than the Korean domestic law.

625. Under the *Foreign Exchange Transactions Act* only financial institutions, including the Korea Post, may provide wire transfer services. The money changing service provided by banks is under the supervision of the FSS while currency changers, including those at casinos, are supervised by the Bank of Korea. The licensing procedure and suitability assessment of shareholders and management of currency changers are considered adequate taking into account the limited scope of business in these activities. AML/CFT supervision of this sector is quite weak however and it may be that the Bank of Korea does not have adequate resources in terms of manpower or training to carry out its AML/CFT supervisory function completely.

626. As mentioned above, all financial institutions are also required to obtain licences and are supervised by the KoFIU and entrusted entities. AML/CFT supervision of institutions other than those subject to the Core Principles is entrusted to the Ministry of the Knowledge Economy or self-regulatory bodies, all of which have limited resources to conduct this activity. While this situation is somewhat ameliorated by the fact that KoFIU provides some support to these agencies' inspection programs, it is recommended that all of these agencies and self-regulatory authorities be provided with increased resources to allow them to pay more attention to their AML/CFT inspection role.

627. Some sectors are exempted from some AML/CFT obligations and are not as actively supervised as others. However, even in these areas it is recommended that KoFIU provide more support to the entrusted agencies, especially in the form of training and educational programs, to raise the awareness of these sectors to ML risks.

628. It is recommended that either the FSC or the FSS establish clear guidance on the licensing procedure and fit and proper test of management to ensure the foreign shareholders or management come from countries where the AML/CFT legal requirements imposed on them are at least equal to those of Korea. In addition, there should be adequate countermeasures measures available to apply in cases where the Korean AML/CFT measures cannot apply to the overseas branches and subsidiaries which are located in countries which do not adequately apply the FATF standards.

629. Although KoFIU provides general feedback with suggestions for improvements at quarterly meetings with entrusted institutions, feedback is not given to the various entrusted agencies on the results of individual on-site examinations. As KoFIU has entrusted the supervisory functions to FSS, Bank of Korea and some other entities, it is recommended that KoFIU establish more clear co-ordination and oversight of the AML/CFT supervision work. In addition to ensuring the effectiveness of AML/CFT supervision in an environment where multiple agencies are involved, such co-operation would assist KoFIU to fully understand how the AML/CFT measures it develops are implemented and any difficulties faced by agencies in doing so. It is recommended that KoFIU designate one of its divisions as responsible for following up on the outcomes of on-site inspections and practical difficulties in the implementation of the AML/CFT measures. This is particularly important at present as new AML/CFT measures were introduced in December 2008.

630. It is recommended that the FSS on-site examination manuals be updated to cope with the new requirements of the FTRA and the *Enforcement Decree of the Financial Transaction Reports Act* which came into force in December 2008. It is recommended that additional review procedures be established to check institutions' internal AML/CFT policies and controls, risk management systems, enhanced CDD, on-going monitoring and oversight for high risk customers.

### **Recommendation 25**

631. KoFIU has issued the *AML Enforcement Guidelines* which provide very useful guidance for the private sectors to develop their own AML policy and business manuals. However, these guidelines are not sector-specific and focus mainly on issues for banking institutions. It is recommended that KoFIU and other relevant supervisory authorities develop sector-specific AML/CFT guidance.

### **Recommendation 29**

632. Authorities have sufficient powers to carry out their inspection role. However it is not possible to sanction the full range of breaches. It is therefore recommended that Korea clearly establish a full range of sanction powers which can be applied as appropriate to the full range of possible breaches of AML/CFT obligations.

### **Recommendation 17**

633. The sanctions available to deal with natural and legal persons who fail to comply with their AML/CFT obligations are not proportionate. The sanctions applied in practice are almost invariably at the lower end of the spectrum. It is therefore recommended that the maximum penalties be increased to a level proportionate to the most severe breaches which may be found in institutions. Further, supervisory authorities should review their current approach to sanctioning to ensure that they are applying sanctions which are proportionate to the severity of the breaches and are truly dissuasive.

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

|      | RATING | SUMMARY OF FACTORS UNDERLYING RATING                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
|------|--------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| R.17 | PC     | <ul style="list-style-type: none"><li>• The only sanctionable AML/CFT breaches are failure to file STRs and CTRs and conducting financial transactions with restricted persons without approval.</li><li>• The level of sanctions available for natural and legal persons who fail to comply with their AML/CFT obligations is very low and not proportionate to the more severe breaches which may occur.</li><li>• Sanctions are not often applied by supervisory authorities and are usually in the nature of a request to the institution during the on-site inspection that corrections be made.</li></ul>                                                                                                                                    |
| R.23 | PC     | <ul style="list-style-type: none"><li>• The scope of AML/CFT supervision by FSS is not adequate: AML risk management, implementation of enhanced CDD for high risk customers and on-going monitoring systems for unusual, large and complex transactions are not reviewed.</li><li>• Institutions other than those subject to the Core Principles, and supervised by the FSS, are not adequately supervised for AML/CFT.</li><li>• Scope limitation: no formal assessment has been undertaken to justify exclusion of some smaller financial institutions, money changers and certain investment-related companies from the obligation to have internal AML/CFT monitoring/reporting, and thus from the corresponding regulatory regime.</li></ul> |
| R.25 | LC     | <ul style="list-style-type: none"><li>• The only guidance is generic for all obliged entities; there are no guidelines on AML/CFT requirements for different financial sectors.</li></ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |

|      | RATING | SUMMARY OF FACTORS UNDERLYING RATING                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|------|--------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| R.29 | PC     | <ul style="list-style-type: none"> <li>• The inspection areas of some supervisory authorities and self-regulatory organisations entrusted with inspection are under-resourced.</li> <li>• The only sanctionable AML/CFT breaches are failure to file STRs and CTRs and conducting financial transactions with restricted persons without approval.</li> <li>• Scope limitation: no formal assessment has been undertaken to justify exclusion of some smaller financial institutions, money changers and certain investment-related companies from the obligation to have internal AML/CFT monitoring/reporting, and thus from the corresponding regulatory regime.</li> </ul> |

### 3.11 Money or Value Transfer Services (SR.VI)

#### 3.11.1 Description and Analysis

634. In Korea, only financial institutions are permitted to conduct international remittances (FETA Article 8(2)).

635. Financial institutions, including those which provide an international remittance service, are licensed and required to meet AML/CFT obligations under the FTRA, the *Real Name Financial Transactions Act* and other laws, decrees and regulations. They are subject to monitoring, supervision and sanctions as described previously in this report.

636. Any business which intends to make a business of foreign exchange, including by conducting international remittances, should prepare capital, facilities and professional human resources sufficient to conduct such business, and register the business with the Minister of Strategy and Finance in advance (FETA Article 8). The offence of not registering or registering by false or illegal means and engaging in foreign exchange business is punishable by imprisonment of up to three years' imprisonment or a fine up to KRW 200 million (USD 172 240) (Article 27(1)(5)).

637. Korea Post is a government agency which operates under the *Postal Savings and Insurance Act*. Its financial services includes remittances. The Ministry of Knowledge Economy is the designated supervisory authority for Korea Post, though in practice it requests the FSC to conduct inspections of the financial services provided by post offices when deemed necessary to maintain its soundness. In 2007, 8% of post office branches were inspected.

638. Recommendations 8 (non-face-to-face business) and 14 (tipping off) have been fully implemented in the banking sector, including in relation to money or value transfer services. Recommendation 4 (financial institution secrecy or confidentiality), 10 (record keeping) and 13 has been substantially implemented in the banking sector, including in relation to MVT services. There has only been partial implementation of 15 (internal controls), 22 (foreign branches and subsidiaries) and 23 (supervision). And there are major shortcomings in requirements relating to Recommendations 5 (CDD), Recommendations 6 (PEPs), 7 (correspondent banking), 9 (third party introducers) and 11 (monitoring of accounts and relationships). All of these requirements and the corresponding deficiencies are described earlier in Section 3 of this report.

639. Sanctions apply for breaches of some, but not all, AML/CFT obligations and there is concern that the level of the sanctions provided in the AML Law appear to be relatively low for major deficiencies. As well, the sanctions regime is focused on minor deficiencies, as described in detail in section 3.10 of this report.

640. Korea has an immigrant population of approximately one million persons, and it is estimated that 230 000 are illegal immigrants, which suggests that it is likely that Korea has some illegal remittance operators and underground banking services. The KCS works actively to uncover illegal operators. The KCS receives information on financial transactions from KoFIU and links this with information on customs clearances and foreign exchange transactions.

641. In 2007 KCS investigations resulted in 690 arrests of persons involved in illegal remittances, 70 of whom were involved in managing the remittances and 620 of whom were arrested for using the illegal services. During the on-site visit Korean authorities noted that the illegal remittance services uncovered to date rarely relate to money exchange businesses. Authorities state that punishment of illegal remitters can vary from a fine to imprisonment according to the type of illegal remittance, though no details are available on the actual penalties imposed.

### 3.11.2 Recommendations and Comments

642. As it is only financial institutions in Korea which may conduct international remittances, Korea's compliance with this Recommendation is inextricably linked to its compliance with other Recommendations which apply to financial institutions. The evaluation team's recommendations, elsewhere in this report, particularly with respect to Recommendations 4-7, 9-11, 13, 15, 17, 21-23, 29 and Special Recommendation VII, are also relevant here.

643. It appears that while the KCS is actively uncovering illegal remittance activity, there is little if any attention being paid to this by relevant ministries and the supervisory authorities. It is recommended that supervisory authorities when inspecting businesses for other matters also be alert to the possibility that illegal remittance activity may be occurring. In addition, KCS and other authorities could focus more broadly at looking for signs of underground banking as well as alternative remittance.

### 3.11.3 Compliance with Special Recommendation VI

|       | RATING | SUMMARY OF FACTORS UNDERLYING RATING                                                                                                                                                                                  |
|-------|--------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| SR.VI | PC     | <ul style="list-style-type: none"> <li>The limitations identified under Recommendations 4-7, 9-11, 13, 15, 17, 21-23 and Special Recommendation VII also affect compliance with Special Recommendation VI.</li> </ul> |

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

##### 4.1 Customer Due Diligence and Record-keeping (R.12, applying R.5, 6, and 8 to 11)

###### 4.1.1 Description and Analysis

644. Designated non-financial businesses and professions (DNFBPs) in Korea have no AML obligations except for casinos. While no AML/CFT obligations apply to trust and company service providers, trust companies are considered to be financial institutions and are thus subject to licensing requirements and supervision by the FSS. They have AML/CFT obligations and are required to report STRs and CTRs under the FTRA.

645. Korean authorities are considering imposing AML/CFT obligation on all DNFBPs. In December 2004, KoFIU entrusted an external research institute to look into this issue, specifically examining the business activities and ML risks faced by lawyers, accountants, casinos, dealers in precious metals and stones, and real estate agents. No concrete plans have been formulated for imposition of AML/CFT obligations on these businesses and professions however.

###### *Casinos*

646. In Korea, there are 16 casinos open to only foreigners and 1 casino that is open to both foreigners and Korean nationals. Customers cannot play in foreign currencies in casinos, and therefore, the 16 casinos are allowed to provide currency exchange services, which are under the supervision of the Bank of Korea. Casinos do not open or maintain accounts for customers.

Overview of Korean casinos, 2007

|                    | # OF EMPLOYEES | REVENUE (KRW BILLION) | # OF VISITORS (x1 000) |
|--------------------|----------------|-----------------------|------------------------|
| 16 x Hotel Casinos | 3 804          | 613                   | 1 176*                 |
| Gangwon Land       | 1 775          | 670                   | 2 452                  |
| <b>TOTAL</b>       | <b>5 579</b>   | <b>1 583</b>          | <b>3 628</b>           |

647. Currency exchangers are reporting entities under the FTRA (Article 2(1)), and thus the casinos' compliance with AML obligations when providing currency exchange services has been examined previously in Section 3 of this report.

648. Since 22 December 2008 casinos have been required to perform CDD not only on currency exchange but also on exchange of chips for cash or checks, *i.e.* when conducting financial activities as part of their gambling business. The FTRA, the *Presidential Enforcement Decree of the FTRA* and the *Financial Transaction Reports and Supervisory Regulations* now apply to casinos in the same way as for financial institutions.

649. Pursuant to Article 10-6 of the *Presidential Enforcement Decree of the FTRA*, KoFIU has provided the *AML Enforcement Guidelines* to the Korea Casino Association to held casinos to develop their internal AML/CFT policies and procedures. The guidelines do not however provide sector-specific information for casinos. The Korea Casino Association has established an AML business manual for casinos based on the *AML Enforcement Guidelines* so that individual casinos can establish their own internal guidelines.

#### ***Other designated non-financial businesses and professions***

650. Real Estate Agents: Although there is no explicit requirement under the *Act on Real Estate Agents* or other legislation for CDD measures to be conducted in real estate brokerage business, in practice it appears that real estate agents do carry out identification of customers, both individuals and legal entities, when conducting transactions. At times they also appear to be verifying the identification of customers by checking the identification documents for individual customers and company registration information for companies. That said, they are not required to do this and steps are not taken to identify beneficial ownership of customers or the source of funds involved in the transactions. Real estate agents are required, as are all companies in Korea (Article 33 of the *Commercial Act*), to keep transaction records for at least five years.

651. Accountants: While no AML/CFT obligations are applied to accountants in Korea, the Institute of CPAs has issued a *Code of Ethics* and guidelines which adopt many international standards relating to auditors and accountants and cover matters such as customer acceptance policies, customer due diligence, checking the integrity of customers, and internal fraud controls. Therefore, although the AML/CFT obligation is not applicable to the CPAs, they are voluntarily carrying out some CDD measures. Accountants are required (Article 33 of the *Commercial Act*), as are all companies in Korea, to keep transaction records for at least five years.

652. Lawyers: The AML/CFT obligations of the FTRA are not applicable to lawyers. Representatives of the legal profession and Korean authorities who met with the evaluation team stated that lawyers often carry out identification of individual and corporate clients. The Korean Bar Association has issued a *Code of Ethics* and rules for lawyers and provides continuous training to members. These documents and training do not however cover any AML/CFT matters. Law firms are required (Article 33 of the *Commercial Act*), as are all companies in Korea, to keep transaction records for at least five years.

653. Dealers in precious metals and stones: AML/CFT obligations do not apply to dealers in precious metals and stones in Korea. However, representatives of the profession have informed the evaluation team that, in practice, dealers often carry out identification of customers in order to protect themselves when issuing certificates for the precious metals and stones sold. Dealers in precious metals and stones keep records of transactions for two to three years, as that is the normal validity of a certificate.

654. Notaries public: Notaries public practicing in Korea are not involved in financial transactions.

655. Trust and company service providers: Trust and company service providers are not recognised in Korea as separate profession. These activities are commonly conducted by lawyers or accountants.

#### **4.1.2 Recommendations and Comments**

656. Only one DNFBP in Korea – casinos – has AML/CFT obligations and these obligations are very recent, coming into force on 22 December 2008. It is recommended that Korea follow through on the research conducted on DNFBPs by conducting a national risk assessment of the DNFBP sectors and

imposing AML/CFT obligations on all other types of DNFBP. During that process it is recommended that training and education programs be provided to all DNFBP sectors to raise awareness of AML/CFT risks.

657. The obligations imposed on casinos are identical to those in place for financial institutions and thus the recommendations made in earlier sections of this report for strengthening Korea's compliance with Recommendations 5, 6 and 9-11 are also relevant here. As AML/CFT obligations were imposed on casinos only very recently it is too early to judge the effectiveness of the measures in that sector. It is recommended that KoFIU issue sector-specific guidance and information on sector-specific risks and ML techniques and trends to help casinos implement their new obligations.

658. Of concern with respect to casinos is the fact that the FTRA and the *Presidential Enforcement Decree of the FTRA* only establish CDD requirements on the currency exchange activities and the exchange of chips used in betting in casinos. While representatives of casinos have stated that they do not maintain accounts for customers, there is a concern that arrangements for VIP customers, which often involve keeping tabs or provision of credit, may not fall under the obligation to conduct CDD. In addition, all transactions in casinos are considered occasional. Article 5-2(1)(1) of FTRA only requires customer identification and verification for occasional transactions above the designated threshold of KRW 20 million for domestic currency transactions and USD 10 000 for foreign currency transactions<sup>58</sup>. It is recommended that Korea consider removing or substantially reducing the threshold for CDD on occasional transactions as it applies to casinos.

#### 4.1.3 Compliance with Recommendation 12

|      | RATING | SUMMARY OF FACTORS UNDERLYING RATING                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
|------|--------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| R.12 | NC     | <ul style="list-style-type: none"> <li>With the exception of casinos, no AML/CFT obligations have been applied to DNFBP sectors.</li> <li>As the AML/CFT obligations for casinos are identical to those for financial institutions, they suffer from the same deficiencies identified previously with respect to Recommendations 5, 6 and 9-11.</li> <li>The AML/CFT obligations for casinos came into force so recently that it is too soon to determine their effectiveness.</li> </ul> |

## 4.2 Monitoring Transactions and Other Issues (R.16, applying R.13-15, 17 & 21)

### 4.2.1 Description and Analysis

659. Since 22 December 2008 casinos have been included as reporting entities under the FTRA and have been required to file STRs (FTRA Article 4, *Presidential Enforcement Decree of the FTRA* Article 2(10)). Their obligations with respect to reporting of STRs, protection from liability of those who report STRs and prohibition on tipping off are the same of those discussed previously in Section 3.7 of this report which apply to financial institutions. No other DNFBPs are subject to these obligations.

660. Article 5 of the FTRA provides that reporting entities must *inter alia* (1) designate persons responsible for establishment of an internal reporting system, (2) establish and implement internal AML/CFT guidelines, and (3) train and educate employees on AML/CFT. Section III of the *AML Enforcement Guidelines* provides relevant guidance to support implementation of Article 5, noting that internal controls for AML should address:

<sup>58</sup> Article 6 of the *Enforcement Decree of the Financial Transaction Reports Act* sets these thresholds.

- Role and responsibilities of the AML compliance officer and other appropriate staff.
- Training and education of executives.
- KYE (Know Your Employee) system.
- Independent audit system.
- Establishment of procedures for risk-based AML.
- Establishment of procedures for customer risk assessment.
- Establishment of policy for risk-based CDD.
- Establishment of procedures for risk-based account and transaction monitoring.
- Establishment of internal and external reporting system.
- Establishment of system for record retention.

661. There is no requirement that the internal AML/CFT guidelines be communicated to staff. The role of a reporting officer under Article 5 of FTRA is limited compared to that of a compliance officer and certainly doesn't cover the full scope of a compliance management arrangement or audit function.

662. Pursuant to Article 5 of FTRA, supported by guidance in Section III.3 of the *AML Enforcement Guidelines*, financial institutions should conduct AML training and education for their executives and employees. That article simply obliges institutions to establish "Training and education of employees regarding prevention of money laundering and financing for offences of public intimidation." It does not specify whether such training should be ongoing and/or ad hoc. Nor does it specify the matters which, at a minimum, should be covered by the training (e.g. CDD, record retention, detection of suspicious transactions, current ML/TF techniques and trends).

663. There is no obligation in law, regulation or other enforceable means for and DNFBPs to have screening procedures to ensure high standards when hiring employees.

664. As noted with respect to financial institutions in Section 3.6 of this report, Korea has no requirements in law, regulation or other enforceable means that special attention be paid to business relationships and transactions with persons from or in jurisdictions which insufficiently apply the *FATF Recommendations*.

#### **4.2.2 Recommendations and Comments**

665. Only one DNFBP – casinos – is subject to suspicious transaction reporting obligations and to the (incomplete) requirements with respect to internal procedures, policies and controls. No DNFBPs are required to pay special attention to business relationships and transactions with persons from or in jurisdictions which insufficiently apply the *FATF Recommendations*. Thus, it is recommended that Korea include the other DNFBPs as reporting entities for the purposes of the FTRA, broaden the requirements in that act which relate to internal controls and establish a requirement that DNFBPs, as well as financial institutions, pay special attention to business relationships and transactions with persons from or in jurisdictions which insufficiently apply the *FATF Recommendations*.

### 4.2.3 Compliance with Recommendation 16

|      | RATING | SUMMARY OF FACTORS UNDERLYING RATING                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
|------|--------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| R.16 | NC     | <ul style="list-style-type: none"><li>• Only one type of DNFBP – casinos – is required to report suspicious transactions and this obligation suffers from the same limitations as noted for R.13.</li><li>• Only one type of DNFBP – casinos – is required to have some internal AML/CFT controls, reporting officers and employee training and this obligation does not involve establishment of a full compliance management function or employee screening.</li><li>• It is too early to assess the effectiveness of obligations imposed on casinos.</li><li>• No DNFBPs are obliged to pay special attention to business relationships and transactions with persons from or in jurisdictions which insufficiently apply the FATF Recommendations.</li></ul> |

## 4.3 Regulation, Supervision and Monitoring (R.24, R.25)

### 4.3.1 Description and Analysis

#### Recommendation 24

##### *Casinos*

666. According to Article 5 of the *Tourism Promotion Act*, casino operators must be licensed by the Ministry of Culture, Sports and Tourism. Article 7 establishes the qualification requirements for casino owners and senior managers. Article 22 also set out disqualification criteria which prevent criminals and related persons from being shareholders or beneficial owners of a casino. Violation of this provision is subject to revocation of licence or suspension of business (Article 35). In addition, the Minister of Culture, Sports and Tourism is able to restrict or not grant licences as s/he deems necessary for the maintenance of public peace and order or the sound development of the casino business. The licensing procedure in place for casinos entails a review of the internal control systems, facilities and equipment.

667. The Ministry of Culture, Sports and Tourism has established several rules for the regulation of casinos including *Rules Regarding Casino Business* which contains provisions on the accounting systems of the casinos, *Standards for Casino IT Systems* which is intended for efficient management of casinos and *Rules on Examination of Casinos* which sets up rules on examination of casino business. Also, the National Gambling Control Commission was established to prevent and treat compulsive gambling problems.

668. While the licensing system can be expected to prevent criminals or their associates from controlling casinos, there are no specific measures taken by the Ministry of Culture, Sports and Tourism for the implementation of AML/CFT measures by casinos. An agreement has recently been reached between the Ministry and KoFIU, which designates KoFIU as the AML/CFT supervisor for casinos. Monitoring by KoFIU in accordance with this MOU is expected to commence in the first quarter of 2009. This supervision work has been assigned to KoFIU's Compliance and Regulatory Division, but as at the time of the onsite visit there was no concrete plan for the expansion of that department or recruitment of additional supervisors with expertise in the casino sector.

669. Nevertheless, the Compliance and Regulatory Division has been working in close collaboration with the Korea Casino Association and representative from casinos during creation of the AML Enforcement Guidelines and the Korea Casino Association's AML business manual for casinos. Since receipt of the Korea Casino Association's AML business manual in late 2008 casinos have been creating their own AML/CFT internal control guidelines.

670. KoFIU has sent staff to attend international workshops and seminars relating to AML/CFT supervision of casinos, including the APG's 2006 Typologies Workshop, which focussed on member jurisdictions' experience in AML/CFT regulation of casinos and typologies of ML/TF involving casinos, and a workshop on AML/CFT for casinos jointly organised by the government of Macao, IMF and AUSTRAC. As at the time of the on-site visit KoFIU was planning study visits to the United States and Australia to gather information on AML/CFT supervision of casinos.

#### ***Other designated non-financial businesses and professions***

671. Real estate agents: All real estate agents, certified or not, are subject to the *Code of Ethics* under the *Act on Certified Real Estate Agents* and Article 27 of that act requires them to report on all purchase and sale transactions for customers to the Local Government within 60 days. For designated areas, such as transactions involving speculation, the reporting period is within 15 days. In addition, in order to obtain the land registration for real estate transfers, a copy of the relevant report has to be filed with the application for registration. 672. The *Act on Certified Real Estate Agents* empowers the head of the relevant Local Government to supervise real estate agents and certified real estate agents. They can investigate the validity of the reports submitted by agents and can impose administrative penalties in case of non-compliance with the reporting rules.

673. Accountants: Certified Public Accountants (CPAs) in Korea operate under the *Certified Public Accountants Act* and the *External Audit Act* which set up the licensing requirements, rules and regulations on the accounting activities including reporting to enforcement agencies of breaches of laws detected during audits and of illegal activities related to directors. The regulation and supervision of accountants is shared between the FSC and the Korean Institute of Certified Public Accountants. CPAs are appointed after passing the qualification examination established by the FSC. In addition, the *Certified Public Accountants Act* and the *External Audit Act* give the FSC the power to disqualify accountants for non-compliance. The Korean Institute of Certified Public Accountants provides training and on-going education to practicing accountants.

674. Lawyers: Persons who wish to work in legal practice in Korea must pass the national bar examination. The Korean Bar Association was established in accordance with Article 78 of the *Attorney-at Law Act* in order to "preserve the dignity of attorneys-at-law, to improve and develop legal services, to further the legal culture and to execute the affairs relating to guidance and supervision of attorneys-at-law and local bar associations". It is mandatory for practicing lawyers to join the association and be subject to the *Code of Ethics* and rules for the profession established by the Association. The Association is empowered under Article 80 to take disciplinary action against members who breach the *Code of Ethics* and rules. However, the Korean Bar Association has no investigative powers and the profession has no AML/CFT obligations.

675. Notaries Public: Notaries in Korea are not involved in financial transactions. Notaries public are appointed by the Minister of Justice and are almost invariably judges, public prosecutors or other lawyers. On appointment notaries 'belong' to a designated local PPO. The term of office for notaries public is five years and notaries may be reappointed once for up to three years. A notary public cannot concurrently serve in a public office or engage in a commercial business or become the representative or an employee of a commercial company or a profit-making corporation. Notaries should not turn down commission from a client without justifiable reason. Authorised law firms can also provide notarial services.

676. Dealers in precious metals and stones: Dealers in precious metals and stones are not subject to licensing requirements for engaging in their business though they must register as a company or partnership with the Commercial Registry. Dealers in precious metals and stones do not have any

AML/CFT obligations and the profession is not subject to any regulation or supervision by a competent authority.

677. Trust and company service providers: Trust and company service providers are not recognised in Korea as separate profession. These services are generally provided by lawyers. Trust companies on the other hand are classified as financial institutions and are thus subject to all of Korea's AML/CFT obligations which is supervised by the FSS.

#### 4.3.2 Recommendations and Comments

678. Only one DNFBP in Korea – casinos – has AML/CFT obligations and oversight and this is very recent, coming into force on 22 December 2008. It is recommended that Korea conduct a national risk assessment of the DNFBP sectors and impose AML/CFT obligations on all other types of DNFBP. During that process it is recommended that guidance, training and education programs be provided to all DNFBP sectors to raise awareness of AML/CFT risks.

679. As AML/CFT supervision for casinos was established only very recently it is too early to judge the effectiveness of these measures. It is recommended that KoFIU be provided with adequate resources and expertise in casino operations in order to carry out its new role as AML/CFT supervisor for casinos. Close communication should be established between KoFIU, the Ministry of Culture, Sports and Tourism and the Casino Association for information exchange pertaining to supervisory issues, and for education and awareness programs. In terms of awareness-raising and guidance, it is recommended that KoFIU issue sector-specific guidance and information on sector-specific risks and ML techniques and trends to help casinos implement their new obligations.

#### 4.3.3 Compliance with Recommendations 24 & 25 (criteria 25.1, DNFBP)

|      | RATING | SUMMARY OF FACTORS UNDERLYING RATING                                                                                                                                                                                                                                          |
|------|--------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| R.24 | NC     | <ul style="list-style-type: none"> <li>With the exception of casinos, no AML/CFT supervision is in place for DNFBP sectors.</li> <li>AML/CFT supervision for casinos came into force so recently that it is too soon to determine its effectiveness.</li> </ul>               |
| R.25 | LC     | <ul style="list-style-type: none"> <li>Casinos are the only DNFBP which has received AML/CFT guidance.</li> <li>It is too early to evaluate the effectiveness of feedback to casinos as their reporting as the obligation to report has only just come into force.</li> </ul> |

#### 4.4 Other Non-financial Businesses and Professions – Modern Secure Transaction Techniques (R.20)

##### 4.4.1 Description and Analysis

680. In July 2007 KoFIU concluded an examination of the horse racing industry's vulnerability to ML to determine whether or not to include the sector into the scope of AML/CTF regime. Of particular interest was the potential for winning tickets to be abused for ML. However, in the second half of 2007 the Korea Racing Authority placed a ceiling of KRW 1.2 million (USD 1 033) on the amount that one person can bet and this is seen to have substantially reduced the risk this type of ML.

681. No other sectors' AML/CFT vulnerabilities have been analysed. With respect to auction houses and dealers in high value and precious goods, the Korean authorities trust that general CDD obligations in place in financial institutions reduce the risk of ML through these businesses.

682. The largest denomination note in Korea is very small; just KRW 10 000 (USD 8.60). Korea has developed modern secure payment systems and promoted non-cash transactions in order to enhance the efficiency of financial transactions. Public campaigns were conducted by the government in the 1960s to encourage people to keep their money in financial institutions. During the 1980s government campaigns promoted the use of electronic transactions. As a result of these efforts, the ratio of currency in circulation to the total GDP decreased from 2.9% in 1995 to 2.3% in 2007, which is very low compared to other countries. According to the *2007 Payment and Settlement System Management Report* published by the Bank of Korea, the average daily number of payments using cash had decreased 10.2% compared to the previous year.

683. Since the implementation in 2005 of the Cash Receipt System by the National Tax Service (NTS), statistics show that most large transactions in Korea are conducted by credit card. The Cash Receipt System is encouraging people to use credit cards or receive cash receipts by giving them tax credits and/or income deductions based on the aggregate total amount of transactions made involving credit cards or cash receipts.

#### 4.4.2 Recommendations and Comments

684. The only other (non-DNFBP) profession which the Korean government has considered applying AML/CFT obligations to is gambling associated with horse racing. It is recommended that, while the initiative taken by the Korea Racing Authority may indeed have substantially reduced the threat of ML in that business, a follow-up study be conducted to determine whether any additional measures are needed. Further it is recommended that Korean authorities conduct similar studies with respect to other forms of gambling and other often-vulnerable businesses such as auction houses and dealers in high value goods to determine whether CDD and other AML/CFT obligations should be implemented for those businesses.

685. Traditionally, Korea has seen a high reliance on cash but this is decreasing at a rate of approximately 10% per year thanks in part to the government not issuing large denomination notes and various measures implemented to encourage use of secure electronic transactions.

#### 4.4.3 Compliance with Recommendation 20

|             | RATING   | SUMMARY OF FACTORS UNDERLYING RATING          |
|-------------|----------|-----------------------------------------------|
| <b>R.20</b> | <b>C</b> | <i>This Recommendation is fully observed.</i> |

## 5. LEGAL PERSONS AND ARRANGEMENTS & NON-PROFIT ORGANISATIONS

### 5.1 Legal Persons – Access to Beneficial Ownership and Control Information (R.33)

#### 5.1.1 Description and Analysis

686. Four types of companies may be formed under Korea's commercial laws.

Companies recorded in commercial register, 12 August 2008

| TYPE                        | NUMBER  |
|-----------------------------|---------|
| Stock Company               | 664 446 |
| Limited Liability Company   | 33 620  |
| Limited Partnership Company | 13 702  |
| Partnership Company         | 2 487   |
| TOTAL                       | 714 255 |

687. Stock companies are the only legal entities that may publicly issue shares. A Limited Liability Company is a closely held company of no more than 50 shareholders. A Limited Partnership Company has two or more partners, some with unlimited liability and others with limited liability. A Partnership Company has two or more partners with unlimited liability. Companies must register with the Commercial Registration Office in the capital city, Seoul.

#### *Central registration system*

688. The *Commercial Act* and the *Commercial Registration Act* require certain information in order to approve registration of incorporation. Some of the “common registration information” required for all four companies include:

- Names, resident registration numbers and domiciles of directors and members representing the company.
- Place of principal office.
- Total number and price of shares to be issued.
- Place of principal office.
- Total amount of capital.
- Type, contents and number of issued shares.
- For property investments, the price and implementation of investment.

689. A company comes into existence on registration of its incorporation at the place of its principal office (Article 172 of the *Commercial Act*). The Commercial Registration Office must be notified of changes to registration information after incorporation (Article 183, 269, 317, and 549 of the *Commercial Act*), but that office is not required to verify the accuracy of any information provided. It is, however, an offence to deliberately provide false information. Registry officials advised the evaluation team that they were not required to cross-reference personal information by those forming companies, or taking an interest in a company, against any domestic or international terrorist lists.

690. In addition, any corporation who intends to issue securities should be registered with the FSC as a securities issuer (Article 3 of the *Securities and Exchange Act* and the Article 2.4 of the *Presidential Enforcement Decree of the Securities and Exchange Act*). Registration entails filing of designated documents with the FSC on the company and its assets, directors and affiliates, executives and staff, articles of incorporation etc and these documents are available to the public (Articles 4, 5 and 5-4 of the *Securities and Exchange Act*). Any securities issuer who intends to make public offering of securities for more than 50 persons should file a registration statement on such securities with the FSC (Article 8 of the *Securities and Exchange Act*).

#### *Shareholder register*

691. On incorporation, a company must keep a general shareholder register together with other information at its principal office (Article 396 of the *Commercial Act*) which must contain names of individual shareholders, including the names of persons who have purchased shares but requested their non-issuance, referred to as “non-bearing shareholders” (Article 358-2). In addition, the Article 118 of the *Corporate Tax Act* requires that the stockholder registry includes information on names of foreign shareholders including their passport numbers. Other identification information is required pursuant to Article 160 of the *Presidential Enforcement Decree of the Corporate Tax Act*. In cases where stockholders are legal persons, the requirement only extends to the names of the legal persons, the locations of the headquarters of those legal persons, and their business registration number. There is no requirement to determine and disclose the names of the natural persons standing behind the shareholder company.

692. Neither the *Corporate Tax Act* nor its presidential enforcement decree require information in relation to beneficial ownership beyond the registered shareholder. The shareholder register is available to shareholders and creditors of the legal person at any time during business hours for inspection. With respect to non-bearing shareholders, it is possible for a person to purchase shares and request their issuance at a later date in the name of a third party, including in the name of a trust.

693. With respect to share transfers, the *Commercial Act*, the *Corporate Tax Act* and the *Presidential Enforcement Decree of the Corporate Tax Act* provide that share transfers must be recorded in the shareholder register within three months of the close of any business year. The evaluation team was concerned that a number of share transfers could be effected within any given year and that only the last transfer would be registered. This concern was not mitigated by Article 119 of the *Corporate Tax Act* which provides that a corporation (excluding partnership corporations as prescribed by the presidential enforcement decree) with changes in stock during the business year shall submit a detailed statement of those changes to the chief of the District Tax Office. That report is subject to tax secrecy laws and is not available for inspection by government agencies except in relation to the investigation of tax offences.

#### *Information on directors and officers*

694. With respect to control information, corporations must appoint directors and officers on incorporation and this information must be recorded in the company’s corporate records. One of the directors of a company must be designated its “representative director” who is the chairman of the Board

of Directors, and the Company's chief executive officer who has full authority to represent and bind the company in all matters. The appointment of nominee directors is not proscribed in Korean law. While Korean officials told the evaluation team that nominee directors have never been used, the evaluation team found a website of a Korean law firm operating in Seoul offering this service<sup>59</sup>.

#### *Listed companies*

695. Any KOSPI-listed corporation or KOSDAQ-listed corporation should submit a business report to the FSC and the Korea Exchange within 90 days of the end of each business year. The business report should include financial status, corporate governance structure, share holding and other information (Article 186-2 and 186-3 of the *Securities and Exchange Act*). In addition, for any stock exchange-listed companies, any person who acquires 5% or more of the total number of stocks or any person with more than 5% of the total number of stocks whose rate of stock holding was changed in excess of 1% should report to the FSC and the Korea Exchange within 5 days (Article 200-2 of the *Securities and Exchange Act*). Such information is disclosed through electronic disclosure systems of the FSC and the Korea Exchange<sup>60</sup>.

#### *Foreign companies*

696. Foreign companies doing business in Korea must comply with registration requirements similar to domestic companies. For instance, they are required to have a presence in Korea through a company representative and establish a business office (Article 617 of the *Commercial Act*). Once registered, foreign companies are required to comply with the requirements of the *Commercial Act* – although it does not appear that they are legally required to keep a shareholder register in Korea – and when they do they are deemed to be a company incorporated in Korea (Article 621). Korean officials were not able to provide information on the number of foreign companies registered in Korea.

#### *Access to information by competent authorities*

697. Some basic information on corporations is publicly available, such as registration number and stockholder fluctuations in public companies. Regulatory, taxation, supervisory and law enforcement authorities have a variety of statutory powers to secure information about the ownership and control of legal persons, both from publicly available sources and through a variety of other measures. But the scope of beneficial ownership information is limited to what is recorded in corporate shareholder registers (as above).

698. Under the *Corporate Tax Act*, legal persons are liable to pay tax and to file tax returns with the NTS. Information contained in tax returns may be useful for establishing beneficial ownership and control of a legal person. However, information in those returns and other information held by the NTS is subject to tax secrecy and can only be released to law enforcement, KoFIU and other government agencies pursuant to a court order or pursuant to a specific investigation of a tax evasion offence or in relation to local government tax matters (Article 81-10(1) to 81-10(5)).

#### *Bearer shares / bearer trust certificates*

699. Korea's *Commercial Act* permits all types of companies to issue bearer shares as a means of taking an ownership interest in a company. Article 357 states that bearer shares may only be issued if permitted in the company's articles of incorporation. Commercial Registration Office officials were not

---

<sup>59</sup> [http://www.korealawblog.com/entry/company\\_formation\\_in\\_korea](http://www.korealawblog.com/entry/company_formation_in_korea), accessed 14 November 2008.

<sup>60</sup> <http://dart.fss.or.kr> and <http://kind.krx.co.kr>.

able to indicate how many registered Korean companies permit the issuance of bearer shares but they did indicate that companies trading on the Korea Exchange cannot trade bearer shares. The *Commercial Act* also provides that the holder of bearer shares may demand that they be converted to registered shares at any time. It does not provide for the conversion of registered shares to bearer shares.

700. In addition to the existence of bearer shares, there is a provision in the *Trust Business Act* which permits a trust company to issue an instrument similar to a bearer share: “beneficiary certificates” (Article 17-2). Article 17-2(3) provides that these certificates shall be “bearer certificates”. Succession rights apply to these certificates in the same way as non-bearer certificates. Korean authorities confirmed that these certificates have the same attributes as bearer shares.

701. There is no legal mechanism in Korea to require disclosure of the person or entity which holds, or is the beneficial owner of, bearer shares or bearer trust certificates in any particular Korean corporation.

### ***Additional elements***

702. Access to beneficial ownership information for financial institutions in Korea is limited given the restricted range of information on beneficial ownership held by and available from Korean companies. The following information is available to the general public via an online system:

- Corporation's registration.
- Listed corporation's financial status, corporate governance structure and stock holding status.
- Changes in stocks of shareholders with more than 5%.
- Corporate governance structure and shareholders of companies affiliated with large scale enterprise groups.

703. All financial institutions met with during the on-site visit advised the evaluation team that when conducting customer identification on corporations they are not required to, nor do they, look beyond the corporate registry for beneficial ownership information, including when the immediate registered shareholder is another company or corporation.

### **5.1.2 Recommendations and Comments**

704. Korea's general corporate registry and information collection system does not focus on obtaining information relating to the beneficial ownership or control of companies in Korea. The information maintained (including changes in information) relates solely to persons and other corporations that are the immediate owners or controllers of a company through shareholdings. The Commercial Registration Office does not focus on ML and TF issues and were not implementing any special measures in this regard. For example, the Commercial Registration Office does not cross-reference applications for company formations against the terrorist lists issued by the Ministry of Strategy and Finance and KoFIU. Measures such as these could act to mitigate to some extent the risk that arises through the use of legal persons to finance terrorists.

705. Korea should ensure that competent authorities have access to accurate and current information on the ultimate beneficial owners and controllers of all legal persons on a timely basis. The current powers of competent authorities are hampered to the extent that the repositories of information from which the authorities could obtain beneficial ownership information do not maintain beneficial ownership

information. And for the NTS, there are statutory barriers (tax secrecy laws) to the sharing of the information with other agencies including law enforcement or other competent authorities.

706. The *Commercial Act* allows for the ownership of companies through the use of bearer shares. There are no special measures in place to ensure disclosure of beneficial owners of bearer shares and the ML and TF risk they pose.

707. It is recommended that Korea:

- Implement measures to ensure that a broader range of beneficial ownership information is collected by companies.
- Either implement measures to ensure transparency with respect to, or prohibit, bearer shares and nominee directors.
- Ensure that beneficial ownership information on companies held by the NTS is not subject to tax secrecy for other government agencies, including law enforcement.

### 5.1.3 Compliance with Recommendations 33

|      | RATING | SUMMARY OF FACTORS UNDERLYING RATING                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
|------|--------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| R.33 | NC     | <ul style="list-style-type: none"> <li>• Laws do not establish adequate transparency concerning beneficial ownership and control of legal persons.</li> <li>• Competent authorities are not able to obtain in a timely fashion adequate, accurate and timely information by competent authorities on the beneficial ownership of legal persons.</li> <li>• There are no measures to ensure that bearer shares are not misused for money laundering and terrorist financing.</li> </ul> |

## 5.2 Legal Arrangements – Access to Beneficial Ownership and Control Information (R.34)

### 5.2.1 Description and Analysis

708. Personal trusts and business trusts are regulated separately in Korea.

709. The *Trust Act* applies to personal trusts. Article 33 obliges a trustee of a personal trust to keep books and clarify the management affairs of the accounts pertaining to each trust and prepare a list of inventory at least once a year. Personal trusts are required to file tax returns but personal information contained therein is limited to the trustee. Korean officials state that “there are few personal trusts in Korea” but, as there is no central trust registry for personal trusts, it is difficult to know the full dimensions of this activity.

710. Trust companies may be banks or other financial institutions licensed under the *Trust Business Act* to engage in trust business. As of the end of 2007, there were 42 trust companies in Korea, 33 of which were banks and asset management companies, while the remaining nine were real estate trust businesses. All trust businesses are licensed and supervised by the FSS and must comply with the current range of AML/CFT requirements in Korean law.

711. As at 31 December 2007, USD 76.8 billion was held in business trusts in Korea. This comprised USD 1.8 billion held by asset management companies (primarily in the nature of business trusts) and USD 75 billion held in real estate trusts.

712. When entering in trust contract with trusters, trust companies are required to include information as below in the contract (Article 37-4 of the *Trust Business Act* and the Article 18 of the *Presidential Enforcement Decree of the Trust Business Act*).

- Names of truster, beneficiary and trust company.
- Information on designation and changes of beneficiary.
- Type, amount and price of property in trust.
- Purpose of trust.
- Information that shows trusted properties of securities, stock certificate and bond certificate.
- Type of trusted properties that would be granted to beneficiary and methods and timing of delivery.

713. Korean officials advised that real estate trust companies are obliged to deposit trust deeds establishing the arrangements with the District Court in the county where the land (subject to the trust) is located. Officials also advised that the District Court and Supreme Courts posts those deeds on their websites (although the evaluation team was unable to locate these instruments on any of the English language versions of those websites).

#### ***Access to information by competent authorities***

714. Law enforcement agencies have powers to obtain information on both personal and business trusts, including the “truster” (i.e. settlor), and to some extent beneficiaries, in business trusts, in criminal investigations. Given the absence of a central registry for personal trusts, the information is limited to what is required under Article 33 of the *Trust Act* (as noted previously). And while personal trusts are obliged to file tax returns, given the strict Korean laws on tax secrecy, that information is not available to other agencies except for a criminal investigation in relation to tax matters or pursuant to a court order.

715. Trust companies are regulated by the FSS which has a full range of administrative powers of access to information held by trust companies (see earlier discussion in Section 3.10 of this report). The FSC may supervise the business of trust companies, and issue an order required therefore (Article 24-2 of the *Trust Business Act*). And the FSC may, where it deems necessary, have a trust company report on the status of business and assets or submit documents or accounting books (Article 25 of the *Trust Business Act*). In addition, the FSC may entrust the FSS with supervision and have officials of the FSS inspect the business and assets of trust companies. The FSS may request trust companies to submit documents and ask an interested party to attend and state his opinion (Article 26 of the *Trust Business Act*).

716. There is an absence of requirements for financial institutions to obtain information on the intended nature and purpose of the business relationship, identify beneficial ownership beyond the direct beneficiary and to conduct ongoing due diligence on all customers, and to subject higher risk customers/transactions to enhanced due diligence. Thus, while law enforcement agencies and supervisory authorities have access to information, little exists which relates to beneficial ownership and control of legal arrangements.

### ***Additional elements***

717. No measures are in place to permit financial institutions access to beneficial ownership information so as to allow them to more easily verify customer identification information.

#### **5.2.2 Recommendations and Comments**

718. Trust companies are regulated by the FSS under the *Trust Business Act* and are subject to AML/CFT obligations. CDD obligations require them to identify their customer, including the truster and beneficiaries of trusts. But deficiencies in Korea's CDD obligations with respect to identification of beneficial owners limit transparency concerning beneficial ownership and control of trusts. Law enforcement authorities have the authority to obtain or access available information on beneficial ownership on trusts in these trust companies only in case of criminal investigations or pursuant to a court order.

719. It is recommended that Korea implement a system of central trust registration and enhance CDD for these vehicles including with respect to ultimate beneficial ownership. In addition, it is recommended that tax secrecy laws be relaxed in relation to personal and business trusts.

#### **5.2.3 Compliance with Recommendations 34**

|      | RATING | SUMMARY OF FACTORS UNDERLYING RATING                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
|------|--------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| R.34 | NC     | <ul style="list-style-type: none"><li>• Laws do not require adequate transparency concerning the beneficial ownership and control of trusts and other legal arrangements.</li><li>• Although law enforcement agencies have powers to obtain information on legal arrangements, there is minimal information concerning the beneficial owners of legal arrangements that can be obtained.</li><li>• Providers of trust and company services are not subject to AML/CFT obligations.</li></ul> |

### **5.3 Non-profit Organisations (SR.VIII)**

#### **5.3.1 Description and Analysis**

720. Three types of NPOs may be established under Korean law: non-profit corporations; non-profit civic organisations; and, public benefit corporations. There were 13 685 non-profit corporations in Korea in 2004, 6 365 non-profit civic corporations in Korea in 2006 and 17 812 public benefit corporations in Korea in 2004.

721. 'Non-profit corporations' include private schools, universities, hospitals, cultural or recreational organisations, research institutions, religious organisations, and social service organisations that are formed as foundations or associations (Article 32 of the *Civil Act* and Article 13 of the *Framework Act on National Taxes*). A 'non-profit civic organisation' is an organisation registered under Article 4 of the *Law on Support for Non-profit Civic Organisations*, in order to secure financial support from a national or a local government. These organisations must be non-political/non-religious organisations who promote the public good. No academic or professional association, co-operative, social club, labor union, or religious organisation may register as a non-profit civic organisation. A 'public benefit corporation' is a corporation or foundation established for the purpose of advancing the public benefit through provision of student grants, research grants, or other academic/charitable business.

### ***Reviews of the domestic non-profit sector***

722. Korea conducted reviews its NPO sector in 2006 and in 2007. In 2006, ML risks in the sector were examined and reviewed by an independent consultant and a report entitled *Analysis of Possibility of Money Laundering through Non-Profit Organisations and Measures on System Improvement* was provided to the Korean government. In 2007, TF risks in the sector were internally reviewed as part of the APG's on-going NPO TF vulnerabilities review project. The project results were shared with APG members. Korea's 2007 report to the APG on NPOs indicated that embezzlement is the most common type of criminal activity among NPOs, with 13 of the 21 criminal cases involving NPOs relating to embezzlement.

723. Together, these reviews covered current conditions of Korea's NPOs, relevant supervisory systems, implementation of AML/CFT systems, pattern and cases of crimes committed by NPOs, and suggestions for systems improvement. The reviews considered a variety of sources including, the Statistical Yearbook of National Tax, the Directory of Korean NPOs released by the Ministry of Government Administration and Home Affairs, the National Tax Service records, Supreme Court cases, STRs and CTRs filed with KoFIU, and NPO supervisory registration information. Neither study reviewed large international NPOs. However, relevant Korean supervisory agencies oversight were consulted on some issues with respect to the international NPOs.

### ***Protecting the NPO sector from terrorist financing through outreach and effective oversight***

724. Korea has not undertaken NPO sector outreach with respect to TF. During the on-site visit Korean officials informed the evaluation team that the extent of NPO engagement was the placement of information (on ML and TF risks) on the websites of administrative authorities (see below). While this information on websites may have some value, it does not amount to sector outreach nor does any of the information constitute best practice guidelines or advisory papers. In addition, there is a website established by an NGO – Guidestar Korea Foundation<sup>61</sup> – which is designed to improve transparency in NPO information management. However, this website was established by and is operated by an NGO and does not yet appear to be widely used by Korean NPOs (only one Korean NPO had registered with the site effective as at 18 November 2008).

725. NPOs in Korea (with the exception of foreign NPOs) must incorporate under the *Civil Act*. Foreign NPOs are required to register under the *Civil Act* to conduct NPO business activities. Those seeking incorporation must submit an application form to the appropriate administrative authority (listed below) providing the following information:

- Information on the founder.
- Articles of incorporation.
- Inventory of assets.
- Documents that prove the assets, business plan and budget.
- Information on those who will be appointed to executive positions.
- Minutes of the organisation's general meeting (Articles 3 and 4 of the Regulations on Establishment and Supervision of NPOs under the jurisdiction of the Minister of Justice).

---

<sup>61</sup> [www.guidestar.or.kr](http://www.guidestar.or.kr).

726. On incorporation, an NPO company must register its objective, name, office, total value of its assets, method of effecting contributions (if any), and full names and domiciles of directors (Article 49 of the *Civil Act*). As outlined below, NPOs must also register their purpose objectives and directors before being granted permission to operate. If any changes occur in registration, including objectives and persons controlling NPOs, these must be notified to the relevant authorities within a specified time frame. After the registration of incorporation, a certified copy of the corporate register should be submitted to the relevant competent authority to inform them of the incorporation (Article 5 of the *Regulations on Establishment and Supervision of NPOs under the jurisdiction of the Minister of Justice*).

### Registration

727. Legal persons (domestic or foreign) wishing to register as NPOs must apply to a competent authority, of which there are 28, as follows:

**Competent authorities for registration of NPOs, 2004**

| COMPETENT AUTHORITIES |                                                        | NO. OF NPOs | PERCENTAGE |
|-----------------------|--------------------------------------------------------|-------------|------------|
| 1                     | Ministry of Culture and Tourism                        | 1 048       | 19.74      |
| 2                     | Ministry of Health and Welfare                         | 491         | 9.25       |
| 3                     | Ministry of Information and Communication              | 392         | 7.38       |
| 4                     | Ministry of Commerce, Industry & Energy                | 357         | 6.72       |
| 5                     | National Youth Commission                              | 300         | 5.65       |
| 6                     | Ministry of Labor                                      | 262         | 4.94       |
| 7                     | Ministry of Environment                                | 261         | 4.92       |
| 8                     | Ministry of Agriculture and Forestry                   | 245         | 4.61       |
| 9                     | Ministry of Finance and Economy                        | 230         | 4.33       |
| 10                    | Ministry of Government Administration and Home Affairs | 211         | 3.97       |
| 11                    | Ministry of Construction and Transportation            | 194         | 3.65       |
| 12                    | Ministry of Foreign Affairs and Trade                  | 190         | 3.58       |
| 13                    | Government Information Agency                          | 190         | 3.58       |
| 14                    | Financial Supervisory Commission                       | 190         | 3.58       |
| 15                    | Ministry of Education & Human Resources Development    | 190         | 3.58       |
| 16                    | Ministry of Unification                                | 181         | 3.41       |
| 17                    | Ministry of Maritime Affairs & Fisheries               | 105         | 1.98       |
| 18                    | Ministry of Patriots & Veterans Affairs                | 85          | 1.60       |
| 19                    | Ministry of Justice                                    | 71          | 1.34       |
| 20                    | Ministry of Gender Equality & Family                   | 51          | 0.96       |
| 21                    | Ministry of National Defence                           | 19          | 0.36       |
| 22                    | Fair Trade Commission                                  | 16          | 0.30       |
| 23                    | Ministry of Planning and Budget                        | 12          | 0.23       |
| 24                    | National Election Commission                           | 11          | 0.21       |
| 25                    | Ministry of Government Legislation                     | 3           | 0.06       |
| 26                    | Board of Audit and Inspection of Korea                 | 2           | 0.04       |

| COMPETENT AUTHORITIES |                                | NO. OF NPOs | PERCENTAGE |
|-----------------------|--------------------------------|-------------|------------|
| 27                    | Office of Court Administration | 1           | 0.02       |
| 28                    | Constitutional Court of Korea  | 1           | 0.02       |

728. These authorities must examine the purpose, financial basis and other relevant information about the NPO before granting it permission to operate. If any changes occur in the registration of a legal person following registration, corrections must be made within three weeks (Article 52 of the *Civil Act*). In addition, the court must give public notice of the particulars registered (Article 54) while a legal person should write and keep lists of assets and its members at its office (Article 55). The general public may access this information.

729. NPOs are not required to register with the NTS but must do so if they desire to receive special tax treatment such as exemption for taxation of its donation receipts. The application to the NTS must include the following documents:

- Report form of incorporation and application form of business registration.
- Certified copy of corporate register.
- Copy of articles of incorporation.
- Copy of lease agreement (in case of a leased place of business).
- Copy of business permission, registration and report (if applicable).
- Copy of incorporation permission granted by competent authorities.

#### *Record keeping*

730. Under Article 112-2 of the *Corporate Tax Act* and Article 73 of the *Restriction of Special Taxation Act*, NPOs must keep account books of issued donation receipts, the details of which must be reported to the Commissioner of the NTS, the head of the competent regional tax office or the head of the district tax office having jurisdiction over the place of payment. These entries must be kept for five years from the date on which donation receipts are issued. NPOs must also make or receive documentary evidence for all business related transactions for each business year and keep them for five years from the date of the expiration of the time limit for tax reports (Article 116 of the *Corporate Tax Act*).

731. NPOs must also publicly disclose documents such as: balance sheets; details of collection and disbursement of donations; matters concerning the representative, directors, contributors, location and projects of the NPO; and, stocks in their possession. These disclosures occur by publication of the information on the NTS website within four months from the end of taxation period or business year of the public service corporation (Article 50-3 of the *Inheritance Tax and Gift Tax Act*).

#### *Supervision and sanctions*

732. Any NPO that operates outside the scope of its purpose or “does an act harming public interests”, violates the conditions of its incorporation and the relevant supervisory authority may cancel the permission to operate (Article 38 of the *Civil Act*). In addition, directors, auditors or liquidators of an NPO shall be liable for a fine if they have done any of the following (Article 97):

- Neglected to effect any of the registrations.
- Made false statements in the inventory of assets or in the list of the members.
- Obstructed inspection and supervision by competent administrative authorities.
- Neglected to give public notices or have given a false public notice.

733. Korean authorities provided statistics for 2007 and 2008 on NPO supervision by a representative sample of competent authorities.

**NPOs subject to sanctions (Ministry of Health and Welfare)**

| YEAR | INSTITUTIONAL WARNINGS | RECTIFICATION ORDERS | BETTERMENT ORDERS | WARNINGS/ ADMONISHMENTS               | CAUTIONS | ADVICE | TOTAL |
|------|------------------------|----------------------|-------------------|---------------------------------------|----------|--------|-------|
| 2006 | 0                      | 19                   | 8                 | 7 warnings (to a total of 14 persons) | 0        | 0      | 34    |
| 2007 | 3                      | 13                   | 14                | 9                                     | 4        | 7      | 50    |
| 2008 | 2                      | 10                   | 5                 | 5                                     | 0        | 6      | 27    |

734. Some NPOs have been de-registered because they have ceased operating or failed to comply with administrative under the *Civil Act* such as filing annual material documentation to maintain the status of the corporation. In 2008 the Ministry of Health and Welfare found major problems four organisations resulting in liquidation orders for failing to conduct projects during the first half of 2009.

735. A legal person who is liable for tax prescribed in the *Corporate Tax Act* shall pay additional tax determined by relevant laws if the legal person fails: (1) to report (Article 47-2 of the *Framework Act of National Taxes*), (2) to perform the duty to keep the accounting books (Article 76(1) of the *Corporate Tax Act*), (3) to submit a detailed statement on the state of fluctuation of stocks (Article 76(6) of the *Corporate Tax Act*), or (4) to issue true donation receipt or compile and keep the details of the issuance of donation receipt (Article 76(10) of the *Corporate Tax Act*). In addition, public service corporations are required under the *Inheritance Tax and Gift Tax Act* to pay additional tax as determined by relevant laws if the public service corporation violates: (1) tax verification by outside experts (Article 50), (2) opening and use of exclusive account (Article 50-2), (3) obligatory disclosure of accounts settlement (Article 50-3), or (4) writing and keeping of account books (Article 51) (Article 78 of the *Inheritance Tax and Gift Tax Act*).

#### **Targeting terrorist abuse of NPOs through information gathering and investigation**

736. Competent administrative authorities may, if deemed it necessary for off-site or on-site inspection and supervision of an NPO's business, order that NPO to submit relevant documents, accounting books or other reference materials in order to inspect the business and operations of that entity (Article 37 of the *Civil Act* and Article 11 of the *Regulations on Establishment and Supervision of NPOs under the jurisdiction of the Minister of Justice*). Korean officials indicated that there were no statistics available from most of the 28 competent authorities which register and/or supervise NPOs on the number of supervisory visits to and administrative sanctions imposed (if any) on NPOs.

737. There is no co-ordination mechanism in Korea to effectively manage the 28 administrative authorities in the NPO sector. Korean officials advised that co-operation and co-ordination among agencies is done on an *ad hoc* basis only, when needed. Sharing of information by the NTS to other

administrative authorities is subject to tax secrecy laws. Such information may only be shared if it relates to tax offences or is necessary for tax related purposes.

738. Sharing of information among NPOs is not co-ordinated effectively. As with co-ordination among administrative authorities, effective sharing mechanisms among NPOs themselves is done on an *ad hoc* basis only, “when needed”. Neither KoFIU, the NPA nor the PPO work with NPO administrative authorities pursuant any form of arrangement or understanding. There is no appointed point of contact in either organisation to liaise with each other for information sharing purposes.

739. Access to NPO-held information for investigation purposes is possible on the basis of the powers of law enforcement agencies under the procedures provided in the *Criminal Act*. There is however (and as noted elsewhere in this report), limited co-ordination among law enforcement and other supervisory authorities to ensure effective sharing of information even during an investigation.

740. There is no mechanism in place (formal or informal) for the prompt sharing of information among all relevant competent authorities in order to take preventative or investigative action when there is suspicion, or reasonable grounds to suspect, that a particular NPO is being exploited for TF purposes or is a front organisation for terrorist fundraising.

### ***Responding to international requests for information about an NPO of concern***

741. Korea uses law enforcement channels for international co-operation related to information requests regarding particular NPOs that are suspected of TF or other forms of terrorist support. However, Korea has not appointed or identified appropriate points of contact within the 28 relevant supervisory agencies to respond to international requests. Korean officials stated that “in principle the legal department of the competent authority or local governments are the central contact points to get information on NPOs”. When asked if such requests had ever been made, the evaluation team was advised that they had not.

### **5.3.2 Recommendations and Comments**

742. Korea has conducted two reviews of its NPO sector but it is unclear why these reviews have not been followed by improvements to the legislative and administrative framework to address the requirements of Special Recommendation VIII. It is recommended that Korea:

- Conduct targeted NPO sector outreach through its multiple administrative authorities to raise awareness on the risks of abuse of the sector for funding terrorism.
- Establish effective coordination and information sharing mechanisms between the NPO administrative authorities; between those authorities and other government agencies; and between law enforcement and those NPOs authorities.
- Issue comprehensive CFT guidance for NPOs in accordance with SR.VIII.
- Promote and implement measures to ensure full transparency among NPOs.
- Conduct further and more frequent on-site NPO inspections to ensure that NPOs are complying with all necessary legal/statutory requirements.
- Provide administrative authorities with adequate resources to monitor NPO sector.

- Establish points of contact among all NPO sector authorities to respond to international information requests.
- Implement all other elements included in the Interpretative Note to SR.VIII.
- Consider implementing elements of the SR.VIII Best Practices Paper.

### 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 outreach has been undertaken to the NPO sector on terrorist financing risks and preventative measures.</li> <li>• There is no domestic co-ordination or information sharing among NPO supervisory authorities or between these authorities and other government agencies, including law enforcement.</li> <li>• Points of contact have not been identified to respond to international requests for information regarding NPOs.</li> </ul> |

## **6. NATIONAL AND INTERNATIONAL CO-OPERATION**

### **6.1 National Co-operation and Co-ordination (R.31 and R.32)**

#### **6.1.1 Description and Analysis**

743. KoFIU is the primary organisation responsible for AML/CTF policy formulation and implementation; collection, analysis and dissemination of financial intelligence; and AML/CFT supervision. KoFIU consults law enforcement agencies and co-ordinates AML/CTF efforts by holding regular meetings.

#### ***Operational co-operation***

744. KoFIU is composed of experts seconded from various law enforcement agencies, which facilitates co-operation between KoFIU and law enforcement agencies. As at September 2008 KoFIU had eight persons seconded from the Ministry of Justice (including three public prosecutors), seven from the NPA, six from NTS, seven from KCS and two from FSS.

#### ***Law enforcement consultation committee***

745. KoFIU convenes the Law Enforcement Consultation Committee with law enforcement agencies to strengthen co-operation and enhance efficiency of AML/CTF efforts. The focus of these meetings of the Law Enforcement Consultation Committee is improvement of the effectiveness of KoFIU's work through discussions of issues including requests for co-operation; feedback on information disseminated by KoFIU; and areas where legal/institutional improvement are required. Meetings of the Law Enforcement Consultation Committee are actively used by KoFIU to gain opinions and information from agencies which receive its information and to aid development of case studies.

746. The Law Enforcement Consultation Committee meets approximately quarterly. Since 2003 the committee has met on three or four occasions each year. Commonly these meetings will discuss a range of AML/CFT issues but, from time to time, meetings of the committee are convened to focus on a single issue. For example, in 2007 one meeting was convened solely to commence inter-agency preparation for the FATF/APG mutual evaluation of Korea.

747. From KoFIU, the Commissioner, two Deputy Commissioners and most of the senior management team participate in the Committee. Participants from law enforcement agencies include senior management representatives from the High-tech & Financial Crime Investigation Division of the Supreme Prosecutors' Office, the NPA Intelligent Crime Division, the NTS International Investigation Division, the KCS Financial Investigation Division, the Political Fund Investigation Division of the National Election Commission, and the FSC Fair Market Division.

#### ***Meetings with examination agencies***

748. Authority to examine reporting entities' AML/CTF operations is delegated to various agencies by KoFIU. KoFIU's Director of the Compliance and Regulatory Division meets with these agencies,

approximately quarterly, to exchange information and to maintain a close co-ordination mechanism to enhance effectiveness of examinations. In order to facilitate communication and co-ordination of supervision, KoFIU provides a basic examination policy for each agency reflecting KoFIU's overall supervision policy. At the meetings, KoFIU provides explanation of the policy, seeks feedback from the agencies, and discusses any difficulties that the agencies face in examination.

### ***AML policy co-ordination***

#### *AML/CFT policy co-ordination committee*

749. The role of the Anti-Money Laundering Policy Co-ordination Committee is to develop and oversee Korea's AML policy, and more recently also its CFT policy, and to strengthen co-operation with relevant entities. The following matters are discussed at Anti-Money Laundering Policy Consultation Committee meetings:

- AML/CFT policy direction and improvement of policy.
- Operational difficulties experienced with the current policy and ways to reduce such difficulties.
- Co-operation and consent among financial institutions, law enforcement agencies.
- Other AML/CFT policy matters tabled by the KoFIU Commissioner.

750. The committee comprises a Chair, the KoFIU Commissioner, and approximately 30 senior managers from financial institutions, supervisory agencies, and law enforcement agencies. The committee meets biannually and additional meetings may be scheduled when there is an issue on which the opinion of relevant experts is needed.

#### *AML private sector consultation committee*

751. The AML Private Sector Consultation Committee is a forum for consultation with the private sector to aid policy formulation, legislative development, accession to international treaties and enhancement of the effectiveness of AML policy. This committee now also consults with the private sector on CFT policy issues. The committee is composed of financial sector compliance officers and experts from the academia (Korea Institute for International Economic Policy, Korea Institute of Criminology, Korea Institute of Finance), research institutions, lawyers, accounting firms and others. It has held 17 meetings since its establishment in 2002.

752. Committee discussions have focussed on advancement of the domestic AML system; implementation of measures and obligations; enhancement of Korea's standing within the international financial system; and, changes in the domestic and international financial environments.

### ***CFT policy co-ordination***

#### *Counter terrorism co-ordination committee*

753. The counter-terrorism co-ordination committee was established by KoFIU in accordance with the *Regulations on Establishment and Operation of PFOP Co-ordination Committee*. The primary business of this committee is to consider whether a person should be designated as a restricted person (see previous discussion under SR.III). This committee also provides a forum for exchange of information on TF and to enhance co-operation with other government agencies. The Committee is contributing to prevention of

terrorism and TF through exchange of information, sharing of each agency's plans for counter-terrorism operations, and co-ordination of works of the agencies.

### ***Additional elements***

#### ***Reporting entities consultation committee***

754. In March 2007 KoFIU established a committee comprising reporting officers of financial institutions; representatives from financial trade associations, such as the Korea Federation of Banks; and, senior managers from the Information Analysis Office of KoFIU. This committee has contributed to development of a standard format for description of financial transactions attached to STRs, the development of KoFIU's information system and improvement of the training programs provided for financial institutions.

#### ***Task force on enhanced CDD***

755. A task force was established in June 2007 to prepare for implementation of enhanced CDD. Working-level officials from KoFIU, industry associations (Banking, Securities, Insurance and Casino) and financial institutions are participating in the task force. Now that enhanced CDD has been implemented, the task force has been disbanded, but could be reformed in future for projects of a similar nature.

#### ***Task force on revision of examples of suspicious transactions***

756. A short-term task force was established in April 2008 to revise the *Examples of Suspicious Transactions* published by KoFIU for reporting entities. KoFIU and financial associations participated together in the task force which compiled examples of suspicious transactions and which has begun making revisions to the *Examples of Suspicious Transactions*.

### **Statistics<sup>62</sup> and effectiveness**

757. Since the AML system was introduced in 2001, the Korean government has been conducting regular reviews of the AML legal/institutional framework in order to bring the system into to closer compliance with the international standards. These reviews have resulted in:

- Amendments to the FTRA in 2004, 2006 and 2007.
- Legislation of Prohibition of Financing for Offences of Public Intimidation Act.
- Development of the FIU IT System.

758. In addition, KoFIU commissions research institutions to conduct policy research projects to review the effectiveness of specific areas of the AML/CTF system and to identify areas where improvement is desired.

#### **Policy research projects conducted**

| YEAR | TITLE                                                                    |
|------|--------------------------------------------------------------------------|
| 2002 | Information Exchange and Co-operation Among Financial Intelligence Units |

<sup>62</sup> As related to R.32; see s.7.2 for the compliance rating for this Recommendation.

| YEAR | TITLE                                                                                                                          |
|------|--------------------------------------------------------------------------------------------------------------------------------|
|      | Money Laundering Using International Financial Transactions and Counter Measures                                               |
|      | Comparative Study on the Concept of Money Laundering, Legal Element of Money Laundering Offence, and Money Laundering Cases    |
|      | Money Laundering Typology Involving Electronic Financial Transactions and Counter Measures                                     |
| 2003 | Online STR Filing System and Method of Foreign Currency Transaction Analysis for Identification of Money Laundering Patterns   |
|      | A Study on Introduction of Customer Due Diligence System in Korea                                                              |
| 2004 | A Study on Introduction of CTR and Establishment of IT System for Processing of CTR                                            |
|      | Classification and Screening of STRs to Identify STRs to be Analysed with Priority                                             |
|      | A Study on Introduction of AML Obligations for DNFBPs                                                                          |
| 2005 | Advancement of Customer Due Diligence System and Improvement of AML Supervision and Examination                                |
|      | Regulation of Alternative Remittance System                                                                                    |
| 2006 | Legal Framework for Counter Terrorist Financing                                                                                |
|      | Introduction of AML Obligations for Casinos                                                                                    |
|      | A Study on Non-profit Organisations' Vulnerability to Money Laundering and Improvement of the Regulatory System                |
| 2007 | FATF Mutual Evaluation Methodology and Korea's Status on Implementation of FATF Standards                                      |
|      | A Study on Advancement of the Korean AML/CTF System in Preparation for the Legislation of the Capital Market Consolidation Act |
|      | A Study on Introduction of Identification/Verification of Beneficial Owner                                                     |
| 2008 | Research on ways to improve supervision and inspection for efficient management of AML business                                |
|      | Research on ways to enhance the efficiency of information analysis                                                             |

### Resources (policy makers)<sup>63</sup>

759. Both the *AML Policy Co-ordination Committee* and the *Law Enforcement Consultation Committee* would, if necessary, deal with resource planning issues at a national level between agencies. In general, however, each agency represented is responsible for putting in place appropriate recruitment practices that ensure the integrity as well as technical ability of its staff. The priority given to AML/CFT issues is demonstrated in the allocation of adequate resources within each agency for the purpose of reviewing policy and carrying out supervisory and enforcement activities. The key operational agencies that participate in policy decisions are required to maintain high professional integrity standards, including standards concerning confidentiality, and are of high integrity and appropriately skilled. See sections 2.5, 2.6 and 3.10 of this report for more details. In 2008, the Ministry of Strategy and Finance had a budget of KRW 10 trillion (USD 8.62 billion) and the Ministry of Justice had a budget of KRW 2 trillion (USD 1.72 billion). As with the operational agencies, it appears these policy agencies are well resourced, have high standards and are able to fully execute their roles.

#### 6.1.2 Recommendations and Comments

760. The FTRA allows for information exchange between the KoFIU and the entrusted supervisory agencies on AML/CFT supervision. All entrusted agencies are required to report to KoFIU on on-site

<sup>63</sup> As related to R.30; see s.7.1 for the compliance rating for this Recommendation.

inspection results and actions taken. Although KoFIU received periodic reports on inspection results and follow-up actions from entrusted supervisory agencies, there is lack of feedback from the KoFIU regarding the adequacy of the scope of inspection carried out or whether the actions taken were appropriate.

### 6.1.3 Compliance with Recommendation 31

|      | RATING | SUMMARY OF FACTORS UNDERLYING RATING                                                                                                                   |
|------|--------|--------------------------------------------------------------------------------------------------------------------------------------------------------|
| R.31 | LC     | <ul style="list-style-type: none"> <li>Limited feedback is provided to the various competent authorities which conduct AML/CFT supervision.</li> </ul> |

## 6.2 The Conventions and UN Special Resolutions (R.35 & SR.I)

### 6.2.1 Description and Analysis

#### *Ratification and implementation of the Conventions*

761. Korea ratified the *Vienna Convention* in December 1998 but has not implemented certain provisions of that convention (e.g. dissemination of recovered proceeds to “intergovernmental bodies specializing in the fight against illicit traffic in and abuse of narcotic drugs and psychotropic substances”). As discussed in Section 2 of this report there are a number of deficiencies in the structure and implementation of the ML offence.

762. Korea signed the *Palermo Convention* in 2000 including the Trafficking in Persons Protocol and the Migrants Protocol, but has not yet ratified them. Legislation to implement the convention was not introduced to the Criminal Law Revision Committee until September 2007. The draft legislation (the *Act on Punishment of Organised Crime and International Cooperation*) is currently undergoing a consultation process and was unavailable in English at the time of the on-site visit. The POCA is also meant to go some considerable way in implementing this convention. It does not fully do so for the reasons set out more fully in Section 2.1 of this report with respect to Recommendation 1.

763. Korea ratified the *Terrorist Financing Convention* on 17 February 2004. The PFOPIA is intended to implement the Convention. It was passed on 21 December 2007 and came into effect on 22 December 2008. It does not fully implement the convention however for the reasons described in Sections 2.2 and 2.4 of this report with respect to Special Recommendations II and III.

764. The offence does not adequately address the provision or collection of funds or assets for use by a terrorist organisation or by individual terrorists for furtherance of their respective criminal activities or criminal purpose as set out in Article 2 of the *Terrorist Financing Convention*.

765. In regard to freezing, Korea seeks compliance with S/RES/1267(1999) via the Ministry of Strategy and Finance’s regime and PFOPIA which do not effect an express freeze, though the prohibition against making funds available fills this gap to some extent. With respect to S/RES/1373(2001), Korea lacks the same capacity as mentioned in respect of S/RES/1267(1999).

766. There are no laws for the confiscation of terrorist property and assets except that the *Punishment of Violences Act* provides some power to confiscate property belonging to organised crime with the proven object of committing violence with deadly weapons. As already noted, terrorism and TF are not predicate offences for POCA<sup>64</sup>. POCA could only be used if the acts of the designated terrorists and the terrorist-

<sup>64</sup> The TF offence has recently (though outside of the time frame considered in this report) been added to the list of predicates for the ML offence.

related funds amounted to laundering of criminal proceeds. This is not what is envisaged by Special Recommendation III and would not have the effect of immediate freezing of terrorist assets. As such, Korea has not gone far in terms of implementation of the *Terrorist Financing Convention*, S/RES/1267(1999) and S/RES/1373(2001).

### ***Additional elements***

767. Korea has actively participated in various international conferences in Asia aimed at improving and enhancing co-operation in countering terrorism and organised crime. Korea is a signatory to and has ratified the *OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*. As part of the process under that convention it has participated in OECD Phase II assessments. Korea has signed the *UN Convention on Corruption* but not yet ratified it.

## **6.2.2 Recommendations and Comments**

768. Korea has implemented some of the major provisions of the *Vienna Convention* and the *Palermo Convention*. However, little is in place to implement the *Terrorist Financing Convention* and relevant Security Council resolutions. Recommendations for reform in these respects are enumerated in Sections 2.2 and 2.4 of this report.

## **6.2.3 Compliance with Recommendation 35 and Special Recommendation I**

|      | RATING | SUMMARY OF FACTORS UNDERLYING RATING                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|------|--------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| R.35 | PC     | <ul style="list-style-type: none"> <li>• The <i>Vienna Convention</i> has been partly implemented, but shortcomings exist in the elements of the money laundering offences.</li> <li>• The <i>Palermo Convention</i> has not been ratified or fully implemented.</li> <li>• Significant shortcomings exist in implementation of the <i>Terrorist Financing Convention</i>.</li> </ul>                                                                                                                                                                   |
| SR.I | PC     | <ul style="list-style-type: none"> <li>• Collection of funds or other assets by terrorist organisations or individual terrorists for the general furtherance of their respective criminal activities or criminal purpose is not adequately criminalised.</li> <li>• There is no adequate provision for confiscation of funds or assets for use by a terrorist organisation or by individual terrorists.</li> <li>• S/RES/1373(2001) has not been fully implemented and shortcomings exist in relation to implementation of S/RES/1267(1999).</li> </ul> |

## **6.3 Mutual Legal Assistance (R.36-38, SR.V)**

### **6.3.1 Description and Analysis**

#### **Recommendation 36**

769. Korea provides mutual legal assistance (MLA) under bilateral and multilateral treaties and under the *Act on International Judicial Mutual Assistance in Criminal Matters* (enacted on 8 March 1991). Individual statutes may also provide for tailored MLA in respect of their provisions. Both the *Act of Special Cases Concerning the Prevention of Illegal Trafficking in Narcotics* (ASPIT) and POCA describe special MLA proceedings relating to confiscation of criminal proceeds. There is furthermore an Act on Confiscation and Recovery of the proceeds of Corruption, which came into effect in 2008, that provides for international mutual assistance relating to ‘corrupt assets’ from corruption crime.

770. As at 1 October 2008, MLA treaties had been concluded by Korea with 29 countries and jurisdictions<sup>65</sup>. Six of these have yet to come into effect – with Kazakhstan, Costa Rica, Algeria, South Africa, Kuwait and Bulgaria – and it is not known when they will come into force. Extending this range of MLATS with more jurisdictions is considered a priority by the authorities.

771. The ASPIT and POCA, in conjunction with the *Act on International Judicial Mutual Assistance in Criminal Matters* (IJMACM), govern MLA in relation to confiscation, preservation, collection, and recovery of criminal proceeds in Korea. It should be noted that under Article 4 of the IJMACM, even if there is no MLAT with a country, if it promises to provide reciprocity for any assistance it receives to Korea, the lack of an MLAT is not an impediment to assistance and is provided for by the Article.

772. In cases, where there are inconsistencies in the MLATs concluded by Korea and the international conventions with any of the MLA provisions of the domestic statutes of Korea, the relevant provisions of the MLATs and the conventions shall take precedence. This is of relevance to one of the discretionary grounds for refusal of MLA in Article 6 of the IJMACM that provides the discretion to refuse assistance for offences of a political nature. It is discretionary and where it conflicts with bilateral or multilateral treaty obligations it will not be relied upon to refuse assistance and the international obligations would take precedence.

773. The IJMACM stipulates the general procedures where either a foreign jurisdiction or the Republic of Korea makes a request for MLA. Normally, requests should be submitted either through diplomatic channels or the Ministry of Justice and the latter ministry performs the function of a central authority. When the MLA request is made by a foreign country, the Minister of Foreign Affairs and Trade sends the written request for mutual assistance to the Minister of Justice and in turn that Minister sends the request for mutual assistance to the prosecutors or the courts, with instructions to provide the requested mutual assistance.

774. However, in cases of urgency, when there is an MLAT, requests can be transmitted directly to the Minister of Justice without going through the Ministry of Foreign Affairs and Trade. This could be a source of delay. In practice, though, the Korean authorities advised, there are more examples of the direct transmission of and execution of MLA requests between central authorities than of requests through diplomatic channels.

### ***Widest possible range of mutual legal assistance***

775. Article 5 of the IJMACM provides for a broad scope of mutual assistance. This amounts to: investigating the location of persons and things; presentations of documents and records; service of documents; gathering of evidence including searches and seizures and other verifications; delivering up of things and other evidence to a requesting country and the hearing of witness testimony, including measures to make a person testify or cooperate generally with an investigation. In ASPIT, Articles 64 through 78 allow for a full range of mutual co-operation to be provided in relation to confiscation preservation and collection of criminal proceeds. This includes the recognition of foreign preservation or freezing orders of property in Korea and of the confiscation of property located in Korea, which is not the actual proceeds of crime but represents property of corresponding value. Under Article 78, the *Criminal Procedure Act* and other legislation, including the IJMACM, are applicable and available to assist MLA in respect of ASPIT matters, save where they contradict provisions in ASPIT. By Article 12 of POCA, the bulk of the provisions in Articles 64 through Article 78 of ASPIT apply *mutatis mutandis* to proceedings under POCA.

---

<sup>65</sup> Algeria, Argentina, Australia, Brazil, Bulgaria Canada, Chile, China, Costa Rica, France, Guatemala, Hong Kong, India, Indonesia, Japan, Kazakhstan, Kuwait, Mexico, Mongolia, New Zealand, Paraguay, Peru, Philippines, South Africa, Spain, Thailand, the US, Uzbekistan and Vietnam.

776. The Ministry of Justice advised that the majority of the treaties Korea had entered into provide for MLA in an even more flexible and broader manner than that of Article 5 of the IJMACM.

***MLA re the financing of terrorism***

777. MLA in respect of TF is provided under the IJMACM and relevant MLATs. The new PFOPIA has no specific provisions in respect of MLA. Dual criminality is not applied strictly in respect of TF and the Korean authorities indicated that even prior to 22 December 2008, (when the PFOPIA and its terrorist financing offences came into force) there was no difficulty in providing assistance by loosely interpreting some Korean offences as equivalent to counterparts' terrorist financing offences. The *Punishment of Violences Act* does provide offences related to organised crime that, subject to restrictions noted previously with respect to Special Recommendations I and II, may provide offences that could be used as the basis for MLA.

778. Even though there are some limitations in Korea's criminalisation of terrorist financing, with the liberal interpretation of dual criminality applied by Korea the dual criminality requirement is not an impediment to MLA in respect of TF offences.

***Provision of MLA in a timely, constructive and effective manner***

779. Assistance is provided in a reasonably constructive manner under the laws of Korea. The Ministry of Justice as the central authority receives requests and processes them to the appropriate PPO. The IJMACM describes the procedures and conditions for obtaining MLA. They include acceptance of the request, the sending of materials for mutual assistance, form of written request for mutual assistance, the kinds of mutual assistance, the action required by the Minister of Foreign Affairs, the action required by the Minister of Justice, action required by the Chief Public Prosecutor, the request for examination of witnesses, the documents to be appended at the time of a request for a warrant and the competent court to render assistance. There is outlined a reasonably clear and definite process for MLA. It should be noted that ASPIT also provides quite detailed provisions. The Korean authorities spoken to had a clear understanding of the need to give assistance in accordance with Korea's laws.

**Mutual legal assistance requests**

|                                        | 2004 | 2005 | 2006 | 2007 | JAN-JUNE 2008 |
|----------------------------------------|------|------|------|------|---------------|
| <b>Requests to foreign countries</b>   | 13   | 33   | 31   | 38   | 25            |
| <b>Requests from foreign countries</b> | 28   | 45   | 53   | 61   | 26            |

780. The statistics demonstrate a steady increase in requests from overseas and requests are returned in a timely manner and without undue delay (bearing in mind complexity issues and translation requirements).

**Responses to MLA requests re ML (including confiscation and collection requests)**

| CLASSIFICATION       | REQUEST RECEIVED<br>RELATING TO ML (CASE) | REQUEST GRANTED<br>(CASE) | TIME REQUIRED TO<br>RESPOND |
|----------------------|-------------------------------------------|---------------------------|-----------------------------|
| <b>2004</b>          | 1                                         | 1                         | 146 days                    |
| <b>2005</b>          | 1                                         | 1                         | 103 days                    |
| <b>2006</b>          | 1                                         | 1                         | 30 days                     |
| <b>2007</b>          | 5                                         | 5                         | 120 days                    |
| <b>JAN-JUNE 2008</b> | 3                                         | 2                         | 165 days                    |

\*Average time required to respond from request received to grant.

***MLA should not be subject to unreasonable, disproportionate or unduly restrictive conditions***

781. The IJMACM does not contain any mandatory grounds for refusal of MLA. The optional grounds are not interpreted strictly (Article 6). Korean authorities indicated that the majority of their MLAT agreements contained similar discretionary grounds for refusal. They can in both theory and practice render assistance even when a restriction would appear to apply. Assistance is not refused on the basis that criminal proceedings have not yet been instituted in the requesting country and this includes freezing orders on property. A conviction is not required before restraint and related assistance is provided, save that enforcement of confiscation orders do depend on a confiscation order having been obtained in the requesting country. Reciprocity and dual criminality are not overly strictly interpreted.

***Refusal of MLA requests***

782. It is provided by the IJMACM, that a request for MLA should not be refused on the sole ground that the offence is also considered to involve fiscal matters.

783. Under the MLA treaties and the IJMACM, there is no provision to refuse a request for MLA that has been adopted by the Ministry of Justice as appropriate for response, on the grounds of laws that impose secrecy or confidentiality requirements on a financial institution or a DNFBP.

784. For example, where secrecy or confidentiality requirements are prescribed by law, such as by Article 4(1)-1 of the *Act on Real Name Financial Transactions and Guarantees of Secrecy*, the identification, freezing, seizure, confiscation, or additional investigation, collecting evidence, search and confiscation of the proceeds of crime can still be executed with a warrant issued by a court. An MLA request cannot therefore be refused on confidentiality or secrecy grounds.

***Powers of competent authorities***

785. All powers available to authorities in domestic matters can be used in respect of MLA. This is set out in Article 5 of the IJMACM and in similar provisions of the MLATs entered into by Korea. In practice a full range of such assistance is being provided.

***Additional elements***

786. Under the IJMACM, foreign judicial and law enforcement authorities can make requests to Korea informally through the Ministry of Home Affairs for assistance in respect of international crime (Article 38). This Ministry is responsible for initiating measures with relevant public bodies to provide assistance and this would include fact finding and investigation of any international crime; and exchange of information and materials in respect of a suspected crime.

787. Korean investigators and prosecutors have informal contacts with counterparts in other jurisdictions. These contacts were useful in assessing whether evidence or other matters were in the other jurisdiction and so could later be formally obtained from those other jurisdictions. Korean officials provide similar assistance to their counterparts in respect of evidence or suspects in Korea. On the basis of reciprocity, Korean officials could exercise powers under Recommendation 28 in most circumstances to assist the other jurisdiction, with the understanding that a formal request would be required to provide any formal, court obtained evidence.

***Mechanisms for determining best venue for prosecution***

788. There are no mechanisms in place for the Ministry of Justice to determine the best venue for prosecutions involving more than one jurisdiction in the interests of justice. These were decided on an *ad*

*hoc* basis with the jurisdictions concerned. There had been no consideration to devising such a mechanism as in practice it had not, for the Koreans, been an issue. The evaluators understand there have been no concerns expressed by member jurisdictions in this regard. The Korean authorities pointed out that they had available in IJMACM, a provision to delay the mutual assistance, on the basis that investigation of the offender the subject of a request is being undergone in Korea or that proceedings have been instituted against the offender in Korea. This power, at least allows flexibility to consider requests from other jurisdictions and to accommodate the course determined to be in the interests of justice.

### **Recommendation 37 (dual criminality relating to mutual legal assistance)**

789. As mentioned one of the discretionary grounds for refusal of MLA is that criminal activity which is the subject of the request is not a crime in Korea. However, few requests have been refused by Korea on the sole basis that the lack of dual criminality prevents assistance and none of the refusals relate to ML or TF cases.

790. Further, Korea's MLA treaties often include provisions which dispense entirely with the dual criminality requirement. For instance, Article 3.2 of the *Treaty between the Republic of Korea and the United States on Mutual Legal Assistance in Criminal Matters* states that dual criminality should be disregarded entirely in respect of the categories of conduct annexed to the treaty. Thus, while Korean law establishes a dual criminality requirement, this is rarely adhered to in practice.

### ***Impediment to assistance where both countries criminalise the conduct underlying the offence***

791. If both the requesting and requested countries criminalise the conduct underlying the offence, technical differences between the laws, such as differences in the manner in which each country categorises or denominates the offence do not pose an impediment to the provision of MLA (Article 6 of the IJMACM). Korea applies the concept of dual criminality flexibly to meet this standard. For instance, most of the Korean extradition treaties provide for the totality of the conduct of the person whose extradition is sought to be taken into account and to ignore any differences in the constituent elements of the offence; and for other technical differences to be disregarded. Where a treaty does not have this provision, the IJMACM allows Korea to be flexible.

### **Recommendation 38**

#### ***MLA and confiscation***

792. An MLA request with respect to identification, freezing, seizure and confiscation of the proceeds from crime can be made under the general procedures of MLA provided for by the IJMACM, and at the same time, mutual assistance proceedings can be provided under the specific provisions of ASPIT and POCA. All of these provisions in turn allow for the appropriate use of powers under the *Criminal Act* and the *Criminal Procedure Act* for the seizure and confiscation of instrumentalities or instrumentalities intended to be used in the laundering of crime proceeds.

793. In ASPIT, Articles 64 through 78 allow for a full range of mutual co-operation to be provided in relation to confiscation preservation and collection of criminal proceeds. This includes the recognition of foreign preservation or freezing orders of property in Korea and of the confiscation of property located in Korea, which is not the actual proceeds of crime but represents property of corresponding value. Under Article 78 of ASPIT, the *Criminal Procedure Act* and other legislation, including the IJMACM are applicable and available to assist MLA in respect of ASPIT matters, save where they contradict provisions in ASPIT. Under Article 12 of POCA, the bulk of the provisions in Articles 64 through 78 of ASPIT apply *mutatis mutandis* to proceedings under POCA.

794. Due to the requirement for dual criminality, the limitations in the TF offences discussed elsewhere in this report could theoretically have some impact on Korea's ability to provide comprehensive MLA in regard to the freezing and confiscation of terrorist property. For example, a narrow reading of the dual criminality requirement could result in assistance not being provided in a confiscation matter where the offence was laundering the proceeds of environmental crimes (as these are not recognised as ML predicates in Korea. Similarly, financial support to individual terrorists and terrorist organisations without a terrorist act occurring is not criminalised in Korea. However, if both the requesting and requested countries criminalise the conduct underlying the offence, technical differences between the laws, such as differences in the manner in which each country categorises or denominates the offence do not pose an impediment to the provision of MLA (Article 6 of the IJMACM). In addition, as the Korean government has taken a flexible and broad approach to dual criminality to date, these details are not expected to be sufficient impetus for a decision by Korea not to assist another jurisdiction by way of freezing, seizing or confiscation of proceeds of crime or instrumentalities.

### ***Co-ordination of seizure and confiscation actions***

795. Korea does not have arrangements for co-ordinating seizure and confiscation actions with other countries, relying instead on *ad hoc* arrangements. Commonly these matters are considered on a case by case basis through consultation with the countries concerned. Issues taken into account include consideration of the whereabouts of evidence and witnesses, the gravity of the interests of each country and the degree of relevance. The Korean authorities have no impediments to prevent *ad hoc* arrangements but by the same token could devise set arrangements and guidelines for such co-ordination that would save time and provide greater certainty to co-operation with other jurisdictions.

### ***Asset forfeiture fund***

796. Korea has considered establishing an asset forfeiture fund. In 2006, the Ministry of Justice pursued the adoption of legislation that would enable the establishment of a fund into which confiscated and collected property from illegal proceeds related to some serious crimes, such as narcotics and organised crimes would be deposited. The fund would be used for law enforcement, education and training in this area; the purchasing of equipment and the sharing of confiscated assets with other countries. However, matters were not progressed as other parts of the government for policy reasons could not support the creation of the fund at that time.

### ***Sharing confiscated assets***

797. Korea has considered authorising the sharing of some kinds of confiscated assets. There are no general procedures authorising the sharing of confiscated assets; but with the adoption of the *Act on Confiscation and Recovery of Proceeds of Corruption* in March 2008, procedures for the sharing between jurisdictions of confiscated bribe property resulting from corruption crime have been established (Article 7). In practice, asset sharing had not yet occurred under this relatively new statute. The Korean authorities intimated that this progression may lead to such asset sharing procedures to be extended legislatively to other kinds of confiscated assets. On a policy basis they at present do not envisage sharing of assets recovered in Korea without similar legislation.

### ***Additional elements***

798. Civil confiscation orders obtained in the other jurisdiction are not recognised in Korea, and so mutual assistance cannot normally be provided. However, the evaluation team was informed by the Korean authorities that if organisations in Korea that are proven to be primarily criminal in nature, as described in Articles 4 and 5 of the *Punishment of Violences Act*, are the subject of a MLA request for execution of an

overseas non criminal confiscation order of that organisation's property, it should be possible to extend assistance under Korean legislation. This is because the organisation itself is criminal and confiscation can be extended as provided for in the *Punishment of Violences Act*, notwithstanding the non-criminal nature of the overseas confiscation order. This contention and its parameters have not been tested in practice.

## Statistics<sup>66</sup> and effectiveness

799. It should be noted from the statistics provided previously that Korea does not keep data on the types of predicates for ML offences being provided assistance. This makes it difficult to assess the overall effect of the MLAT provided with respect to ML and predicate offences.

### 6.3.2 Recommendations and Comments

800. It is recommended that Korea consider expanding the present legislative provision that expressly allows assistance to international organisations to be provided outside formal MLA to expressly include other direct assistance to investigatory and prosecuting authorities in other jurisdictions. At present, assistance is given to other jurisdictions informally and directly but this assistance is based on personal contacts and consent of Korean officials. This assistance would not extend to obtaining witness statements from a witness before a court. It would be more effective, comprehensive and open for there to be legislative provision for such assistance, either under primary legislation or secondary.

801. There is potential for conflicts of jurisdiction and it is recommended therefore that Korea consider devising mechanisms for determining the best venue for prosecution of defendants in the interests of justice. A reliance on *ad hoc* arrangements can allow for greater flexibility but in the absence of a mechanism there may be cases that appear arbitrarily decided. This may lead to further conflicts in the determination of jurisdiction. In addition, the absence of a mechanism may provide an avenue for abuse of the *ad hoc* system of deciding jurisdiction.

802. Korea does not have arrangements for co-ordinating seizure and confiscation actions with other countries, relying instead on *ad hoc* arrangements. Such arrangements would be beneficial for much the same reasons in respect of a mechanism for determining the best venue for prosecution. The case for co-ordination is stronger though, as formal arrangements would allow smooth and efficient co-operation which may have to occur at short notice and without the delays that may be incurred if in the absence of predetermined arrangements, some officials hesitate to commit to a course of action. Predetermined arrangements given the blessing of persons of authority would avoid delays that may be incurred if officials seek approval of a course of action from superiors because there are without previously agreed procedures.

### 6.3.3 Compliance with Recommendations 36 to 38 and Special Recommendation V

|      | RATING | SUMMARY OF FACTORS UNDERLYING RATING                                                                                                                                                                                                                                                                                                                           |
|------|--------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| R.36 | LC     | <ul style="list-style-type: none"> <li>There is potential for conflicts of jurisdiction as Korea has no mechanisms for determining the best venue for prosecution of defendants.</li> </ul>                                                                                                                                                                    |
| R.37 | C      | <i>This Recommendation is fully observed.</i>                                                                                                                                                                                                                                                                                                                  |
| R.38 | LC     | <ul style="list-style-type: none"> <li>Korea does not have formal arrangements outside some specific bilateral agreements for co-ordinating seizure and confiscation actions with other countries, relying often on <i>ad hoc</i> arrangements.</li> <li>It is too early to evaluate the effectiveness of MLA related to terrorist financing due to</li> </ul> |

<sup>66</sup> As related to R.32; see s.7.2 for the compliance rating for this Recommendation.

|      | RATING | SUMMARY OF FACTORS UNDERLYING RATING                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
|------|--------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|      |        | the very recent enactment of that offence.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| SR.V | LC     | <ul style="list-style-type: none"> <li>• There is potential for conflicts of jurisdiction as Korea has no mechanisms for determining the best venue for prosecution of defendants.</li> <li>• Korea does not have formal arrangements outside some specific bilateral agreements for co-ordinating seizure and confiscation actions with other countries, relying often on <i>ad hoc</i> arrangements.</li> <li>• It is too early to evaluate the effectiveness of MLA related to terrorist financing due to the very recent enactment of that offence.</li> </ul> |

## 6.4 Extradition (R.37, 39, SR.V)

### 6.4.1 Description and Analysis

#### Recommendation 39

803. The *Extradition Act* of 1988 provides the general procedures for extradition requests both to Korea and by Korea to another country. Where either a foreign country or Korea makes a request for extradition, it is submitted through diplomatic channels, and the Ministry of Justice is the central authority. The Supreme Prosecutor's Office handles all in coming extradition requests, following referral from the central authority (Article 3 of the *Extradition Act*).

804. By Article 6 of the *Extradition Act*, extradition may be requested only in cases where an extraditable crime corresponds to an offence in Korea carrying a penalty of imprisonment without prison labour of not less than one year. Extradition may be refused on mandatory or discretionary grounds:

- Mandatory grounds (Articles 7 and 8): extradition must not be granted where Korea is prosecuting the crime for which extradition is sought; the crime is political in nature or the accused is being prosecuted because of his or her race, religion, nationality, race, political belief, or membership in a social group.
- Discretionary grounds (Article 9): There are five discretionary grounds including the right to deny extradition on the ground of Korean citizenship. There is a mandatory political ground preventing extradition for offences of a political nature; but there are qualifications and in particular if the crime alleged bears an obligation to extradite under a multilateral treaty, for example the *Vienna Convention* (Article 8).

805. Extradition requests must be made in writing and there is provision for arrest and review of the request by a court. During this review the suspect has the right to legal counsel and to be heard. When the central authority has accepted a request having determined it is reasonable to comply and passed it to the public prosecutor, an extradition arrest warrant is issued to arrest the suspect. An urgent arrest warrant can be requested by the requesting state (Article 24). However, there is no simplified fast track extradition procedure as provided in some jurisdictions. In respect of some extradition treaties and only for cases of provisional arrest, direct transmission of requests between central authorities may be made.

806. The request for an extradition review by the public prosecutor must be done without delay (Article 13(1)). A court tasked with an extradition review must complete such a review without delay and if the suspect is in detention under an extradition warrant the decision must be made within two months (Article 14). If the suspect has consented to the extradition and the simplified procedure is adopted the court must make a determination without delay. Once a court has found in favour of an extradition, then it

is returned to the Ministry of Justice to make the extradition order without delay and it appears he has discretion to refuse should it be against the interests of Korea (Article 34). Once an extradition order is made by the Ministry it must be executed within 30 days and the Minister of Foreign affairs notified (Articles 35 and 38).

807. Extradition may be affected by concurrent proceedings. If there is a trial in Korea pending for the requested extraditable crime, then the Korean trial takes precedence.

808. Extradition is generally pursuant to bilateral treaty and in conjunction with the *Extradition Act*. In the case of conflict between the extradition treaty and any provisions in the act, the treaty provisions shall govern. As at 31 August 2008, Korea had signed extradition treaties with 28 countries, and 23 of them were in effect. When a treaty is not in place, Korea will if the requesting country promises equivalent reciprocity, execute requests in accordance with the *Extradition Act* (Article 4).

### ***Money laundering should be an extraditable offence***

809. Money laundering in Korea is punishable with up to two years imprisonment (Article 3 of POCA) and is therefore an extraditable crime as provided by Article 6 of the *Extradition Act*. There have been no requests received to extradite a suspect from Korea on ML charges.

### ***Extradition of own nationals***

810. Korea does not normally extradite its own nationals but prosecutes in Korea. As noted above, refusal to extradite nationals is discretionary. In practice, no denial has been made solely on this ground. It is provided for in all the extradition treaties entered into by Korea that prosecution of Korean nationals in the event of a refusal to extradite should take place with the co-operation of the requesting state. The competent authorities should conduct proceedings as they would for a domestic case. The *Extradition Act* itself does not require Korea to prosecute its own nationals in lieu of extradition this requirement is invariably one contained in bilateral treaties.

811. There are no procedural impediments to the prosecution of non-extradited nationals. MLA in the normal manner is available. While no formal request for extradition has been refused on the grounds of nationality, reports indicate that Korean nationals have been prosecuted after an indication they would not be extradited. The prosecution has proceeded satisfactorily.

### ***Additional elements***

812. The extradition request is in principle required to be submitted through diplomatic channels. But some treaties allow, in cases of provisional arrest, the direct transmission of requests between central authorities. If no treaty exists between the requesting country and Korea then requests must be through the central authority. A request for extradition of a person sought for prosecution must be supported by a copy of the warrant or order of arrest, a copy of the charging documents and information to provide reasonable grounds to believe that the person sought has committed the offence for which extradition is requested. Persons cannot be extradited based only on the arrest warrant or judgement of the requesting country.

813. In urgent cases as referred to previously, a request for provisional arrest can be made based on a warrant of arrest from the requesting country but after arrest the normal documents and procedure apply. There is a simplified extradition when the suspect waives the right to a review and consents to the extradition (Article 15(2)). Consent has to be made in writing by the suspect to the court and confirmed by the court with the suspect. However, as noted, there is no fast track procedure in respect of contested extraditions.

## **Recommendation 37 and SR.V (related to extradition)**

### ***Extradition and dual criminality***

814. Article 6(4) of the IJMACM allows for dual criminality. However, it is an optional ground for refusal, so the assistance requested can be rendered even in a case where the crime does not constitute a crime under the laws of Korea. As discussed in Section 6.3 of this report, dual criminality is not applied strictly and in some MLATs it is disregarded entirely.

### ***Extradition related to terrorist acts and TF***

815. As extradition may only be requested in cases where an extraditable crime corresponds to imprisonment of not less than one year, the category of offences in practice is not very restrictive and because of the relaxed attitude to dual criminality, most offences can be brought into the range of extraditable offences.

816. Therefore, extradition procedures can be applied to terrorism and TF offences. This is notwithstanding the deficiencies of the ML offences discussed previously. It is a moot point as to what extent a suspect whose situation is outside the limited scope of the TF offence in Korea but not of that of the requesting state could use the deficiencies to argue against extradition. It has not been tested but on the face of it because of the relaxed dual criminality principle such a suspect would possibly and eventually be extradited. The deficiencies would though allow a suitable suspect to make this argument and at least probably delay extradition so that it could be properly heard by a court. The suspect may appeal the decision.

### ***Additional element***

817. There are no special procedures for expedited extradition for TF offences and the same simplified procedures apply in appropriate circumstances as noted previously.

### **Statistics<sup>67</sup> and effectiveness**

818. No extraditions relating to TF have occurred to date.

## **6.4.2 Recommendations and Comments**

819. Korea has an extradition treaty network that covers the major economies. Further expansion of this network would be a continued improvement and this should include expanding the multilateral treaties that have been ratified, for example the UNCAC. The recent amendment to the *Extradition Act* to codify the principle of reciprocity is welcomed.

820. However, in the absence of a right to extradite Korean nationals, it remains possible that under a multilateral treaty extradition or one not governed by a bilateral treaty but simply the reciprocity principle, a Korean national could be refused to be extradited and yet there would be no obligation or authority to prosecute that individual in Korea for the requested offence. It is to be remembered that no extradition has been refused solely on the basis of nationality but the possibility of the situation indicated arising is not so remote a likelihood. Legislative change to the *Extradition Act* making it an obligation and giving the authorities the power to prosecute in lieu of extradition is recommended.

---

<sup>67</sup> As related to R.32; see s.7.2 for the compliance rating for this Recommendation.

821. A less restrictive ability to make direct requests to the central authority without first having to pass through diplomatic channels would allow for a faster and more efficient process.

#### 6.4.3 Compliance with Recommendations 37 & 39, and Special Recommendation V

|      | RATING | SUMMARY OF FACTORS UNDERLYING RATING                                                                                                                                                                                                                                     |
|------|--------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| R.39 | LC     | <ul style="list-style-type: none"> <li>It is not required that nationals be prosecuted in lieu of not being extradited.</li> </ul>                                                                                                                                       |
| R.37 | C      | <i>This Recommendation is fully observed.</i>                                                                                                                                                                                                                            |
| SR.V | LC     | <ul style="list-style-type: none"> <li>It is not required that nationals be prosecuted in lieu of not being extradited.</li> <li>It is too early to evaluate the effectiveness of extradition related to TF due to the very recent enactment of that offence.</li> </ul> |

#### 6.5 Other Forms of International Co-operation (R.40 & SR.V)

##### 6.5.1 Description and Analysis

##### Recommendation 40

822. Korea participates in the international community's AML/CTF efforts in various ways. Korea is currently working to achieve full membership at the FATF. Korea hosted the 7th APG Annual meeting and took the APG chair position during 2003-2004 and hosted the 16th Egmont Group Plenary in 2008. Korea also exchanges information with other countries by participating in various international AML/CTF conferences.

823. Moreover, KoFIU constantly expands its information exchange networks with FIUs of countries that are Korea's major transaction partners by signing MOUs regarding exchange of financial transaction information. As at August 2008, KoFIU has signed MOUs with FIUs of 36 countries.

KoFIU's international MOUs for exchange of information, December 2008

|    | COUNTRY     | DATE              |    | COUNTRY   | DATE              |
|----|-------------|-------------------|----|-----------|-------------------|
| 1  | Belgium     | 11 March 2002     | 21 | U.S.      | 23 November 2004  |
| 2  | UK          | 7 October 2002    | 22 | Albania   | 31 December 2004  |
| 3  | Poland      | 14 October 2002   | 23 | Paraguay  | 5 April 2005      |
| 4  | Brazil      | 10 February 2003  | 24 | Russia    | 29 June 2005      |
| 5  | Australia   | 28 May 2003       | 25 | Chile     | 30 June 2005      |
| 6  | Bolivia     | 15 September 2003 | 26 | Bahamas   | 30 June 2005      |
| 7  | Romania     | 6 October 2003    | 27 | Ukraine   | 23 September 2005 |
| 8  | Indonesia   | 20 October 2003   | 28 | Moldova   | 23 September 2005 |
| 9  | Venezuela   | 6 November 2003   | 29 | China     | 15 November 2005  |
| 10 | Colombia    | 7 November 2003   | 30 | Hong Kong | 6 April 2006      |
| 11 | Japan       | 18 December 2003  | 31 | Mexico    | 13 June 2006      |
| 12 | Finland     | 30 January 2004   | 32 | Denmark   | 11 October 2006   |
| 13 | Philippines | 17 June 2004      | 33 | Taiwan    | 29 November 2006  |
| 14 | Thailand    | 17 June 2004      | 34 | Malaysia  | 30 April 2007     |

|    | COUNTRY   | DATE             |    | COUNTRY     | DATE             |
|----|-----------|------------------|----|-------------|------------------|
| 15 | Canada    | 23 June 2004     | 35 | Lebanon     | 2 November 2007  |
| 16 | Ireland   | 23 June 2004     | 36 | Cyprus      | 17 December 2007 |
| 17 | Guatemala | 7 September 2004 | 37 | New Zealand | October 2008     |
| 18 | France    | 23 October 2004  | 38 | Macao       | November 2008    |
| 19 | Portugal  | 29 October 2004  | 39 | Sri Lanka   | December 2008    |
| 20 | Spain     | 11 November 2004 |    |             |                  |

824. The Ministry of Justice has been expanding its international co-operation network through activities as follows:

- Establishment of MLA procedure for criminal investigation and trial.
- Hosted a Conference of APEC Cyber Crime Investigation Experts on Mutual Assistance (2005).
- Participated in an international seminar on Internet intellectual property rights (2005).
- Distributed public relations material about the Korean PPO to contact points at 39 countries (2005).
- Two diplomats from the Chinese embassy visited the PPO to discuss mutual assistance between the two countries (2005).
- Participated in the '2005 International Conference of Cyber Crime Investigation Experts' hosted by the Chinese Public Prosecutors' Office (2005).
- Participated and delivered a presentation at '2005 International Conference on Cyber Terrorism' (2005).
- French official responsible for AML operation visited the PPO for consultation (2006).
- Participated in the FATF Plenary (2007).
- Participated in an international seminar on international co-operation in asset recovery co-hosted by the Narcotics Division of the Supreme Prosecutors' Office and the U.S. Drug Enforcement Administration (2007).
- Indonesian task force team for implementation of the *UN Convention Against Corruption* visited the Proceeds of Crime Recovery Team of the Supreme Prosecutors' Office (2008).
- Provided a presentation on the Korean proceeds of crime recovery procedure and major cases.
- Established legal basis for recovery of proceeds of corruption hidden overseas or brought into Korea with enactment of the *Special Act on Confiscation and Recovery of Proceeds of Corruption* (2008).

825. The NPA establishes and maintains co-operative relationships with foreign counter parts through MOUs regarding exchange of crime information, co-operation for investigation, and capacity building, etc.

As of August 2008, the NPA signed 12 MOUs with 12 central police agencies, 17 local police agencies and 2 police offices of foreign countries.

**MOUs established by Police agencies, June 2008**

| NAME OF AGENCY                            | COUNTERPART                                                 | DATE       | NAME OF AGENCY                            | COUNTERPART                                        | DATE       |
|-------------------------------------------|-------------------------------------------------------------|------------|-------------------------------------------|----------------------------------------------------|------------|
| <b>National Police Agency</b>             | Ministry of Public Security, the People's Republic of China | 05/11/1996 | <b>Pusan Metropolitan Police Agency</b>   | Shanghai Public Security Bureau, China             | 04/12/1996 |
|                                           | Ministry of Internal Affairs, Russian Federation            | 19/09/2000 | <b>Incheon Metropolitan Police Agency</b> | Shandong Province Public Security Agency, China    | 23/11/1998 |
|                                           | Japan National Police Agency                                | 29/03/2001 | <b>Gangwon Provincial Police Agency</b>   | Jilin Province Public Security Agency, China       | 07/10/1999 |
|                                           | Police Agency, Mongolia                                     | 25/07/2002 | <b>Gyeonggi Provincial Police Agency</b>  | Heilongjing Province Public Security Agency, China | 16/05/2000 |
|                                           | Indonesian National Police                                  | 31/08/2004 | <b>Jeonbuk Provincial Police Agency</b>   | China                                              | 24/04/2001 |
|                                           | Ministry of Public Security, Viet Nam                       | 06/05/2005 | <b>Jeonnam Provincial Police Agency</b>   | Zhejiang Province Public Security Agency, China    | 23/04/2002 |
|                                           | Australian Federal Police                                   | 19/06/2006 | <b>Gyeongbuk Provincial Police Agency</b> | Henan Province Public Security Agency, China       | 22/05/2001 |
|                                           | New Zealand Police                                          | 21/06/2006 | <b>Choongbuk Provincial Police Agency</b> | China                                              | 06/11/2001 |
|                                           | Royal Thai Police                                           | 23/06/2006 | <b>Gyeongnam Provincial Police Agency</b> | China                                              | 02/02/2004 |
|                                           | Philippine National Police                                  | 05/03/2007 | <b>Choongman Provincial Police Agency</b> | Centrum Bisai Police, Philippines                  | 07/09/2005 |
|                                           | Singapore Police Force                                      | 17/05/2007 | <b>Daegu Metropolitan Police Agency</b>   | Dinang City Public Security Bureau, Viet Nam       | 02/12/2005 |
|                                           | Jordan Police Force                                         | 05/09/2007 | <b>Jeju Provincial Police Agency</b>      | Kien Giang Public Security Bureau, Viet Nam        | 08/05/2007 |
| <b>Korea Police Investigation Academy</b> | China Criminal Police University                            | 26/05/2008 | <b>Ulsan Metropolitan Police Agency</b>   | Tianjin Public Security Bureau, China              | 05/05/2008 |
| <b>Korea National Police University</b>   | China People's Public Security University                   | 26/09/2000 | <b>Cyber Terror Response Center</b>       | National Hightech Crime Unit, British Police       | 2005       |
|                                           | Turkish Institute for Police Studies                        | 20/06/2006 |                                           | Information Technology Crime Center, National      | 2005       |

| NAME OF AGENCY                   | COUNTERPART                              | DATE       | NAME OF AGENCY | COUNTERPART                 | DATE |
|----------------------------------|------------------------------------------|------------|----------------|-----------------------------|------|
| Seoul Metropolitan Police Agency |                                          |            |                | Police of France            |      |
|                                  | Beijing Municipal Public Security Bureau | 21/11/1997 |                | Cyber Center, FBI, U.S.     | 2006 |
|                                  | Tokyo Metropolitan Police Department     | 28/08/1999 |                | Bundes Kriminalamt, Germany | 2007 |

826. The NPA participated in the first meeting on amendment of the Korea-EU General Agreement on Co-operation.

827. The NPA is currently working on conclusion of a General Agreement on Co-operation that will contain provisions for co-operation and consultation between the two parties to prevent the financial system from being abused for laundering of proceeds of crimes including drug trafficking and corruption or laundering of funds for terrorism. The agreement will also contain provisions regarding co-operation for recovery of proceeds of crime and funds derived from proceeds of crime.

828. The KCS has established liaison channels with 25 countries with which it signed Customs Mutual Assistance Agreements and 36 countries with which it had Customs Commissioners' Meetings. Moreover, the KCSs has established bilateral co-operation channels through officials stationed in six locations (U.S., Japan, Beijing, Shanghai, Hong Kong, Thailand).

**Information provided by customs officials stationed overseas**

|           | 2006 (NO. OF CASES)  |       |       | 2007 (NO. OF CASES)  |       |       | JAN-JUNE 2008 (NO. OF CASES) |       |       |
|-----------|----------------------|-------|-------|----------------------|-------|-------|------------------------------|-------|-------|
|           | NARCOTICS, TERRORISM | OTHER | TOTAL | NARCOTICS, TERRORISM | OTHER | TOTAL | NARCOTICS, TERRORISM         | OTHER | TOTAL |
| U.S.      | 3                    | 7     | 10    | 2                    | 1     | 3     | 1                            | 0     | 10    |
| Japan     | 68                   | 35    | 103   | 94                   | 27    | 121   | 46                           | 21    | 103   |
| Beijing   | 6                    | 10    | 16    | 6                    | 7     | 13    | 3                            | 5     | 16    |
| Thailand  | 3                    | 3     | 6     | 9                    | 12    | 21    | 1                            | 1     | 6     |
| Shanghai  | 1                    | 33    | 34    | 8                    | 11    | 19    | 2                            | 20    | 34    |
| Hong Kong | 11                   | 27    | 38    | 0                    | 49    | 49    | 1                            | 20    | 38    |
| TOTAL     | 92                   | 115   | 207   | 119                  | 107   | 226   | 54                           | 67    | 207   |

829. Moreover, the KCS is participating in multi-lateral co-operation channels through frameworks of international organisations. The KCS exchanges information on counterfeit goods, smuggling including narcotics smuggling, case studies, and investigation methods through WCO CEN(World Customs Organisation Customs Enforcement Network, 169 members) channel. The KCS gathers information on new trends in the region with liaison officers stationed at WCO RILO A/P (World Customs Organisation Regional Information Liaison Office A/P). The KCS also maintains close co-operation channels with relevant international organisations for exchange of information on narcotics trafficking (UNCND, IDEC, HONLEA, ADEC, ADLOMICO, etc.).

830. The FSS is a signatory to the IOSCO multi-lateral MOU. As at May 2007, the FSS had signed MOUs with 18 financial supervisory authorities from 13 countries. According to the MOUs, the FSS provides international co-operation for the following matters:

- Exchange of information on licensing and examination of financial institutions.
- Joint examination of financial institutions between the authorities of the host country and the home country.
- Examination of compliance with laws and regulations governing transactions and settlement in the securities and futures markets.
- Investigations into insider trading and unfair trading.

**MOUs signed by the FSS, November 2007**

|    | COUNTRY  | NAME OF AGENCY                               | DATE       |    | COUNTRY   | NAME OF AGENCY                                                 | DATE      |
|----|----------|----------------------------------------------|------------|----|-----------|----------------------------------------------------------------|-----------|
| 1  | Japan    | Financial Services Agency                    | 2000.12.22 | 12 | Hong Kong | Hong Kong Monetary Authority                                   | 2006.9.1  |
| 2  | China    | China Securities Regulatory Commission       | 2001.6.19  | 13 | Germany   | The Bundesanstalt für Finanzdienstleistungsaufsicht            | 2006.11.3 |
| 3  | Vietnam  | State Securities Commission                  | 2002.1.30  | 14 | Hungary   | Hungarian Financial Supervisory Authority                      | 2006.11.6 |
| 4  | France   | Commission des Opérations de Bourse (Note 1) | 2002.4.30  | 15 | Qatar     | Qatar Financial Centre Regulatory Authority                    | 2007.5.10 |
| 5  | China    | China Insurance Regulatory Commission        | 2002.9.3   | 16 | Singapore | Monetary Authority of Singapore                                | 2007.5.10 |
| 6  | France   | Commission Bancaire                          | 2003.10.18 | 17 | UAE       | Securities and Commodities Authority                           | 2007.5.22 |
| 7  | China    | China Banking Regulatory Commission          | 2004.2.11  | 18 | U.K.      | Financial Services Authority                                   | 2007.5.28 |
| 8  | Malaysia | Securities Commission                        | 2004.3.17  | 19 | U.S.      | National Association of Insurance Commissioners                | 2007.6.22 |
| 9  | UAE      | Dubai Financial Services Authority           | 2006.4.11  | 20 | Cambodia  | The Ministry of Economy and Finance of The Kingdom of Cambodia | 2008.6.19 |
| 10 | Vietnam  | State Bank of Vietnam                        | 2006.6.8   | -  | -         | International Organisation of Securities Commissions (note 2)) | 2007.11.7 |
| 11 | U.S.     | Securities Exchange Commission               | 2006.6.28  |    |           |                                                                |           |

Note 1) Consolidated into AMF.

Note 2) Listed in 'Appendix B' of the IOSCO MMoU.

831. Besides the international co-operation based on the MOUs, the FSS provides international co-operation related to AML examination to the greatest extent permitted by law.

*Gateways for prompt and constructive exchange of information*

832. KoFIU contributes directly and indirectly to promoting international co-operation for AML/CTF investigation and indictment through exchange of financial transaction information with foreign FIUs pursuant to FTRA Article 8.

**Exchange of information between KoFIU and foreign FIUs**

|                                                           | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 | 2008<br>JAN-JUNE | TOTAL |
|-----------------------------------------------------------|------|------|------|------|------|------|------------------|-------|
| <b>Voluntary provision of information by foreign FIUs</b> | 0    | 1    | 0    | 2    | 2    | 1    | 4                | 8     |
| <b>Requests from Foreign FIUs</b>                         | 3    | 31   | 30   | 42   | 33   | 18   | 17               | 170   |
| <b>KoFIU requests to foreign FIUs</b>                     | 0    | 9    | 2    | 5    | 5    | 2    | 0                | 23    |

*National Police Agency*

833. Korea joined the Interpol on September 30, 1964 and has been maintaining co-operative relationships with 186 member countries to effectively cope with international crimes such as terrorism, drug trafficking, currency counterfeiting, and ML. The Korean NPA provides international co-operation in the Interpol framework to the greatest extent permitted by law for a wide variety of matters including:

- Exchange of information and data about international crime.
- Identification of suspects and search of past criminal records.
- Locating fugitives fleeing overseas.
- Co-operation requested by the Interpol General Secretariat or Secretariats in other countries.
- Co-operation for general operations and prevention of crime.
- Education or exchange of information for capacity building.
- Implementation of matters determined by the General Secretariat.

**International co-operation through Interpol**

|                                         | 2005  | 2006  | 2007  | JAN-JUNE 2008 | TOTAL  |
|-----------------------------------------|-------|-------|-------|---------------|--------|
| <b>Requests for joint investigation</b> | 154   | 141   | 132   | 46            | 473    |
| <b>Forced repatriation of fugitives</b> | 44    | 48    | 61    | 25            | 178    |
| <b>International Mutual Assistance</b>  | 4 704 | 4 505 | 6 323 | 3 002         | 18 534 |

834. The International Investigation Division of the National Tax Service exchanges information relevant to taxation with 70 foreign countries under the Korea's bilateral double taxation conventions. As of the end of June 2008, the International Investigation Division made 306 requests for information to its foreign treaty partners and received 514 requests from overseas. Moreover, the International Investigation Division deals with automatic exchange of information with foreign treaty partners regarding data on non-residents' interest, dividends, and loyalty incomes. As of the end of 2007, Korea had provided 78 173 cases of automatic exchange of information to foreign partners and received 149 645 cases from overseas.

835. The KCS has established the following channels for co-operation in investigation of predicates:

- Annual working-level consultation with China and Japan.

- Contact points with the Chinese General Administration of Customs (Korea Customs Service ↔ GAC, Incheon Airport Customs ↔ Yanji Customs, Pusan Incheon Customs ↔ Dalian Qingdao Customs).
- Contact points with the Japanese Customs Service (Investigation Planning Division of the Korea Customs Service ↔ International Information Center of Tokyo Customs).
- Contact points for exchange of information on narcotics trafficking.
- Information gathering on drug trafficking through WCO RILO or overseas customs attaches about major drug trafficking countries with which the KCS has not established direct bilateral contact channels such as the Philippines.
- Participation in the tobacco smuggling monitoring and notification system ("Project Crocodile").

#### Information exchange through Project Crocodile

|               | PROVIDED INFORMATION | RECEIVED INFORMATION | TOTAL |
|---------------|----------------------|----------------------|-------|
| 2004          | 5(2)                 | 20                   | 25    |
| 2005          | 16(1)                | 58(5)                | 74    |
| 2006          | 7                    | 38                   | 45    |
| 2007          | 2                    | 12(4)                | 14    |
| JAN-JUNE 2008 | 2                    | 1                    | 3     |
| TOTAL         | 32(3)                | 129(9)               | 161   |

\* Numbers in parentheses are number of arrests made based on the information.

#### Real-time exchange of information on drug trafficking

|                  | 2006                                                                            | 2007                                                                                                                                                          |
|------------------|---------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Counterparts     | Japan, Taiwan, Belgium, Switzerland, China, Canada, Australia (7 jurisdictions) | Japan, Taiwan, Belgium, Switzerland, China, Canada, Australia, US, Thailand, Hong Kong, Philippines, India, Luxemburg, Russia, New Zealand (15 jurisdictions) |
| No. of Exchanges | 554                                                                             | 556                                                                                                                                                           |

836. As at May 2007, the FSS had established MOUs with 18 supervisory authorities of 13 jurisdictions.

#### FSS exchange of information with foreign authorities or international organisations

|                                           | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 | JAN-JUNE 2008 | TOTAL |
|-------------------------------------------|------|------|------|------|------|------|---------------|-------|
| Foreign Financial Supervisory Authorities | 40   | 44   | 25   | 21   | 21   | 36   | 31            | 218   |
| International Organisations               | 2    | 1    | 0    | 1    | 0    | 2    | 0             | 6     |
| TOTAL                                     | 42   | 45   | 25   | 22   | 21   | 38   | 31            | 224   |

837. Korean authorities can exchange information with foreign counterparts upon request or spontaneously pursuant to MOUs signed between KoFIU and foreign FIUs or the Mutual Customs Service Assistance Agreement between Korea and the U.S. etc.

838. Especially, as a result of amendment of the *Real Name Financial Transactions Act* in March 2006, Korean financial supervisory authorities can exchange information with foreign financial supervisory authorities (Article 4(1)(6)). Before the amendment, the information that the Korean financial supervisory authorities could exchange with their foreign counterparts was limited to general information on the financial system or the market. After the amendment, however, the financial supervisory authorities can exchange financial transaction information including information on the identity of the person placing orders for securities transactions, location where the orders are placed, and the identity of the party making the payment.

839. This facilitates gathering of information on international transactions including information on off-shore funds and detection of illegal activities using international transactions including those involving tax havens.

#### *Conducting enquiries/investigations on behalf of foreign counterparts*

840. According to the *Act on International Judicial Mutual Assistance in Criminal Matters*, Korea can provide assistance for investigation of criminal case upon request from foreign countries. The aforementioned act includes provisions on reception of request, sending of requested material (Article 11), contents of written request form (Article 12), actions to be taken by the Minister of Foreign Affairs and Trade, the Minister of Justice, or the Chief Public Prosecutor (Articles 14 to 16), and request for examination of witness (Article 18).

841. Moreover, according to Article 8 of the FTRA, KoFIU can provide foreign counterparts with information that it has in its DB upon request. KoFIU can also obtain information requested by a foreign FIU from domestic law enforcement agencies or administrative agencies when deemed necessary.

842. According to the *Act on International Judicial Mutual Assistance in Criminal Matters* (Articles 15 to 17), the Chief Public Prosecutor acting upon the order of the Minister of Justice should order public prosecutors under his/her control to collect materials necessary for mutual assistance, or to take other necessary measures. A public prosecutor ordered by the Chief Public Prosecutor may demand any interested person to attend for stating his/her opinion or make any seizure, search or verification by a warrant issued by a judge.

843. Korea can conduct investigation requested for investigation or trial of other countries pursuant to the international mutual assistance treaties. In case a foreigner commits a crime within the territory of Korea, Korea can conduct investigation pursuant to the general principles of the *Criminal Act*.

#### *Conditions on exchanges of information*

844. Generally, Korea can provide information or other co-operation for other countries according to the principle of reciprocity. There are exceptional situations where confidentiality is required or restrictions are placed on the use of information, but such conditions are not unduly restrictive.

845. According to Article 8 of the FTRA, the Commissioner of KoFIU can exchange financial transaction information with foreign FIUs under the following conditions:

- The information provided to foreign FIUs should not be used for purposes other than the specific purpose for which the information was provided.
- The fact that the information was provided and the provided information should be kept confidential.

- The information provided should not be used for investigation or trial of criminal cases of the foreign country unless there is express prior consent of the Commissioner of KoFIU.

846. The Commissioner of KoFIU can consent to use information provided by KoFIU in investigation or court proceeding of a criminal case that is the subject of the information request. Before the Commissioner of KoFIU gives such consent, s/he must obtain consent from the Minister of Justice.

847. The Korean financial supervisory authorities cannot sign an MOU with a foreign supervisory counterpart when any of the following is the case:

- When there is the possibility that Korea's sovereignty, public security, important economic interest, or the public interest could be negatively affected.
- When it is prohibited by any relevant law or regulation.
- When the provided information is not kept confidential or used for purposes other than supervision/examination.

848. Article 36 of the *Act on International Judicial Mutual Assistance in Criminal Matters* and Article 46 of the *Extradition Act* contain provisions about expenses of MLA or extradition (expenses should be, in principle, met by the requesting party), but generally the Korean government bears the expenses and there is no case where Korea refuse to provide assistance for fiscal reasons.

849. Legal provisions that govern exchange of information do not place any restriction on information exchange or signing of MOUs on the ground that laws impose confidentiality requirements on financial institutions or DNFBPs.

#### *Safeguards*

850. According to Article 8(2) of the FTRA, based on the principle of reciprocity, any information exchanged between KoFIU and a foreign counterpart should be used for the specific purpose for which the information was provided.

851. MOUs that the Korean financial supervisory authorities signed with foreign counterparts also state that the information received pursuant to the MOUs cannot be used for purposes other than the supervision permitted by relevant laws or regulations.

#### ***Additional elements***

852. When there is request from a foreign FIU, KoFIU can obtain the requested information from a law enforcement agency or an administrative agency if such an agency has the information in its database. It is, however, impossible to get specific information from individuals.

#### **Special Recommendation V**

853. According to POCA Article 11, Korea can provide MLA for confiscation, confiscation of corresponding value, or provisional measures in relation to crimes that can be seen as TF so far as the crime in question is covered by the list of serious crimes under POCA.

854. The *Act on Crimes within the Jurisdiction of the International Criminal Court* punishes crimes of genocide, crimes against humanity (aggression against civilians, etc.), war crimes against humans, war

crimes against properties or rights, and war crimes using prohibited weapons, etc. (Articles 8 to 16). Funds related to these crimes can be seen as 'criminal proceeds' under POCA (Article 2(2)(b)). Therefore, international assistance for confiscation of criminal proceeds, confiscation of corresponding value, or provisional measures stipulated in POCA Article 11 also apply to fund related to the aforementioned crimes.

### ***Additional elements***

855. Korea can give consent to use of information on TF provided by KoFIU in investigation or court proceedings of a criminal case in a foreign country with the consent by the Commissioner of the FIU. Moreover, KoFIU can obtain information requested by foreign counterpart from other domestic law enforcement agency or administrative agency. Therefore, the elements can also apply to TF.

### **Statistics<sup>68</sup> and effectiveness**

856. No relevant statistics were supplied. Effectiveness is difficult to judge and suffers from the limitations of the overall approach to TF (see the discussions on SRII and SRIII in Section 2 of this report).

### **6.5.2 Recommendations and Comments**

857. Information exchange mechanism exists between FSS and its foreign counterparts. Through the MOU arrangement, consolidated supervision on overseas branches and information exchange on inspection results is allowed. There are also adequate controls and safeguards to ensure that information received by competent authorities is used only in an authorised manner.

858. For the area of DNFBPs, due to the fact that only casinos are covered under the AML/CFT regimes, there can be difficulties to provide co-operation in relation to the professional areas like the lawyers, auditors and accountants who are bound by their professional secrecy laws.

### **6.5.3 Compliance with Recommendation 40 and Special Recommendation V**

|             | RATING    | SUMMARY OF FACTORS UNDERLYING RATING                                                                                                                                                                                                                                                                                    |
|-------------|-----------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>R.40</b> | <b>LC</b> | <ul style="list-style-type: none"> <li>Information exchange is only possible under MOU arrangements.</li> <li>Deficiencies in the list of predicate offences and in the criminalisation of money laundering and terrorist financing have the potential to impact on the scope of international co-operation.</li> </ul> |
| <b>SR.V</b> | <b>LC</b> | <ul style="list-style-type: none"> <li>It is too early to evaluate the effectiveness of international co-operation with respect to terrorist financing due to the very recent enactment of that offence.</li> </ul>                                                                                                     |

<sup>68</sup> As related to R.32; see s.7.2 for the compliance rating for this Recommendation.

## 7. OTHER ISSUES

### 7.1 Resources and Statistics (R.30 & R.32)

859. The text of the description, analysis and recommendations for improvement that relate to Recommendations 30 and 32 is contained in all the relevant sections of the report, *i.e.* all of Section 2, parts of Sections 3 and 4, and in Section 6. There is a single rating for each of these Recommendations, even though the Recommendations are addressed in several sections. Section 7.1 of the report contains the boxes showing the rating and the factors underlying the rating.

|      | RATING | SUMMARY OF FACTORS UNDERLYING RATING                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
|------|--------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| R.30 | PC     | <ul style="list-style-type: none"><li>• KoFIU has insufficient human resources for effective analysis when the large volume of STRs is considered.</li><li>• Enforcement agencies have received limited training with respect to terrorist financing.</li><li>• Supervisory authorities, other than the FSS and FSC, and relevant self-regulatory organisations do not have sufficient resources to conduct their AML/CFT supervision roles.</li></ul>                                                        |
| R.32 | PC     | <ul style="list-style-type: none"><li>• There are no centralised statistics on the number of AML/CFT inspections carried out on different financial sectors, deficiencies and violations found, actions taken by entrusted agencies and sanctions by KoFIU.</li><li>• Statistics are not available on the outcomes of matters presented to the courts.</li><li>• It is not possible to properly determine effectiveness of MLA related to money laundering due to the limited statistics available.</li></ul> |

### 7.2 Other Relevant AML/CFT Measures or Issues

860. There are no further issues to be discussed in this section.

### 7.3 General Framework for AML/CFT System (see also s.1.1)

861. There are no further issues to be discussed in this section.

## TABLES

**Table 1. Ratings of Compliance with FATF Recommendations**

The rating of compliance vis-à-vis the *FATF Recommendations* has been made according to the four levels of compliance mentioned in the 2004 Methodology<sup>69</sup> (Compliant (C), Largely Compliant (LC), Partially Compliant (PC), Non-Compliant (NC)), or, in exceptional cases, Not Applicable (N/A).

|                     |                                                                                                                                                                                                            |
|---------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Compliant           | The Recommendation is fully observed with respect to all essential criteria.                                                                                                                               |
| Largely Compliant   | There are only minor shortcomings, with a large majority of the essential criteria being fully met.                                                                                                        |
| Partially Compliant | The country has taken some substantive action and complies with some of the essential criteria.                                                                                                            |
| Non Compliant       | There are major shortcomings, with a large majority of the essential criteria not being met.                                                                                                               |
| Not Applicable      | A requirement or part of a requirement does not apply, due to the structural, legal or institutional features of a country e.g. a particular type of financial institution does not exist in that country. |

| Recommendations                                         | Rating | Summary of Factors Underlying Rating <sup>70</sup>                                                                                                                                                                                                                                                                                                                                            |
|---------------------------------------------------------|--------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Legal systems</b>                                    |        |                                                                                                                                                                                                                                                                                                                                                                                               |
| 1 – ML offence                                          | LC     | <ul style="list-style-type: none"> <li>• Terrorism, terrorist financing and environmental crimes are not predicate offences. In addition, there is an inadequate range of offences within two categories of predicate offences: copyright and fraud.</li> <li>• The ancillary offence of conspiracy is limited in its availability for money laundering cases.</li> </ul>                     |
| 2 – ML offence – mental element and corporate liability | PC     | <ul style="list-style-type: none"> <li>• The sanctions for legal persons convicted of money laundering are insufficiently effective and are not dissuasive or proportionate. The sanctions imposed on natural persons are not effectively implemented.</li> </ul>                                                                                                                             |
| 3 – Confiscation and provisional measures               | PC     | <ul style="list-style-type: none"> <li>• Confiscation powers are not available for the money laundering offence where the predicate offence was terrorism, including terrorist financing, or environmental crime.</li> <li>• Given the size of the economy and the risk of money being laundered in Korea, the number of confiscations and the value confiscated each year is low.</li> </ul> |
| <b>Preventive measures</b>                              |        |                                                                                                                                                                                                                                                                                                                                                                                               |
| 4 – Secrecy laws                                        | LC     | <ul style="list-style-type: none"> <li>• A financial secrecy provision exists which limits the sharing of customer identification information between financial institutions in such a way as to impact full implementation of Recommendation 7 and Special</li> </ul>                                                                                                                        |

<sup>69</sup> *Methodology for Assessing Compliance with the FATF 40 Recommendations and the FATF 9 Special Recommendations*, 27 February 2004 (Updated as of February 2007).

<sup>70</sup> These factors are only required to be set out when the rating is less than Compliant.

| Recommendations            | Rating | Summary of Factors Underlying Rating <sup>70</sup>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
|----------------------------|--------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                            |        | Recommendation VII.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| 5 – Customer due diligence | PC     | <p><i>When CDD is required</i></p> <ul style="list-style-type: none"> <li>Financial institutions are only expected to discover linked transactions over a twenty-four hour period, which is not sufficient to identify structured transactions intended to avoid the threshold for occasional transactions.</li> <li>Institutions are not expressly required to conduct CDD when they have doubts about the veracity or adequacy of previously obtained customer identification data.</li> </ul> <p><i>Required CDD measures</i></p> <ul style="list-style-type: none"> <li>Financial institutions are not required to verify whether the natural person acting for a legal person is authorised to do so.</li> <li>For customers who are legal persons or arrangements, financial institutions are not required by law, regulation or other enforceable means to obtain information on the customer's legal form, director(s) and provisions regulating the power to bind the legal person or arrangement.</li> <li>There is no requirement for financial institutions to identify and verify the identity of the beneficial owner except where there is a suspicion of money laundering or terrorist financing.</li> <li>In the case of legal persons or arrangements, institutions are not obliged to understand the ownership and control structure of the customer or to determine who are the natural persons who ultimately own or control the customer, other than when there is a suspicion of money laundering or terrorist financing.</li> <li>Financial institutions are not explicitly required to obtain information on the purpose and intended nature of the business relationship.</li> <li>Ongoing due diligence on the business relationship is not expressly required in law, regulation or other enforceable means.</li> <li>There is no express requirement for financial institutions to scrutinise transactions throughout the course of the business relationship to ensure they are consistent with the institution's knowledge of the customer, their business and risk profile, and the source of funds.</li> <li>There is no explicit requirement that financial institutions ensure documents, data or information collected as part of CDD is kept up-to-date and relevant.</li> <li>There is no prohibition on institutions opening accounts, commencing business relations or performing transactions when they are unable to: verify that any person purporting to act on behalf of a customer that is a legal person or legal arrangement is so authorised and identify and verify the identity of that person; verify the legal status of the legal person or arrangement; or, identify and verify beneficial owners.</li> <li>Financial institutions are not required to consider filing an STR when they are unable to complete all CDD as detailed in the <i>FATF Standards</i>.</li> </ul> <p><i>Timing of verification</i></p> <ul style="list-style-type: none"> <li>There is no explicit requirement for institutions to develop internal controls to mitigate the risk posed by transactions undertaken before the completion of the CDD process.</li> </ul> <p><i>Existing customers</i></p> <ul style="list-style-type: none"> <li>There is no provision expressly requiring CDD be applied to pre-existing customers.</li> <li>There is no express requirement that financial institutions conduct CDD on pre-existing customers at appropriate times or when the institution becomes aware that it lacks sufficient information about an existing customer.</li> </ul> |

| Recommendations                                  | Rating | Summary of Factors Underlying Rating <sup>70</sup>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
|--------------------------------------------------|--------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                  |        | <ul style="list-style-type: none"> <li>There is no requirement that financial institutions terminate an existing business relationship and consider filing an STR when: the institution has doubts about the veracity or adequacy of previously obtained customer identification data; it is unable to satisfactorily complete post-transaction or post-account opening; or is unable to satisfactorily complete CDD on existing customers.</li> </ul> <p><i>Scope issue</i></p> <ul style="list-style-type: none"> <li>Scope limitation: no formal assessment has been undertaken to justify exclusion of some smaller financial institutions, money changers and certain investment-related companies from the requirement to have internal AML/CFT monitoring/reporting, which may prevent them from conducting effective CDD.</li> </ul>                                                                           |
| 6 – Politically exposed persons                  | NC     | <ul style="list-style-type: none"> <li>Financial institutions are not required to determine whether a customer is a PEP.</li> <li>There is no provision requiring financial institutions to obtain senior management approval to establishing business relationships with PEPs or to continue business relationships with PEPs.</li> <li>Financial institutions are not required to establish the source of wealth and funds of customers and beneficial owners identified as PEPs.</li> <li>Financial institutions are not required to conduct enhanced ongoing monitoring of business relationships with PEPs.</li> </ul>                                                                                                                                                                                                                                                                                            |
| 7 – Correspondent banking                        | NC     | <ul style="list-style-type: none"> <li>There are no obligations for financial institutions to: determine whether a respondent institution has been subject to money laundering or terrorist financing enforcement action; assess the adequacy of the respondent's AML/CFT controls; require senior management approval before establishing the relationship; or document the respective AML/CFT responsibilities of each institution.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| 8 – New technologies & non face-to-face business | C      | <i>This Recommendation is fully observed.</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| 9 – Third parties and introducers                | NC     | <ul style="list-style-type: none"> <li>Financial institutions relying on a third party to perform CDD are not required to immediately gain from the third party the necessary information concerning elements of the CDD process.</li> <li>There is no requirement for financial institutions to take adequate steps to satisfy themselves that copies of identification data and other relevant CDD documentation will be made available from the third party upon request without delay.</li> <li>Financial institutions are not required to satisfy themselves that the third party is regulated and supervised and has measures in place to comply with CDD requirements.</li> <li>There is no provision requiring financial institutions relying on CDD conducted by third parties in foreign countries to take into account whether those countries adequately apply the <i>FATF Recommendations</i>.</li> </ul> |
| 10 – Record keeping                              | LC     | <ul style="list-style-type: none"> <li>There is no specific requirement that the transaction records kept by institutions be sufficient to permit reconstruction of individual transactions.</li> <li>There is no overall and general requirement that the information which must be provided to competent authorities be available on a timely basis.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| 11 – Unusual transactions                        | NC     | <ul style="list-style-type: none"> <li>There is no explicit requirement in law, regulation or other enforceable means for financial institutions to pay special attention to complex, unusual large transactions, or patterns of transactions.</li> <li>Financial institutions are not required to examine the background and purpose of such transactions and set forth findings in writing except where there is a suspicion of money laundering or terrorist financing.</li> <li>Institutions are not required to make findings of their examinations of</li> </ul>                                                                                                                                                                                                                                                                                                                                                 |

| Recommendations                            | Rating | Summary of Factors Underlying Rating <sup>70</sup>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
|--------------------------------------------|--------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                            |        | unusual transactions available to competent authorities.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| 12 – DNFBPs – R.5, 6, 8-11                 | NC     | <ul style="list-style-type: none"> <li>With the exception of casinos, no AML/CFT obligations have been applied to DNFBP sectors.</li> <li>As the AML/CFT obligations for casinos are identical to those for financial institutions, they suffer from the same deficiencies identified previously with respect to Recommendations 5, 6 and 9-11.</li> <li>The AML/CFT obligations for casinos came into force so recently that it is too soon to determine their effectiveness.</li> </ul>                                                                                                                                                                                                                                                                     |
| 13 – Suspicious transaction reporting      | PC     | <ul style="list-style-type: none"> <li>The suspicious transaction reporting requirement does not apply to funds that are the proceeds of all offences that are required to be included as predicate offences under Recommendation 1..</li> <li>The STR obligation is only mandatory above a transaction threshold of KRW 20 million (for transactions in Korean Won) / USD 10 000 (for transactions in foreign currencies).</li> <li>It is too soon to determine the effectiveness of the new obligation to report suspicious transactions related to terrorist financing.</li> </ul>                                                                                                                                                                         |
| 14 – Protection & no tipping-off           | C      | <i>This Recommendation is fully observed.</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| 15 – Internal controls, compliance & audit | PC     | <ul style="list-style-type: none"> <li>It is not explicitly required that the internal AML/CFT procedures, policies and controls be communicated to employees.</li> <li>There is no requirement that compliance officers be appointed at a management level.</li> <li>Audit committees are not explicitly required to test compliance with AML/CFT procedures, policies and controls.</li> <li>The obligation for institutions to have AML/CFT training for employees is very general and not well implemented in practice.</li> <li>Financial institutions are not required to have screening procedures to ensure high standards when hiring employees.</li> </ul>                                                                                          |
| 16 – DNFBPs – R.13-15 & 21                 | NC     | <ul style="list-style-type: none"> <li>Only one type of DNFBP – casinos – is required to report suspicious transactions and this obligation suffers from the same limitations as noted for R.13.</li> <li>Only one type of DNFBP – casinos – is required to have some internal AML/CFT controls, reporting officers and employee training and this obligation does not involve establishment of a full compliance management function or employee screening.</li> <li>It is too early to assess the effectiveness of obligations imposed on casinos.</li> <li>No DNFBPs are obliged to pay special attention to business relationships and transactions with persons from or in jurisdictions which insufficiently apply the FATF Recommendations.</li> </ul> |
| 17 – Sanctions                             | PC     | <ul style="list-style-type: none"> <li>The only sanctionable AML/CFT breaches are failure to file STRs and CTRs and conducting financial transactions with restricted persons without approval.</li> <li>The level of sanctions available for natural and legal persons who fail to comply with their AML/CFT obligations is very low and not proportionate to the more severe breaches which may occur.</li> <li>Sanctions are not often applied by supervisory authorities and are usually in the nature of a request to the institution during the on-site inspection that corrections be made.</li> </ul>                                                                                                                                                 |
| 18 – Shell banks                           | PC     | <ul style="list-style-type: none"> <li>There is no prohibition in law, regulation or other enforceable means on financial institutions from entering into or continuing correspondent</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |

| Recommendations                                    | Rating | Summary of Factors Underlying Rating <sup>70</sup>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
|----------------------------------------------------|--------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                    |        | <p>banking relationships with shell banks.</p> <ul style="list-style-type: none"> <li>There is no requirement in law, regulation or other enforceable for financial institutions to satisfy themselves that respondent financial institutions do not permit their accounts to be used by shell banks.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| 19 – Other forms of reporting                      | C      | <i>This Recommendation is fully observed.</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| 20 – Other NFBP & secure transaction techniques    | C      | <i>This Recommendation is fully observed.</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| 21 – Special attention for higher risk countries   | NC     | <ul style="list-style-type: none"> <li>There is no requirement in law, regulation or other enforceable means for financial institutions to pay special attention to business relationships and transactions with persons from countries which do not or insufficiently apply the <i>FATF Recommendations</i>.</li> <li>Where transactions have no apparent economic or lawful purpose, there is no requirement to examine the background and purpose of the transactions, set forth findings in writing and make them available to assist competent authorities.</li> <li>While there are demonstrated means of notifying financial institutions of weaknesses in the AML/CFT systems of other countries, institutions are not provided clear advice on what action should be taken.</li> <li>The only possible counter-measure is application of enhanced customer due diligence and as this was only implemented on 22 December 2008 it is too early to assess the effectiveness of this measure.</li> </ul> |
| 22 – Foreign branches & subsidiaries               | PC     | <ul style="list-style-type: none"> <li>Foreign subsidiaries are not required to observe AML/CFT measures consistent with Korean requirements.</li> <li>Not all Korean AML/CFT measures must be observed by foreign branches.</li> <li>Financial institutions are not required to pay special attention to the application of AML/CFT measures in branches and subsidiaries located in jurisdictions which insufficiently apply the <i>FATF Recommendations</i>.</li> <li>Financial institutions are not required, where the home and host country requirements differ, to apply the higher of the two standards wherever possible.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                  |
| 23 – Regulation, supervision and monitoring        | PC     | <ul style="list-style-type: none"> <li>The scope of AML/CFT supervision by FSS is not adequate: AML risk management, implementation of enhanced CDD for high risk customers and on-going monitoring systems for unusual, large and complex transactions are not reviewed.</li> <li>Institutions other than those subject to the Core Principles and supervised by the FSS, are not adequately supervised for AML/CFT.</li> <li>Scope limitation: no formal assessment has been undertaken to justify exclusion of some smaller financial institutions, money changers and certain investment-related companies from the obligation to have internal AML/CFT monitoring/reporting, and thus from the corresponding regulatory regime.</li> </ul>                                                                                                                                                                                                                                                                |
| 24 – DNFBP: regulation, supervision and monitoring | NC     | <ul style="list-style-type: none"> <li>With the exception of casinos, no AML/CFT supervision is in place for DNFBP sectors.</li> <li>AML/CFT supervision for casinos came into force so recently that it is too soon to determine its effectiveness.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| 25 – Guidelines & Feedback                         | LC     | <ul style="list-style-type: none"> <li>The only guidance is generic for all obliged entities; there are no guidelines on AML/CFT requirements for different financial sectors.</li> <li>Casinos are the only DNFBP which has received AML/CFT guidance.</li> <li>It is too early to evaluate the effectiveness of feedback to casinos as their reporting as the obligation to report has only just come into force.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |

| Recommendations                         | Rating | Summary of Factors Underlying Rating <sup>70</sup>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
|-----------------------------------------|--------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Institutional and other measures</b> |        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| 26 – The FIU                            | LC     | <ul style="list-style-type: none"> <li>KoFIU does not have timely access to other agencies' financial, administrative and law enforcement information and this is leading to delays in STR analysis and delays in dissemination of information to law enforcement agencies.</li> <li>The human resources for STR analysis is insufficient considering the significant and continuing increase in the amount of information being submitted to KoFIU.</li> </ul>                                                                                                                                                                                                          |
| 27 – Law enforcement authorities        | LC     | <ul style="list-style-type: none"> <li>Effectiveness concerns: The number of investigations of money laundering is low when compared with the incidence of predicate crimes, and, as the terrorist financing offence was implemented in December 2008 it is too early to judge the effectiveness of terrorist financing investigations.</li> </ul>                                                                                                                                                                                                                                                                                                                       |
| 28 – Powers of competent authorities    | LC     | <ul style="list-style-type: none"> <li>Effectiveness concern: The requirement that a warrant be obtained in order to compel production, search and seizure and the difficulties experienced in obtaining such warrants may result in a relatively limited use of these powers in cases of money laundering and terrorist financing.</li> </ul>                                                                                                                                                                                                                                                                                                                           |
| 29 – Supervisors                        | PC     | <ul style="list-style-type: none"> <li>The inspection areas of some supervisory authorities and self-regulatory organisations entrusted with inspection are under-resourced.</li> <li>The only sanctionable AML/CFT breaches are failure to file STRs and CTRs and conducting financial transactions with restricted persons without approval.</li> <li>Scope limitation: no formal assessment has been undertaken to justify exclusion of some smaller financial institutions, money changers and certain investment-related companies from the obligation to have internal AML/CFT monitoring/reporting, and thus from the corresponding regulatory regime.</li> </ul> |
| 30 – Resources, integrity and training  | PC     | <ul style="list-style-type: none"> <li>KoFIU has insufficient human resources for effective analysis when the large volume of STRs is considered.</li> <li>Enforcement agencies have received limited training with respect to terrorist financing.</li> <li>Supervisory authorities, other than the FSS and FSC, and relevant self-regulatory organisations do not have sufficient resources to conduct their AML/CFT supervision roles.</li> </ul>                                                                                                                                                                                                                     |
| 31 – National co-operation              | LC     | <ul style="list-style-type: none"> <li>Limited feedback is provided to the various competent authorities which conduct AML/CFT supervision.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| 32 – Statistics                         | PC     | <ul style="list-style-type: none"> <li>There are no centralised statistics on the number of AML/CFT inspections carried out on different financial sectors, deficiencies and violations found, actions taken by entrusted agencies and sanctions by the KoFIU.</li> <li>Statistics are not available on the outcomes of matters presented to the courts.</li> <li>It is not possible to properly determine effectiveness of MLA related to money laundering due to the limited statistics available.</li> </ul>                                                                                                                                                          |
| 33 – Legal persons – beneficial owners  | NC     | <ul style="list-style-type: none"> <li>Laws do not establish adequate transparency concerning beneficial ownership and control of legal persons.</li> <li>Competent authorities are not able to obtain in a timely fashion adequate, accurate and timely information by competent authorities on the beneficial ownership of legal persons.</li> <li>There are no measures to ensure that bearer shares are not misused for money laundering and terrorist financing.</li> </ul>                                                                                                                                                                                         |

| Recommendations                                 | Rating | Summary of Factors Underlying Rating <sup>70</sup>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
|-------------------------------------------------|--------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 34 – Legal arrangements – beneficial owners     | NC     | <ul style="list-style-type: none"> <li>Laws do not require adequate transparency concerning the beneficial ownership and control of trusts and other legal arrangements.</li> <li>Although law enforcement agencies have powers to obtain information on legal arrangements, there is minimal information concerning the beneficial owners of legal arrangements that can be obtained.</li> <li>Providers of trust and company services are not subject to AML/CFT obligations.</li> </ul>                                                        |
| <b>International Co-operation</b>               |        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| 35 – Conventions                                | PC     | <ul style="list-style-type: none"> <li>The <i>Vienna Convention</i> has been partly implemented, but shortcomings exist in the elements of the money laundering offences.</li> <li>The <i>Palermo Convention</i> has not been ratified or fully implemented.</li> <li>Significant shortcomings exist in implementation of the <i>Terrorist Financing Convention</i>.</li> </ul>                                                                                                                                                                   |
| 36 – Mutual legal assistance (MLA)              | LC     | <ul style="list-style-type: none"> <li>There is potential for conflicts of jurisdiction as Korea has no mechanisms for determining the best venue for prosecution of defendants.</li> </ul>                                                                                                                                                                                                                                                                                                                                                       |
| 37 – Dual criminality                           | C      | <i>This Recommendation is fully observed.</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| 38 – MLA on confiscation and freezing           | LC     | <ul style="list-style-type: none"> <li>Korea does not have formal arrangements outside some specific bilateral agreements for co-ordinating seizure and confiscation actions with other countries, relying often on <i>ad hoc</i> arrangements.</li> <li>It is too early to evaluate the effectiveness of MLA related to terrorist financing due to the very recent enactment of that offence.</li> </ul>                                                                                                                                         |
| 39 – Extradition                                | LC     | <ul style="list-style-type: none"> <li>It is not required that nationals be prosecuted in lieu of not being extradited.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                |
| 40 – Other forms of co-operation                | LC     | <ul style="list-style-type: none"> <li>Information exchange is only possible under MOU arrangements.</li> <li>Deficiencies in the list of predicate offences and in the criminalisation of money laundering and terrorist financing have the potential to impact on the scope of international co-operation.</li> </ul>                                                                                                                                                                                                                           |
| <b>Nine Special Recommendations</b>             |        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| SR.I – Implement UN instruments                 | PC     | <ul style="list-style-type: none"> <li>Collection of funds or other assets by terrorist organisations or individual terrorists for the general furtherance of their respective criminal activities or criminal purpose is not adequately criminalised.</li> <li>There is no adequate provision for confiscation of funds or assets for use by a terrorist organisation or by individual terrorists.</li> <li>S/RES/1373(2001) has not been fully implemented and shortcomings exist in relation to implementation of S/RES/1267(1999).</li> </ul> |
| SR.II – Criminalise TF                          | PC     | <ul style="list-style-type: none"> <li>The terrorist financing offence does not adequately cover provision/collection of funds for an individual terrorist or terrorist organisation.</li> <li>Terrorist financing is not a predicate offence for money laundering.</li> <li>It is too soon to determine the effectiveness of the terrorist financing offence as it came into force on 22 December 2008.</li> <li>The ancillary offence of conspiracy is only available where an offence has been committed.</li> </ul>                           |
| SR.III – Freeze and confiscate terrorist assets | PC     | <ul style="list-style-type: none"> <li>Measures for implementation of S/RES/1267(1999) do not allow for freezing of terrorist assets (only restriction of transactions) and obligations under S/RES/1373(2001) have not been fully implemented.</li> <li>The current regimes only cover foreign exchange transactions and related foreign transactions and domestic banking, cash and securities</li> </ul>                                                                                                                                       |

| Recommendations                                            | Rating | Summary of Factors Underlying Rating <sup>70</sup>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
|------------------------------------------------------------|--------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                            |        | <p>transactions conducted by financial institutions.</p> <ul style="list-style-type: none"> <li>• There are no provisions for freezing concerning movable or immovable property or property derived from funds or assets owned or controlled by designated entities.</li> <li>• There are no provisions with respect to confiscation of funds or other assets of designated persons or entities other than where those funds or assets can be confiscated as criminal proceeds.</li> <li>• Procedures underlying the mechanisms for restricting the funds or other assets of designated entities are in place but require clarification.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                        |
| SR.IV – Suspicious transaction reporting                   | NC     | <ul style="list-style-type: none"> <li>• The suspicious transaction reporting requirement does not apply to funds linked or related to, or to be used for, terrorist organisations or those who finance terrorism.</li> <li>• The STR obligation is only mandatory above a transaction threshold of KRW 20 million (for transactions in Korean Won) / USD 10 000 (for transactions in foreign currencies)_and this is of particular concern when the nature of terrorist financing is considered.</li> <li>• It is too soon to determine the effectiveness of the new obligation to report suspicious transactions related to terrorist financing.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                              |
| SR.V – International co-operation                          | LC     | <ul style="list-style-type: none"> <li>• There is potential for conflicts of jurisdiction as Korea has no mechanisms for determining the best venue for prosecution of defendants.</li> <li>• Korea does not have formal arrangements outside some specific bilateral agreements for co-ordinating seizure and confiscation actions with other countries, relying often on <i>ad hoc</i> arrangements.</li> <li>• It is not required that nationals be prosecuted in lieu of not being extradited.</li> <li>• It is too early to evaluate the effectiveness of international co-operation, including extradition and MLA, with respect to terrorist financing due to the very recent enactment of that offence.</li> </ul>                                                                                                                                                                                                                                                                                                                                                 |
| SR.VI – AML requirements for money/value transfer services | PC     | <ul style="list-style-type: none"> <li>• The limitations identified under Recommendations 4-7, 9-11, 13, 15, 17, 21-23 and Special Recommendation VII also affect compliance with Special Recommendation VI.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| SR.VII – Wire transfer rules                               | PC     | <ul style="list-style-type: none"> <li>• Ordering financial institutions are not required by law, regulation or other enforceable means to include full originator information in messages accompanying cross-border or domestic wire transfers, though the institutions do in fact appear to be including full originator information in the messages.</li> <li>• There is no requirement that each intermediary or beneficiary institution in the payment chain be required to ensure that all originator information that accompanies a wire transfer is transmitted with the transfer.</li> <li>• Beneficiary institutions are not required to adopt effective risk-based procedures for identifying and handling wire transfers that are not accompanied by complete originator information.</li> <li>• As limited obligations exist in law, regulation or other enforceable means with respect to wire transfers (these are primarily found in guidance), there is limited corresponding monitoring or sanctions by supervisory authorities in this area.</li> </ul> |
| SR.VIII – Non-profit organisations                         | PC     | <ul style="list-style-type: none"> <li>• No outreach has been undertaken to the NPO sector on terrorist financing risks and preventative measures.</li> <li>• There is no domestic co-ordination or information sharing among NPO supervisory authorities or between these authorities and other government agencies, including law enforcement.</li> <li>• Points of contact have not been identified to respond to international</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |

| Recommendations                               | Rating | Summary of Factors Underlying Rating <sup>70</sup>                                                                                                                                                                                |
|-----------------------------------------------|--------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                               |        | requests for information regarding NPOs.                                                                                                                                                                                          |
| SR.IX – Cross-border Declaration & Disclosure | LC     | <ul style="list-style-type: none"> <li>The sanctions imposed on persons who do not make declarations or who make false declarations are only in the nature of fines and these are too low to be considered dissuasive.</li> </ul> |

**Table 2. Recommended Action Plan to Improve the AML/CFT System**

| AML/CFT SYSTEM                                                    | RECOMMENDED ACTION (LISTED IN ORDER OF PRIORITY)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|-------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>1. General</b>                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| <b>2. Legal System and Related Institutional Measures</b>         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| 2.1 Criminalisation of ML (R.1 & 2)                               | <ul style="list-style-type: none"> <li>• It is recommended that Korea broaden the range of predicate offences to comply with FATF standards. Recent amendments to POCA (outside of the timeframe considered by this report) have incorporated TF and additional copyright offences as predicates to ML. Further amendments should be passed making terrorism and environmental crimes predicates for ML. Moreover, there is an insufficient range of fraud offences which constitute predicates to ML, which should be addressed.</li> <li>• Amendments should also be made to the ML offences in Article 7(1) of ASPIT and Article 3(1) of POCA, specifically to ensure the penalties available are effective proportionate and dissuasive to the nature of the criminal activity.</li> <li>• In terms of effectiveness of the ML offences, Korea could benefit from an internal awareness raising campaign targeted at officials within the legal system including the judiciary, to ensure that there is an understanding across the board of the gravamen of the ML offences and the need to reflect this with dissuasive sanctions.</li> </ul> |
| 2.2 Criminalisation of TF (SR.II)                                 | <ul style="list-style-type: none"> <li>• The PFOPIA is a well intentioned piece of legislation, but it would be more effective and in closer compliance with the <i>Terrorist Financing Convention</i> if it were strengthened by addition of provisions which make it clear that it applies to the funding of terrorist organisations and individual terrorists even when those funds or assets or the intention of the provider of those funds or assets cannot be linked to a terrorist act.</li> <li>• It is recommended that the PFOPIA be amended so as to include a definition of terrorist and terrorist organisation, to cover the provision/collection of funds for an individual terrorist or terrorist organisation.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                         |
| 2.3 Confiscation, freezing and seizing of proceeds of crime (R.3) | <ul style="list-style-type: none"> <li>• As noted earlier in this report, it is recommended that further amendments be passed making terrorism and environmental crimes predicates for ML.</li> <li>• It is recommended that the relevant agencies in Korea jointly, maybe by way of the Law Enforcement Consultation Committee, consider the entire confiscation regime with a view to encouraging more concerted use of these tools.</li> <li>• It is recommended that Korean agencies ensure their statistics in this area are comprehensive and available to assist in understanding the effectiveness of the whole confiscation regime in Korea.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| 2.4 Freezing of funds used for TF (SR.III)                        | <ul style="list-style-type: none"> <li>• As the system in Korea only offers prohibition of foreign transactions and other related transactions, it is recommended that, as a matter of urgency, steps be taken to broaden the system to effect a freeze, and allow for confiscation, of all types of 'funds' as defined in Article 1 of the <i>Terrorist Financing Convention</i>.</li> <li>• It is recommended that further underlying procedures and guidance to financial institutions be developed and refined. There should be a clear policy steer as to which body oversees this area and has responsibility for guidance. Compliance and monitoring should be considered a high priority and sufficient resources allocated to accommodate the increased demands in this area.</li> </ul>                                                                                                                                                                                                                                                                                                                                                   |
| 2.5 The Financial Intelligence Unit and its functions (R.26)      | <ul style="list-style-type: none"> <li>• In order to ensure timely access to information and prompt dissemination to law enforcement agencies, it is recommended that KoFIU obtain direct</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |

| AML/CFT SYSTEM                                                                | RECOMMENDED ACTION (LISTED IN ORDER OF PRIORITY)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
|-------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                                               | <p>access to other agencies' information and take any other actions which will lead to receipt of information from other authorities on a more timely basis and any actions which might lead to faster analysis of STRs.</p> <ul style="list-style-type: none"> <li>While IT developments have been important for the efficiency of KoFIU's operations, it is recommended nonetheless that KoFIU increase its human resources in order to ensure effective analysis of STR information.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| 2.6 Law enforcement, prosecution and other competent authorities (R.27 & 28)  | <ul style="list-style-type: none"> <li>The evaluation team recommends that the PPO convene inter-agency meetings of enforcement authorities to establish a concerted program for increasing the number of ML and TF investigations in Korea.</li> <li>The assessment team is concerned about the effectiveness of a system where a warrant is always required in order to compel production of, search for or seize documents and suggests that the Ministry of Justice review this situation to ensure that the warrant requirement and/or process for obtaining warrants is not unduly hindering enforcement agencies' ability to obtain financial information and other documents for use in investigation and prosecution of ML, TF and predicate offences.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| 2.7 Cross-border Declaration & Disclosure (SR.IX)                             | <ul style="list-style-type: none"> <li>It is recommended that KCS review the measures in place at seaports and land borders for detection of cross-border movement of currency/BNI to ensure these are at least at the same level as those in place at the international airports. Further, it is recommended that KCS and the PPO take a stronger stance in terms of fines, with a view to ensuring that the level of fines imposed is dissuasive.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| <b>3. Preventive Measures – Financial Institutions</b>                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| 3.1 Risk of ML or TF                                                          | <i>There are no recommendations for this section.</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| 3.2 Customer due diligence, including enhanced or reduced measures (R.5 to 8) | <ul style="list-style-type: none"> <li>The <i>AML Enforcement Guidelines</i> are in many areas, particularly with respect to CDD, broader than the provisions found in Korea's laws, decrees and regulations. It is strongly recommended that Korean authorities either transpose these areas of the guidelines into law, decree or regulation, or, revised the content of the guidelines to ensure the language used sets out clear requirements and establish a clear mechanism for enforcing the requirements of the guidelines, so they qualify as other enforceable means.</li> </ul> <p><i>Recommendation 5</i></p> <ul style="list-style-type: none"> <li>As the threshold above which CDD is required for occasional transactions is only just below the threshold of EUR 15 000 / USD 15 000 amount allowed for in the FATF Recommendations, it is recommended that this threshold be lowered to a level than is reliably under EUR 15 000 / USD 15 000 even when currency fluctuations occur.</li> <li>Korea should require, in law or regulation, that financial institutions conduct CDD in cases where several transactions below the designated threshold appear to be linked (e.g. structuring) and that the period of time over which transactions should be linked should be greater than twenty-four-hours (e.g. at least one week) in order to identify structured transactions intended to avoid the threshold for occasional transactions.</li> <li>In addition, the assessment team recommends that Korea: <ul style="list-style-type: none"> <li>Require in law or regulation that CDD be conducted for all occasional transactions over EUR 1 000 / USD 1 000 which are wire transfers, including obtaining and verifying full originator information.</li> <li>Expressly limit the customer identification documents upon which financial institutions are permitted to rely, in the case of natural persons, to documents which include photographic identification, or, in situations when photographic identification is not practicable, require additional secondary measures to mitigate the increased risk accompanying such situations.</li> </ul> </li> </ul> |

| AML/CFT SYSTEM                                  | RECOMMENDED ACTION (LISTED IN ORDER OF PRIORITY)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|-------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                 | <ul style="list-style-type: none"> <li>o Require secondary verification of customer identification information (for both natural and legal persons) by law or regulation. In this respect, authorities should consider creating a legally binding obligation to authenticate identification documents by contacting the issuing agency or through notarisation, and/or requirements to develop independent contact with the customer via telephone, postal or electronic mail to verify the veracity of contact information. Korea should also consider adopting the verification procedures applicable to legal persons suggested by the Basel Committee.</li> <li>o Expressly provide in law or regulation that financial institutions must verify whether or not the representative agent of a legal person is authorised to act for the legal person.</li> <li>o Establish an obligation to identify and verify beneficial ownership information. The definition of beneficial owners should be changed, so that it includes only natural persons who ultimately own or control a customer or the person(s) on whose behalf a transaction is being conducted, not legal persons who “ultimately” control a customer.</li> <li>o Make the prohibition against reduced CDD in situations where there is a suspicion of ML or TF explicit in law, regulation or other enforceable means.</li> </ul> <p><i>Recommendation 6</i></p> <ul style="list-style-type: none"> <li>• Korean authorities should adopt a broader understanding of PEPs in order to deal effectively with the higher risk this customer category presents, particularly with respect to former officials and close associates. It is recommended that Korea establish requirements in law, regulation or other enforceable means for financial institutions to: <ul style="list-style-type: none"> <li>o Have risk management systems to determine whether a potential customer, a customer or the beneficial owner is a PEP.</li> <li>o Obtain senior management approval for establishing business relationships with PEPs.</li> <li>o Take reasonable measures to establish the source of wealth and source of funds of customers and beneficial identified as PEPs.</li> <li>o Conduct enhanced ongoing monitoring of business relationships with PEPs.</li> </ul> </li> </ul> <p><i>Recommendation 7</i></p> <ul style="list-style-type: none"> <li>• Rather than allowing them to rely on a questionnaire and contract, financial institutions should be directed to conduct independent investigations of a respondent institution in order to understand fully the nature of the respondent's business and to determine its reputation and quality of supervision (including whether it has been subject to a ML or TF financing investigation or regulatory action). Institutions should also be required to independently assess, including with site visits, where appropriate, the respondent institution's AML/CFT controls, and ascertain that they are adequate and effective. They should also be required to obtain senior management approval before establishing correspondent banking relationships and should be required to document the responsibilities of each institution. While use of payable-through accounts appears not to be common in Korea, this practice should either be prohibited by law or should have obligations attached to it to ensure that appropriate CDD is conducted and institutions share relevant information.</li> </ul> |
| 3.3 Third parties and introduced business (R.9) | <ul style="list-style-type: none"> <li>• Since reliance on third parties to perform some elements of the CDD process is possible in practice, it is recommended that Korea clearly regulate in which situations such reliance on third parties is permitted. Obligations should be established specifying that financial institutions relying on a third parties must immediately obtain from the third party information concerning the CDD process; that financial institutions</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |

| AML/CFT SYSTEM                                                                   | RECOMMENDED ACTION (LISTED IN ORDER OF PRIORITY)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
|----------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                                                  | <p>relying on third parties must take adequate steps to satisfy themselves that copies of identification data and other relevant documentation relating to CDD requirements will be made available from the third party upon request without delay; that financial institutions relying on third parties must satisfy themselves that the third party is regulated and supervised and have measures in place to comply with CDD obligations; and, that the ultimate responsibility for customer identification and verification remains with the financial institution even when it relies on third parties to conduct some of its CDD.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| 3.4 Financial institution secrecy or confidentiality (R.4)                       | <ul style="list-style-type: none"> <li>• A provision exists which limits the sharing of customer identification information between financial institutions in such a way as to impact full implementation of Recommendation 7 and Special Recommendation VII and it is recommended that this obstacle be removed.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| 3.5 Record keeping and wire transfer rules (R.10 & SR.VII)                       | <p><i>Recommendation 10</i></p> <ul style="list-style-type: none"> <li>• It is recommended that Korea consider placing clear record keeping requirements, including with respect to reconstruction of transactions, within the <i>Real Name Financial Transactions Act</i> or one of the other acts related to AML/CFT. Details provided in the <i>AML Enforcement Guidelines</i> would be useful in that regard. It is further recommended that Article 4(1) of the <i>Real Name Financial Transactions Act</i> be amended to ensure that institutions are obliged to provide the information to authorities 'on a timely basis'.</li> </ul> <p><i>Special Recommendation VII</i></p> <ul style="list-style-type: none"> <li>• Some limited obligations are in place in Korea with respect to wire transfers. Useful guidance exists within the <i>AML Enforcement Guidelines</i> and institutions appear to be working towards compliance with this document. It is therefore recommended that the contents of the guideline be transposed into law or regulation in order to establish requirements for financial institutions.</li> </ul>                                                                                                                                                                                                                                                                                                                                                |
| 3.6 Monitoring of transactions and relationships (R.11 & 21)                     | <ul style="list-style-type: none"> <li>• It is recommended that Korean authorities conduct a review of this area and introduce a direct obligation in law, regulation or other enforceable means for financial institutions to pay special attention to all complex, unusual large transactions, as called for under Recommendation 11. Financial institutions should also be required to examine the background and purpose of such transactions, set forth findings in writing and maintain records for competent authorities and auditors for at least five years.</li> <li>• While transactions with jurisdictions that either do not or insufficiently apply the <i>FATF Recommendations</i> would likely be subject to internal monitoring under the general risk-based AML/CFT obligation, it is recommended that Korean authorities implement a direct obligation in law, regulation or other enforceable means requiring special attention to business relationships and transactions with high-risk jurisdictions. This special attention should include a requirement to investigate such transactions and prepare written records to assist competent authorities.</li> <li>• Competent authorities could also provide more clear guidance to financial institutions concerning the actions to be taken with respect to the advisories issued with respect to insufficient application of the <i>FATF Recommendations</i> in certain jurisdictions or regional areas.</li> </ul> |
| 3.7 Suspicious transaction reports and other reporting (R.13-14, 19, 25 & SR.IV) | <ul style="list-style-type: none"> <li>• As noted previously in Section 2.1 of this report, the list of predicate offences in POCA does not cover all the categories of offences required by the FATF. As this limitation in scope of predicate offences has the potential to limit the scope of the STR reporting obligation, it is recommended that POCA be amended to incorporate these offences as predicates and to ensure that predicate offences in Korea include a range of offences in each of the designated categories of offences.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |

| AML/CFT SYSTEM                                                            | RECOMMENDED ACTION (LISTED IN ORDER OF PRIORITY)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
|---------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                                           | <ul style="list-style-type: none"> <li>• It is recommended that Korea remove the reporting threshold of USD 10 000 / KRW 20 million prescribed in the <i>Presidential Decree of the Financial Transaction Reports Act</i> as a matter of priority.</li> <li>• The Korean Government should consider amending the FTRA to explicitly require that STRs be submitted even for attempted transactions.</li> <li>• Limitations in the scope of the TF offence have the potential to consequentially limit the scope of the STR reporting requirement related to TF and should therefore be addressed.</li> <li>• No explanation has been provided for the relatively high number of STRs received from the futures companies, the negligible filings from the forestry co-operatives or the decline in STRs from the community credit co-operatives and from the mutual savings banks. It is recommended that more attention be paid to ensuring that these sectors are reporting effectively.</li> <li>• Reporting entities would benefit from further guidelines specific to their sectors, in particular for the securities companies, insurance companies and currency changers.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| 3.8 Internal controls, compliance, audit and foreign branches (R.15 & 22) | <ul style="list-style-type: none"> <li>• It is recommended that legislative amendments be made which ensure explicitly that: <ul style="list-style-type: none"> <li>o The internal controls which must be established include internal controls for AML/CFT.</li> <li>o Institutions must communicate the internal controls to their employees.</li> <li>o Compliance officers are appointed at a management level.</li> <li>o One role of the audit function is to test compliance (including sample testing) with the internal AML/CFT procedures, policies and controls.</li> <li>o Institutions are required to have ongoing internal AML/CFT training to ensure that employees are kept informed of new developments.</li> <li>o Institutions are required to have screening procedures to ensure high standards when hiring employees.</li> </ul> </li> <li>• Korean financial institutions are required to ensure that their foreign branches observe the AML/CFT measures in the FTRA and its enforcement decree consistent with home country requirements. It is recommended that legislative amendments be made to apply this requirement to subsidiaries as well as to foreign branches and to ensure that AML/CFT measures contained in other pieces of legislation are also applicable to overseas branches and subsidiaries.</li> <li>• It is recommended that: <ul style="list-style-type: none"> <li>o Korean authorities and institutions ensure that information is provided to the foreign branches and subsidiaries about jurisdictions which insufficiently apply the <i>FATF Recommendations</i>.</li> <li>o Financial institutions be required to implement systems that pay special attention to the application of AML/CFT measures in branches and subsidiaries located in jurisdictions which insufficiently apply the <i>FATF Recommendations</i>.</li> <li>o Financial institutions be required, where the home and host country requirements differ, to apply the higher of the two standards wherever possible.</li> </ul> </li> </ul> |
| 3.9 Shell banks (R.18)                                                    | <ul style="list-style-type: none"> <li>• It is recommended that the <i>Banking Act</i> be amended to prohibit financial institutions to enter into or continue correspondent banking relationships with shell banks. Further, a requirement should be established that financial institutions satisfy themselves that respondent financial institutions in foreign countries do not permit their accounts to be used</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |

| AML/CFT SYSTEM                                                                                                                                                     | RECOMMENDED ACTION (LISTED IN ORDER OF PRIORITY)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                                                                                                                                    | by shell banks.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| <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> | <p><i>Recommendation 23</i></p> <ul style="list-style-type: none"> <li>• It is recommended that, in addition to providing assistance to inspections conducted by entrusted agencies, KoFIU should provide comments and feedback to the entrusted agencies regarding the scope of inspections, on-site inspection plans, common deficiencies found and actions taken for deficiencies.</li> <li>• It is recommended that the Ministry of the Knowledge Economy and the self-regulatory bodies be provided with increased resources to allow them to pay more attention to their AML/CFT inspection role.</li> <li>• Some sectors are exempted from some AML/CFT obligations and are not as actively supervised as others. However, even in these areas it is recommended that KoFIU provide more support to the entrusted agencies, especially in the form of training and educational programs, to raise the awareness of these sectors to ML risks.</li> <li>• It is recommended that either the FSC or the FSS establish clear guidance on the licensing procedure and fit and proper test of management to ensure the foreign shareholders or management come from countries where the AML/CFT legal requirements imposed on them are at least equal to those of Korea. In addition, there should be adequate countermeasures measures available to apply in cases where the Korean AML/CFT measures cannot apply to the overseas branches and subsidiaries which are located in countries which do not adequately apply the FATF standards.</li> <li>• As KoFIU has entrusted the supervisory functions to FSS, Bank of Korea and some other entities, it is recommended that KoFIU establish more clear co-ordination and oversight of the AML/CFT supervision work. It is recommended that KoFIU designate one of its divisions as responsible for following up on the outcomes of on-site inspections and practical difficulties in the implementation of the AML/CFT measures.</li> <li>• It is recommended that the FSS on-site examination manuals be updated to cope with the new requirements of the FTRA and the <i>Enforcement Decree of the Financial Transaction Reports Act</i> which came into force in December 2008. It is recommended that additional review procedures be established to check institutions' internal AML/CFT policies and controls, risk management systems, enhanced CDD, on-going monitoring and oversight for high risk customers.</li> </ul> <p><i>Recommendation 25</i></p> <ul style="list-style-type: none"> <li>• It is recommended that KoFIU and other relevant supervisory authorities develop sector-specific AML/CFT guidance.</li> </ul> <p><i>Recommendation 29</i></p> <ul style="list-style-type: none"> <li>• It is recommended that Korea clearly establish a full range of sanction powers which can be applied as appropriate to the full range of possible breaches of AML/CFT obligations.</li> </ul> <p><i>Recommendation 17</i></p> <ul style="list-style-type: none"> <li>• It is recommended that the maximum penalties be increased to a level proportionate to the most severe breaches which may be found in institutions. Further, supervisory authorities should review their current approach to sanctioning to ensure that they are applying sanctions which are proportionate to the severity of the breaches and are truly dissuasive.</li> </ul> |
| <p>3.11 Money value transfer services (SR.VI)</p>                                                                                                                  | <ul style="list-style-type: none"> <li>• As it is only financial institutions in Korea which may conduct international remittances, Korea's compliance with this Recommendation is inextricably linked to its compliance with other Recommendations which apply to financial institutions. The evaluation team's</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |

| AML/CFT SYSTEM                                                           | RECOMMENDED ACTION (LISTED IN ORDER OF PRIORITY)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|--------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                                          | <p>recommendations, elsewhere in this report, particularly with respect to Recommendations 4-7, 9-11, 13, 15, 17, 21-23, 29 and Special Recommendation VII, are also relevant here.</p> <ul style="list-style-type: none"> <li>It is recommended that supervisory authorities when inspecting businesses for other matters also be alert to the possibility that illegal remittance activity may be occurring. In addition, KCS and other authorities could focus more broadly at looking for signs of underground banking as well as alternative remittance.</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>It is recommended that Korea follow through on the research conducted on DNFBPs by conducting a national risk assessment of the DNFBP sectors and imposing AML/CFT obligations on all other types of DNFBP. During that process it is recommended that training and education programs be provided to all DNFBP sectors to raise awareness of AML/CFT risks.</li> <li>The obligations imposed on casinos are identical to those in place for financial institutions and thus the recommendations made in earlier sections of this report for strengthening Korea's compliance with Recommendations 5, 6 and 9-11 are also relevant here. It is recommended that KoFIU issue sector-specific guidance and information on sector-specific risks and ML techniques and trends to help casinos implement their new obligations.</li> <li>It is recommended that Korea consider removing or substantially reducing the threshold for CDD on occasional transactions as it applies to casinos.</li> </ul> |
| 4.2 Suspicious transaction reporting (R.16)                              | <ul style="list-style-type: none"> <li>It is recommended that Korea include the other DNFBPs as reporting entities for the purposes of the FTRA, broaden the requirements in that act which relate to internal controls and establish a requirement that DNFBPs, as well as financial institutions, pay special attention to business relationships and transactions with persons from or in jurisdictions which insufficiently apply the FATF Recommendations.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| 4.3 Regulation, supervision and monitoring (R.24-25)                     | <ul style="list-style-type: none"> <li>It is recommended that Korea conduct a national risk assessment of the DNFBP sectors and impose AML/CFT obligations on all other types of DNFBP. During that process it is recommended that guidance, training and education programs be provided to all DNFBP sectors to raise awareness of AML/CFT risks.</li> <li>It is recommended that KoFIU be provided with adequate resources and expertise in casino operations in order to carry out its new role as AML/CFT supervisor for casinos. Close communication should be established between KoFIU, the Ministry of Culture, Sports and Tourism and the Casino Association for information exchange pertaining to supervisory issues, and for education and awareness programs. In terms of awareness-raising and guidance, it is recommended that KoFIU issue sector-specific guidance and information on sector-specific risks and ML techniques and trends to help casinos implement their new obligations.</li> </ul>                       |
| 4.4 Other non-financial businesses and professions (R.20)                | <ul style="list-style-type: none"> <li>It is recommended that, while the initiative taken by the Korea Racing Authority may indeed have substantially reduced the threat of ML in that business, a follow-up study be conducted to determine whether any additional measures are needed. Further it is recommended that Korean authorities conduct similar studies with respect to other forms of gambling and other often-vulnerable businesses such as auction houses and dealers in high value goods to determine whether CDD and other AML/CFT obligations should be implemented for those businesses.</li> <li>It is recommended that the Korean government explore further options for reducing the reliance on cash, such as active development and</li> </ul>                                                                                                                                                                                                                                                                      |

| AML/CFT SYSTEM                                                                         | RECOMMENDED ACTION (LISTED IN ORDER OF PRIORITY)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
|----------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                                                        | promotion of secure payment systems.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| <b>5. Legal Persons and Arrangements &amp; Non-Profit Organisations</b>                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| 5.1 Legal Persons – Access to beneficial ownership and control information (R.33)      | <ul style="list-style-type: none"> <li>• Korea should ensure that competent authorities have access to accurate and current information on the ultimate beneficial owners and controllers of all legal persons on a timely basis.</li> <li>• It is recommended that Korea: <ul style="list-style-type: none"> <li>o Implement measures to ensure that a broader range of beneficial ownership information is collected by companies.</li> <li>o Either implement measures to ensure transparency with respect to, or prohibit, bearer shares and nominee directors.</li> <li>o Ensure that beneficial ownership information on companies held by the NTS is not subject to tax secrecy for other government agencies, including law enforcement.</li> </ul> </li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| 5.2 Legal Arrangements – Access to beneficial ownership and control information (R.34) | <ul style="list-style-type: none"> <li>• It is recommended that Korea implement a system of central trust registration and enhance CDD for these vehicles including with respect to ultimate beneficial ownership. In addition, it is recommended that tax secrecy laws be relaxed in relation to personal and business trusts.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| 5.3 Non-profit organisations (SR.VIII)                                                 | <ul style="list-style-type: none"> <li>• It is recommended that Korea: <ul style="list-style-type: none"> <li>o Conduct targeted NPO sector outreach through its multiple administrative authorities to raise awareness on the risks of abuse of the sector for funding terrorism.</li> <li>o Establish effective coordination and information sharing mechanisms between the NPO administrative authorities; between those authorities and other government agencies; and between law enforcement and those NPOs authorities.</li> <li>o Issue comprehensive CFT guidance for NPOs in accordance with SR.VIII.</li> <li>o Promote and implement measures to ensure full transparency among NPOs.</li> <li>o Conduct further and more frequent on-site NPO inspections to ensure that NPOs are complying with all necessary legal/statutory requirements.</li> <li>o Provide administrative authorities with adequate resources to monitor NPO sector.</li> <li>o Establish points of contact among all NPO sector authorities to respond to international information requests.</li> <li>o Implement all other elements included in the Interpretative Note to SR.VIII.</li> <li>o Consider implementing elements of the SR.VIII Best Practices Paper.</li> </ul> </li> </ul> |
| <b>6. National and International Co-operation</b>                                      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| 6.1 National co-operation and co-ordination (R.31)                                     | <i>There are no recommendations for this section.</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| 6.2 The Conventions and UN Special Resolutions (R.35 & SR.I)                           | <ul style="list-style-type: none"> <li>• Little is in place to implement the <i>Terrorist Financing Convention</i> and relevant Security Council resolutions. Recommendations for reform in these respects are enumerated in Sections 2.2 and 2.4 of this report.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| 6.3 Mutual Legal Assistance (R.36-38 & SR.V)                                           | <p><i>Recommendation 36</i></p> <ul style="list-style-type: none"> <li>• It is recommended that Korea consider expanding the present legislative provision that expressly allows assistance to international organisations to be provided outside formal MLA to expressly include other direct assistance to investigatory and prosecuting authorities in other jurisdictions.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |

| AML/CFT SYSTEM                                | RECOMMENDED ACTION (LISTED IN ORDER OF PRIORITY)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
|-----------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                               | <ul style="list-style-type: none"> <li>There is potential for conflicts of jurisdiction and it is recommended therefore that Korea consider devising mechanisms for determining best venue for prosecution of defendants in the interests of justice.</li> </ul> <p><i>Recommendation 38</i></p> <ul style="list-style-type: none"> <li>Korea does not have arrangements for co-ordinating seizure and confiscation actions with other countries, relying instead on <i>ad hoc</i> arrangements. Such arrangements would be beneficial for much the same reasons in respect of a mechanism for determining the best venue for prosecution.</li> </ul> |
| 6.4 Extradition (R.39, 37 & SR.V)             | <ul style="list-style-type: none"> <li>Korea has an extradition treaty network that covers the major economies. Further expansion of this network would be a continued improvement and this should include expanding the multilateral treaties that have been ratified, for example the UNCAC.</li> <li>Legislative change to the <i>Extradition Act</i> making it an obligation and giving the authorities the power to prosecute in lieu of extradition is recommended.</li> </ul>                                                                                                                                                                  |
| 6.5 Other Forms of Co-operation (R.40 & SR.V) | <i>There are no recommendations for this section.</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| <b>7. Other Issues</b>                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| 7.1 Resources and statistics (R.30 & 32)      | <i>There are no recommendations for this section.</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| 7.2 Other relevant AML/CFT measures or issues | <i>There are no recommendations for this section.</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| 7.3 General framework – structural issues     | <i>There are no recommendations for this section.</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |

**Table 3: Authorities' Response to the Evaluation**

| RELEVANT SECTIONS<br>AND PARAGRAPHS | JURISDICTION'S COMMENTS |
|-------------------------------------|-------------------------|
|                                     |                         |

## **ANNEXES**

**Annex 1: Abbreviations**

**Annex 2: All Bodies met during the on-site visit**

**Annex 3: Provisions of key laws, regulations and other measures**

**Annex 4: List of all laws, regulations and other material received**

## ANNEX 1: Abbreviations

| ABBREVIATION | FULL TERM                                                                                                            |
|--------------|----------------------------------------------------------------------------------------------------------------------|
| AML          | Anti-money laundering                                                                                                |
| APG          | Asia/Pacific Group on Money Laundering                                                                               |
| ASPIT        | Act on Special Cases Concerning the Prevention of Illegal Trafficking in Narcotics, Psychotropic Substances and Hemp |
| ATM          | Automatic teller machine                                                                                             |
| BNI          | Bearer negotiable instruments                                                                                        |
| BOK          | Bank of Korea                                                                                                        |
| CDD          | Customer due diligence                                                                                               |
| CEO          | Chief Executive Officer                                                                                              |
| CFT          | Combating the financing of terrorism                                                                                 |
| CPA          | Certified public accountant                                                                                          |
| CTR          | Cash transaction report                                                                                              |
| DNFBP        | Designated non-financial businesses and profession                                                                   |
| EFTA         | European Free Trade Agreement                                                                                        |
| ESW          | Egmont secure web                                                                                                    |
| EU           | European Union                                                                                                       |
| EUR          | Euro                                                                                                                 |
| FATF         | Financial Action Task Force                                                                                          |
| FETA         | Foreign Exchange Transactions Act                                                                                    |
| FIU          | Financial intelligence unit                                                                                          |
| FSAP         | Financial Sector Assessment Program                                                                                  |
| FSC          | Financial Services Commission                                                                                        |
| FSS          | Financial Supervisory Service                                                                                        |
| FTA          | Free trade agreement                                                                                                 |
| FTC          | Fair Trade Commission                                                                                                |
| FTRA         | Financial Transaction Reports Act                                                                                    |
| GDP          | Gross domestic product                                                                                               |
| IAIS         | International Association of Insurance Supervisors                                                                   |
| ID           | Identity document                                                                                                    |
| IMF          | International Monetary Fund                                                                                          |
| IOSCO        | International Organisation of Securities Commissions                                                                 |
| IT           | Information technology                                                                                               |
| KCS          | Korea Customs Service                                                                                                |
| KoFIS        | KoFIU IT system                                                                                                      |
| KoFIU        | Korea Financial Intelligence Unit                                                                                    |

| ABBREVIATION | FULL TERM                                                        |
|--------------|------------------------------------------------------------------|
| KRW          | South Korean Won                                                 |
| KYE          | Know your employee                                               |
| LEA          | Law enforcement agency                                           |
| ME           | Mutual evaluation                                                |
| ML           | Money laundering                                                 |
| MLA          | Mutual legal assistance                                          |
| MLAT         | Mutual legal assistance treaty                                   |
| MOFE         | Ministry of Finance and Economy                                  |
| MOU          | Memorandum of understanding                                      |
| NCCT         | Non-cooperative countries and territories                        |
| NEC          | National Election Commission                                     |
| NPA          | National Police Agency                                           |
| NPO          | Non-profit organisation                                          |
| NTS          | National Tax Service                                             |
| OFAC         | Office of Foreign Assets Control                                 |
| PEP          | Politically exposed person                                       |
| PFOPIA       | Prohibition of Financing for Offences of Public Intimidation Act |
| POCA         | Proceeds of Crime Act                                            |
| PVA          | Punishment of Violences Act                                      |
| PPO          | Public Prosecutors Office                                        |
| Q&A          | Question and answer                                              |
| SDN          | Specially designated nationals or blocked persons                |
| SPO          | Supreme Prosecutors Office                                       |
| SRO          | Self-regulatory organisation                                     |
| SSL          | Secure sockets layer                                             |
| STR          | Suspicious transaction report                                    |
| TF           | Terrorist financing                                              |
| UAE          | United Arab Emirates                                             |
| UK           | United Kingdom                                                   |
| UN           | United Nations                                                   |
| UNSC         | United Nations Security Council                                  |
| US           | United States                                                    |
| USD          | United States Dollar                                             |
| VAT          | Value-added tax                                                  |
| VPN          | Virtual private network                                          |
| WCO          | World Customs Organisation                                       |

## ANNEX 2: All Bodies Met During the On-site Visit

### Government Agencies

|                                                                                                     |                                                                                                     |
|-----------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------|
| Anti-corruption and Civil Rights Commission                                                         | Ministry of Foreign Affairs                                                                         |
| Bank of Korea                                                                                       | Ministry of Justice                                                                                 |
| Commercial Registration Office                                                                      | Ministry of Public Administration and Security                                                      |
| Fair Trade Commission                                                                               | Ministry of Strategy and Finance                                                                    |
| Financial Services Commission                                                                       | National Election Commission                                                                        |
| Financial Supervisory Service                                                                       | National Police Agency, including the Incheon Police Agency                                         |
| Judicial Police                                                                                     | National Supreme Court Deposit and Corporation Registration Division                                |
| Korea Customs Service (Seoul Main Customs and Incheon Customs at the Incheon International Airport) | National Tax Service                                                                                |
| Korea Financial Intelligence Unit                                                                   | Public Prosecutors Office (the Supreme Prosecutors Office and Incheon District Prosecutors' Office) |
| Ministry of Culture, Sports and Tourism,                                                            |                                                                                                     |

### Industry Bodies

|                                                            |                                                  |
|------------------------------------------------------------|--------------------------------------------------|
| Asset Management Association                               | Korea Life Insurance Association                 |
| Canning Fisheries Co-operatives                            | Korea Security Dealers Association               |
| DongDaeMunSangGa Community Credit Co-operative             | Korean Bar Association                           |
| Frozen and Cold Storage Fisheries Co-operatives            | Korean Institute of Certified Public Accountants |
| General Insurance Association of Korea                     | Korean Real Estate Brokers Association           |
| Korea Association of Dealers in Precious Metals and Stones | MokDong Community Credit Co-operative            |
| Korea Casino Association                                   | National Federation of Fisheries Co-operatives   |
| Korea Federation of Banks                                  |                                                  |

### Private Sector

|                                                      |                                                        |
|------------------------------------------------------|--------------------------------------------------------|
| 7Luck Casino                                         | Representatives from the accounting profession         |
| Dongbu Savings Bank                                  | Representatives from the legal profession              |
| Grand Hyatt Hotel                                    | Representatives from the real estate agents profession |
| Gwanak Credit Union                                  | Representatives from trust companies                   |
| Hotel Lotte                                          | Representatives of NPOs                                |
| Hyundai Securities                                   | Samil PricewaterhouseCoopers                           |
| Kangwon Land Casino                                  | Samsung Life Insurance                                 |
| Kookmin Bank                                         | Samyangdong Credit Union                               |
| Korea Exchange Bank                                  | Shinhan Bank                                           |
| Paradise Casino                                      | Woori Bank                                             |
| Representative dealers in precious metals and stones |                                                        |

### ANNEX 3: Provisions of Key Laws, Regulations and Other Measures

#### ACT ON REAL NAME FINANCIAL TRANSACTIONS AND GUARANTEE OF SECRECY

Act No. 5493, Dec. 31, 1997  
Amended by Act No. 5552, Sep. 16, 1998  
Act No. 6051, Dec. 28, 1999  
Act No. 6062, Dec. 28, 1999  
Act No. 6429, Mar. 28, 2001  
Act No. 6682, Mar. 30, 2002  
Act No. 7115, Jan. 29, 2004  
Act No. 7189, Mar. 12, 2004  
Act No. 7886, Mar. 24, 2006  
Act No. 8863, Feb. 29, 2008

##### Article 1 (Purpose)

The purpose of this Act is to realize economic justice and to facilitate the sound development of national economy by implementing real name financial transactions and protecting financial secrets through normalized financial transactions.

##### Article 2 (Definitions)

For the purpose of this Act, the definitions of terms shall be as follows:

<Amended by Act No. 6062, Dec. 28, 1999; Act No. 6429, Mar. 28, 2001; Act No. 6682, Mar. 30, 2002; Act No. 8863, Feb. 29, 2008>

1. The term “financial institutions” means:
  - (a) The Bank of Korea, Korea Development Bank, Export-Import Bank of Korea, Industrial Bank of Korea, and financial institutions under the Banking Act;
  - (b) The Long-Term Credit Bank under the Long-Term Credit Bank Act;
  - (c) Short-term finance companies under the Short-Term Financial Business Act;
  - (d) Merchant banks under the Merchant Banks Act;
  - (e) Mutual savings banks and the Federation of Savings Banks under the Mutual Savings Banks Act;
  - (f) Agricultural cooperatives and the National Agricultural Cooperative Federation under the Agricultural Cooperatives Act;
  - (g) Fisheries cooperatives and the National Federation of Fisheries Cooperatives under the Fisheries Cooperatives Act;
  - (h) Livestock cooperatives and the National Livestock Cooperatives Federation under the Livestock Cooperatives Act;
  - (i) Ginseng cooperatives and the National Ginseng Cooperatives Federation under the Ginseng Cooperatives Act;
  - (j) Credit unions and the National Credit Union Federation under the Credit Unions Act;
  - (k) Community credit cooperatives and the Korean Federation of Community Credit Cooperatives under the Community Credit Cooperatives Act;
  - (l) Trust companies under the Trust Business Act, and management companies under the Securities Investment Trust Business Act;
  - (m) Securities companies, securities finance companies, brokerage companies, and institutions performing stock transfers on behalf of others under the Securities and Exchange Act;
  - (n) Insurers under the Insurance Business Act;
  - (o) Post offices under the Postal Savings and Insurance Act; and
  - (p) Other institutions as determined by the Presidential Decree;
2. The term “financial assets” means cash and securities, such as demand deposits, installment deposits, installments, fraternity dues, depositary receipts, investments, trust property, stocks, bonds, beneficiary certificates, contribution quotas, bills, checks and debt certificates which are dealt with by financial institutions, and other similar items as determined by Ordinance of the Prime Minister;

3. The term “financial transactions” means transactions in which financial institutions receive, sell and purchase, repurchase, mediate, discount, issue, redeem, are entrusted with, register, or exchange financial assets, or in which financial institutions pay interest, money discounted, or dividends of those financial assets or carry out such payment as an agent, or other transactions involving financial assets as determined by Ordinance of the Prime Minister; and
4. The term “real name” means a name entered in a resident registration card, a name entered in the business registration certificate, and other names as determined by the Presidential Decree.

#### **Article 3 (Real Name Financial Transactions)**

- (1) Financial institutions shall perform financial transactions with customers under their real names.
- (2) Notwithstanding the provisions of paragraph (1), financial institutions may decide not to verify real names of the customers concerned in case of any transactions falling under the following subparagraphs: <Amended by Act No. 6682, Mar. 30, 2002>
  1. Continuous transactions by accounts in which the real names of the persons concerned have been verified, and transactions such as receipt of public impositions and transfers of not more than one million won, as determined by the Presidential Decree;
  2. Transactions such as the purchase of foreign currency, receipt of deposits in foreign currency or transfers of bonds in foreign currency, during the period as determined by the Presidential Decree; and
  3. Transactions of bonds which fall under any of the following items (hereinafter referred to as “specific bonds”) and are issued under the issue terms such as the period, interest rate, and maturity as determined by the Minister of Finance and Economy between the date of entry into force of this Act and December 31, 1998:
    - (a) Bonds issued for employment stabilization security, improvement of workers’ vocational abilities and livelihood stabilization as determined by the Presidential Decree;
    - (b) Bonds in foreign currency which are foreign exchange equalization fund bonds referred to in Article 14 of the Foreign Exchange Control Act;
    - (c) Bonds issued for restructuring assistance to small and medium businesses, as determined by the Presidential Decree;
    - (d) Corporate bonds referred to in Article 160 of the Securities and Exchange Act; and
    - (e) Other bonds issued for the stabilization of people’s livelihood and the sound development of the national economy, as determined by the Presidential Decree.
- (3) The verification methods and procedures of real name transactions and other necessary matters shall be determined by Ordinance of the Prime Minister. <Amended by Act No. 6682, Mar. 30, 2002; Act No. 8863, Feb. 29, 2008>

#### **Article 4 (Guarantee of Secrecy of Financial Transactions)**

- (1) No person working for financial institutions shall not provide or reveal information or data concerning the contents of financial transactions (hereinafter referred to as “transaction information”) to other persons unless he receives a request or consent in writing from the holder of a title deed (in case of trust, meaning a trustor or beneficiary), and no person may request a person working for financial institutions to provide transaction information: Provided, That the same shall not apply to any of the following cases in which the said transaction information is requested or provided to the minimum limit necessary for the purpose of use thereof: <Amended by Act No. 6682, Mar. 30, 2002; Act No. 7886, Mar. 24, 2006; Act No. 8863, Feb. 29, 2008>
  1. Provision of transaction information by a court order to produce evidence, or by a warrant issued by a judge;
  2. Provision of tax data which must be submitted under tax-related Acts, and provision of transaction information necessary to confirm inherited or donated property, confirm evidence to show a suspicion of tax evasion, request taxpayer’s property, and make legal inquiries and investigation into taxes due to the cause falling under any subparagraph of Article 14 (1) of the National Tax Collection Act by the heads of the competent agencies;
  3. Provision of transaction information by the Governor of the Financial Supervisory Service and the President of the Korea Deposit Insurance Corporation through a resolution by the relevant investigation committees, as necessary for the legislative investigation of state affairs under the Act on the Inspection and Investigation of State Administration;
  4. Provision of transaction information necessary to supervise and inspect financial institutions by the Financial Services Commission (referring to the Securities Futures Commission in the case of investigation of unfair trades in the securities or futures markets; hereafter the same shall apply in this Article), the Governor of the Financial Supervisory Service and the President of the Korea Deposit Insurance Corporation, where it falls

under any of the following items and where it is to be presented to the investigation committees pursuant to subparagraph 3:

- (a) Where it is necessary to investigate inside transactions and unfair transaction practices;
  - (b) Where it is necessary to detect financial misconduct such as embezzlement of deposits from customers or cash withdrawal after receiving payments without sources;
  - (c) Where it is necessary to investigate unsound financial transaction practices such as receipt of compulsory deposits and issuance of cashier's checks;
  - (d) Where it is necessary to investigate the violation of Acts and subordinate statutes such as a violation of real name financial transactions, off-book transactions, loans for contributors or one individual in excess of the limit; and
  - (e) Where it is necessary for the deposit insurance services under the Depositor Protection Act and to carry out the functions of making a list of depositors by the President of the Deposit Insurance Corporation under the Act on the Structural Improvement of the Financial Industry;
5. Provision of transaction information necessary for business inside any financial institution or between financial institutions;
6. Provision of transaction information, etc. that are necessary for the Financial Services Commission and the Governor of the Financial Supervisory Service to cooperate with foreign financial supervisory institutions (including international financial supervisory bodies; hereinafter the same shall apply), which perform the work equivalent to the Commission's or Service's work, in facilitating their work cooperation on the matters falling under each of the following items:
- (a) The supervision and the inspection of financial institutions, the overseas branches of the financial institutions and local corporations, etc.; and
  - (b) The cooperation in facilitating the exchange of information, etc. and the inspection, etc. provided for in Article 206-4 of the Securities and Exchange Act and Article 95-7 of the Futures Trading Act;
7. Provision of transaction information, etc., which are held by securities companies and futures traders and are needed by the Korea Securities and Futures Exchange that is established pursuant to the Korea Securities and Futures Exchange Act (hereinafter referred to as the "Korea Securities and Futures Exchange") in the case falling under each of the following subparagraphs:
- (a) Where the examination or the supervision are performed on any abnormal transaction pursuant to the provisions of Article 19 of the Korea Securities and Futures Exchange Act; and
  - (b) Where it is necessary to cooperate with any foreign exchange, etc. that perform the work equivalent to the work of the Korea Securities and Futures Exchange in connection with the examination or the supervision of any abnormal transaction: Provided, That the same shall apply only to a case where prior approval therefor is obtained from the Financial Services Commission; and
8. Other provision of any transaction information under Acts which must be disclosed to various persons under the relevant Acts.
- (2) A person who requests transaction information pursuant to paragraph (1) 1 through 4, or 6 through 8 shall do so at a specified business place of a financial institution by means of the standard form as stipulated by the Financial Services Commission containing the following subparagraphs: Provided, That in the event that anyone intends to request the provisions of transaction information, etc. referred to in paragraph (1) 1 and transaction information, etc. referred to in paragraph (1) 2, both of which are concerned with a person who is recognized to be suspected of having evaded the income tax or the corporate tax, which is corroborated by indisputable data on his holding period of real estate (including any right to such real estate; hereafter in this paragraph the same shall apply), the number of his real estate, the scale of his transaction of real estate and his ways of executing real estate transaction, etc. in connection with the real estate transaction prescribed by the Presidential Decree and that it is necessary to confirm the fact of his evading taxes (including any person who has acted as an agent or a broker for the transaction of the relevant real estate) or transaction information, etc. that are necessary to inquire about the property of any defaulter whose arrearage amounts to not less than 10 million won under the conditions as prescribed by the Presidential Decree, he may request the department which keeps and manages transaction information to provide such information: <Amended by Act No. 6682, Mar. 30, 2002; Act No. 7115, Jan. 29, 2004; Act No. 7886, Mar. 24, 2006; Act No. 8863, Feb. 29, 2008>
- 1. Personal information on the holder of a title deed;
  - 2. Trade period subject to a request;
  - 3. Legal ground for a request;
  - 4. Purpose of the use of information;
  - 5. Contents of transaction information requested; and

6. Personal information, such as the name and duties, etc., of the person in charge and the responsible person in the institution to be requested.
- (3) Where persons working for financial institutions receive a request for the provision of transaction information in violation of paragraph (1) or (2), they shall refuse it.
- (4) No person who comes to know transaction information pursuant to paragraph (1) (including Article 5 (1) 1 through 4 of the previous Real Name Financial Transactions Act and each subparagraph of Article 4 (1) of the Presidential Financial and Economic Emergency Order on Real Name Financial Transactions and Guarantee of Secrecy) shall provide or disclose such information to other persons, or use such information for other purposes than the original purpose, and no person shall request a person who comes to know such information to provide such information: Provided, That the same shall not apply to a case where the Financial Services Commission or the Governor of the Financial Supervisory Service provides any foreign financial supervisory institution with the transaction information, etc. that it or he has learned pursuant to the provisions of paragraph (1) 4 and 6 or the Korea Securities and Futures Exchange provides any foreign exchange, etc. with any transaction information pursuant to the provisions of paragraph (1) 7. <Amended by Act No. 7886, Mar. 24, 2006; Act No. 8863, Feb. 29, 2008>
- (5) Persons who have transaction information provided or disclosed in violation of paragraph (1) or (4) (including those who have obtained transactions information again from them) shall not provide or disclose it to others where they come to know such violation.
- (6) Where provision of transaction information is requested pursuant to any of the following Acts, it shall be based upon the standard form as stipulated by the Financial Services Commission under paragraph (2), notwithstanding the provisions of relevant Acts: <Newly Inserted by Act No. 6682, Mar. 30, 2002; Act No. 7115, Jan. 29, 2004; Act No. 7189, Mar. 12, 2004; Act No. 8863, Feb. 29, 2008>
  1. Article 27 (2) of the Board of Audit and Inspection Act;
  2. Article 134 (2) of the Act on the Election of Public Officials and the Prevention of Election Malpractices;
  3. Article 8 (5) of the Public Service Ethics Act;
  4. Article 50 (5) of the Monopoly Regulation and Fair Trade Act;
  5. Article 83 (1) and (2) of the Inheritance Tax and Gift Tax Act;
  6. Article 10 (3) of the Act on Report on Specific Financial Transaction Information and Utilization Thereof, etc.; and
  7. Article 6 (1) of the Act on the Submission and Management of Taxation Data.

#### **Article 4-2 (Notice of Fact to Provide Transaction Information)**

- (1) Where a financial institution has provided transaction information with the written consent of the holder of a title deed, or has provided it pursuant to Article 4 (1) 1, 2 (excluding taxable data, etc. that shall be submitted under the tax-related Acts), 3 and 8, the financial institution shall notify in writing the holder of a title deed of the major contents, purpose of use, person to be provided, and date of provision, etc., within 10 days from the date of such provision (where such notice is deferred under paragraph (2) or (3), the date on which the deferred period of notice expires). <Amended by Act No. 7886, Mar. 24, 2006>
- (2) Where a financial institution receives a written request for a deferment of notice from a requester for transaction information subject to notice on the grounds falling under any of the following subparagraphs, the financial institution shall defer such notice for the requested deferment period (6 months where the deferment of notice has been requested for 6 months or longer on the grounds of subparagraph 2 or 3):
  1. Where the relevant notice carries a matter of concern about threatening the safety of human life or body;
  2. Where the relevant notice carries a matter of obvious concern about obstructing the progress of fair legal procedures such as destruction of evidence or threat to witness; or
  3. Where the relevant notice carries a matter of obvious concern about obstructing, or delaying to excess, the progress of administrative procedures such as an interrogation or investigation.
- (3) A financial institution shall, where a requester for transaction information presents that the reasons falling under any subparagraph of paragraph (2) is continued, and repeatedly requests in writing a deferment of notice, defer such notice for the requested deferment period within the limit of 3 months for each time, limited to only twice from the date of such request (excluding the case of paragraph (2) 1): Provided, That where a requester for transaction information under Article 4 (1) 2 (excluding taxable data, etc. that shall be submitted under the tax-related Acts) requests a deferment of notice, it shall defer such notice for the requested deferment period within 6 months from such date.
- (4) Expenses spent by any financial institution to notify the title holder of the fact of provision of transaction information, etc. under paragraph (1) shall be borne by anyone who has requested provision of such transaction

information, etc. pursuant to Article 4 (1) under the conditions as prescribed by the Presidential Decree. <Newly Inserted by Act No. 7115, Jan. 29, 2004>

- (5) Where provision of transaction information is requested pursuant to any of the following Acts, paragraphs (1) through (4) shall be applicable: <Amended by Act No. 7115, Jan. 29, 2004; Act No. 7189, Mar. 12, 2004>
1. Article 27 (2) of the Board of Audit and Inspection Act;
  2. Article 134 (2) of the Act on the Election of Public Officials and the Prevention of Election Malpractices;
  3. Article 8 (5) of the Public Service Ethics Act;
  4. Article 50 (5) of the Monopoly Regulation and Fair Trade Act;
  5. Article 83 (1) and (2) of the Inheritance Tax and Gift Tax Act; and
  6. Article 6 (1) of the Act on the Submission and Management of Taxation Data.
- [This Article Newly Inserted by Act No. 6682, Mar. 30, 2002]

#### **Article 4-3 (Record and Management of Details concerning Provision of Transaction Information)**

- (1) A financial institution shall record and manage, pursuant to the standard form as stipulated by the Financial Services Commission, information containing the following subparagraphs, in case where it has provided transaction information to other persons than the holder of a title deed with his written consent, has received a request for provision of transaction information from other persons than the holder of a title deed pursuant to Article 4 (1) 1, 2 (excluding taxable data, etc. that shall be submitted under the tax-related Acts), 3, 4, 6, 7 or 8 or has provided transaction information to other persons than the holder of a title deed: <Amended by Act No. 7886, Mar. 24, 2006; Act No. 8863, Feb. 29, 2008>
1. Personal information on a requester (person in charge and responsible person), details and date of such request;
  2. Personal information on a provider (person in charge and responsible person) and the date of provision;
  3. Details of transaction information provided;
  4. Legal ground for provision; and
  5. Date on which the financial institution has notified the holder of a title deed.
- (2) Records under paragraph (1) shall be preserved for 5 years from the date of provision of transaction information (where such provision has been refused, the date of receiving a request for such provision).
- (3) Where provision of transaction information is requested pursuant to any of the following Acts, paragraphs (1) and (2) shall be applicable: <Amended by Act No. 7115, Jan. 29, 2004; Act No. 7189, Mar. 12, 2004>
1. Article 27 (2) of the Board of Audit and Inspection Act;
  2. Article 134 (2) of the Act on the Election of Public Officials and the Prevention of Election Malpractices;
  3. Article 8 (5) of the Public Service Ethics Act;
  4. Article 50 (5) of the Monopoly Regulation and Fair Trade Act;
  5. Article 83 (1) and (2) of the Inheritance Tax and Gift Tax Act;
  6. Article 10 (3) of the Act on Report on Specific Financial Transaction information and Utilization Thereof, etc.; and
  7. Article 6 (1) of the Act on the Submission and Management of Taxation Data.
- [This Article Newly Inserted by Act No. 6682, Mar. 30, 2002]

#### **Article 4-4 (Duties of Financial Services Commission)**

The Financial Services Commission shall collect the statics data on demand and provision of transaction information under this Act or other Acts, and at the request of the National Assembly, submit a report thereon to the National Assembly. <Amended by Act No. 8863, Feb. 29, 2008> [This Article Newly Inserted by Act No. 6682, Mar. 30, 2002]

#### **Article 5 (Differential Taxation on Income Accruing from Non-Real Name Assets)**

With respect to the income from interests and dividends accruing from financial assets transacted under non-real names, the withholding tax rate for income tax shall be 90/100 (20/100 (15/100 on and after January 1, 2001) for the income from interests arising from specific bonds), and such income shall not be included in the calculation of tax base for global income referred to in Article 14 (2) of the Income Tax Act. <Amended by Act No. 5552, Sep. 16, 1998; Act No. 6051, Dec. 28, 1999>

#### **Article 6 (Penal Provisions)**

- (1) A person who violates the provisions of Article 4 (1) or (3) through (5) shall be punished by imprisonment for not more than five years or by a fine not exceeding thirty million won.

- (2) Penalty of imprisonment and fines pursuant to paragraph (1) may be concurrently imposed.

#### **Article 7 (Fine for Negligence)**

- (1) Officers and employees of financial institutions who violate the provisions of Articles 3, 4-2 (1) and (5) (limited to the case where the provisions of Article 4-2 (1) are applied) and 4-3 shall be punished by a fine for negligence not exceeding five million won. <Amended by Act No. 6682, Mar. 30, 2002; Act No. 7115, Jan. 29, 2004>
- (2) A fine for negligence pursuant to paragraph (1) shall be imposed and collected by the Financial Services Commission under the conditions as determined by the Presidential Decree. <Amended by Act No. 6682, Mar. 30, 2002; Act No. 8863, Feb. 29, 2008>
- (3) A person who is dissatisfied with the disposition of a fine for negligence pursuant to paragraph (2) may file an objection with the Financial Services Commission within 30 days from the date of receipt of notice of such disposition. <Amended by Act No. 6682, Mar. 30, 2002; Act No. 8863, Feb. 29, 2008>
- (4) Where a person subject to disposition pursuant to paragraph (2) has filed an objection under paragraph (3), the Financial Services Commission shall notify the competent court without delay, upon receiving such notification, the court shall bring the case of the fine for negligence to trial under the Non-Contentious Case Litigation Procedure Act. <Amended by Act No. 6682, Mar. 30, 2002; Act No. 8863, Feb. 29, 2008>
- (5) Where neither the objection is filed nor the fine for negligence is paid within the period under paragraph (3), it shall be collected according to the example of a disposition on national taxes in arrears.

#### **Article 8 (Joint Penal Provisions)**

When the representative of a juristic person, or an agent, an employee, or any other employed person of a juristic person or an individual commits the offense prescribed in Article 6 or 7 in relation to any business or duty of the said juristic person or individual, a fine or a fine for negligence stipulated in respective Articles shall also be imposed on that juristic person or that individual in addition to the punishment of the actual offender.

#### **Article 9 (Relations with Other Acts)**

- (1) Where this Act conflicts with other Acts, this Act shall apply.
- (2) Notwithstanding the provisions of paragraph (1), at the time when the Presidential Financial and Economic Emergency Order on Real Name Financial Transactions and Guarantee of Secrecy enters into force, Acts applied in preference to the said Presidential Financial and Economic Emergency Order shall govern in preference to this Act.

### **ADDENDA**

#### **Article 1 (Enforcement Date)**

This Act shall enter into force on the date of its promulgation.

#### **Article 2 (Repeal of Emergency Order)**

The Presidential Financial and Economy Emergency Order on Real Name Financial Transactions and Guarantee of Secrecy (hereinafter referred to as the "Emergency Order") shall be hereby repealed.

#### **Article 3 (General Transitional Measures)**

Except as otherwise provided by this Act, the guarantee of secrecy in financial transactions, conversion of assumed or borrowed name for financial assets into real ones and taxation at the source of income from financial assets prior to the entry into force of this Act shall be governed by the previous Emergency Order.

#### **Article 4 (Transitional Measures on Penal Provisions)**

The application of penal provisions and fines for negligence to acts committed prior to the entry into force of this Act shall be governed by the previous Emergency Order.

#### **Article 5 (Verification of Real Names for Existing Financial Assets)**

- (1) For holders of title deed for financial assets whose real names are not verified before the entry into force of this Act from among financial assets for which financial accounts have been opened prior to the entry into force of the previous Emergency Order (hereinafter referred to as "existing financial assets"), financial institutions shall verify whether any name is real when the first financial transactions are executed after the entry into force of this Act.

- (2) Financial institutions shall not pay, redeem, refund or repurchase existing financial assets which are not verified pursuant to paragraph (1) or for which it is confirmed that they are not real names.
- (3) The provisions of Articles 7 and 8 shall apply mutatis mutandis to cases in which the officers or employees of financial institutions violate the provisions of paragraph (1) or (2). In this case, the term “Article 3” of Article 7 (1) shall be deemed to read “Article 5 (1) or (2) of the Addenda”.

**Article 6 (Imposition of Charges on Those who have Converted into Real Names)**

- (1) Financial institutions shall collect withholding taxes as charges at the source of the amount calculated by applying 50/100 to the value of financial assets as of the date of entry into force of the previous Emergency Order and pay them to the Government by the 10th day of the following month in which they are collected, where customers with existing financial assets convert their names into real ones after the entry into force of this Act.
- (2) Where it is deemed difficult for customers with existing financial assets to convert their names into real ones for any cause as determined by the Presidential Decree but where they convert their names into real ones within one month from the date on which such cause disappears, charges shall not be imposed notwithstanding the provisions of paragraph (1).
- (3) Where, in case of paragraph (1), charges collected or to be collected by financial institutions are not paid in full within the time limit, the Minister of Finance and Economy shall collect additional dues equivalent to 10/100 of the charges, plus unpaid charges, from the financial institutions.
- (4) The Minister of Finance and Economy may delegate the functions on the collection, payment, delinquent disposition and refund of charges and additional dues referred to in paragraphs (1) and (3) (hereinafter referred to as “collection”) to the Commissioner of the National Tax Administration.
- (5) The National Tax Collection Act, the Framework Act on National Taxes and the Income Tax Act shall apply mutatis mutandis with respect to the collection of charges and additional dues referred to in paragraphs (1) and (3). In this case, the term “national taxes” shall be deemed to read “charges”.

**Article 7 (Taxation at Source for Income Tax on Real Name-Converted Assets)**

- (1) For interest and dividend income derived from existing financial assets converted into real names after the entry into force of this Act, financial institutions shall collect withholding taxes at the source of the total amount of deficiencies in withholding taxes referred to in any of the following subparagraphs, and shall pay them to the Government by the 10th day of the following month:
  1. Balance when the existing income tax amount collected at the source is deducted from the amount of withholding taxes at the source of income calculated by applying the withholding tax rate referred to in Article 5 for interest and dividend income derived after the entry into force of this Act;
  2. Balance when the existing income tax amount collected at the source is deducted from the amount of withholding taxes at the source of income calculated by applying the withholding tax rate referred to in Article 9 of the previous Emergency Order for interest and dividend income derived before the entry into force of this Act from October 13, 1993; and
  3. Amount of withholding taxes at the source of income tax calculated pursuant to Article 8 (1) of the previous Emergency Order for interest and dividend income derived until October 12, 1993.
- (2) The amount of income tax collected at the source pursuant to paragraph (1) shall be within the limit of the value of financial assets concerned as of the date of conversion into real names.
- (3) The provisions of Article 158 (1) of the Income Tax Act shall not apply where financial institutions tax at the source for income tax and pay it pursuant to paragraph (1).

**Article 8 (Special Cases for Tax Investigations on Real Name-Converted Financial Assets)**

- (1) Notwithstanding tax Acts, investigations shall not be made into the source of funds for existing financial assets converted into real names after the entry into force of this Act, and obligations to pay taxes which arose prior to the entry into force of the previous Emergency Order based on the tax data for financial assets concerned shall not be imposed: Provided, That this shall not apply in any of the following subparagraphs:
  1. Where the financial assets have been converted into the real name of a person of less than thirty years of age and the value exceeds thirty million won; and
  2. Where taxes are imposed based on the tax data other than the financial assets.
- (2) Financial institutions shall notify the Commissioner of the National Tax Administration of the converted contents on the financial assets referred to in paragraph (1) 1 as determined by the Presidential Decree.

- (3) The provisions of paragraph (1) shall also apply to financial assets which have been converted into real names and reported to the Commissioner of the National Tax Administration prior to the entry into force of this Act.

#### **Article 9 (Special Cases for Tax Investigations on Transactions of Specific Bonds)**

Notwithstanding tax Acts, investigations shall not be made into the source of funds for bearers of specific bonds, and obligations to pay taxes which arose prior to the purchase of such bonds based on the tax data shall not be imposed: Provided, That this shall not apply where taxes are imposed based on the tax data other than the funds which purchased the bonds.

#### **Article 10 (Special Cases for Tax Investigations on Small and Medium Business Investments)**

- (1) Where any resident referred to in Article 1 of the Income Tax Act falls under any of the following subparagraphs during the period as determined by the Presidential Decree, investigations shall not be made into the sources of funds in connection with such contributions or investments for such funds notwithstanding tax Acts, and obligations to pay taxes which arose prior to the contribution or investment based on the tax data shall not be imposed: Provided, That this shall not apply where taxes are imposed based on the tax data other than the funds contributed or invested:
1. Where he contributes to any small and medium business (limited to juristic persons) as determined by the Presidential Decree;
  2. Where he contributes to any small and medium enterprise establishment investment company, small and medium enterprise establishment investment association or other similar juristic person or association under the Support for Small and Medium Enterprise Establishment Act, as determined by the Presidential Decree;
  3. Where he contributes to any financial institution which provides assisting funds to small and medium businesses as determined by the Presidential Decree; and
  4. Where he converts beneficiary certificates of any venture business investment trust referred to in Article 13-3 (1) 2 of the Regulation of Tax Reduction and Exemption Act.
- (2) Any resident who intends to be subject to the provisions of paragraph (1) 3 shall contribute imposts on contribution (hereinafter referred to as “contribution imposts”) to any credit guarantee institution as determined by the Presidential Decree.
- (3) The provisions of the main sentence of paragraph (1) shall not apply in cases falling under any of the following subparagraphs:
1. Where a person of less than thirty years of age contributes or invests;
  2. Where he contributes or invests in the method of transfer of another’s contribution quotas or beneficiary certificates; and
  3. Where he falls under any of the following subparagraphs before five years have elapsed from the date of contribution or investment: Provided, That this shall not apply due to the contributor’s or investor’s death or other causes as determined by the Presidential Decree:
    - (a) Where he transfers or recovers his contribution quotas referred to in paragraph (1) 1 through 3; and
    - (b) Where he transfers beneficiary certificates of any venture business investment trust referred to in paragraph (1) 4, or a management company referred to in Article 2 (3) of the Securities Investment Trust Act repurchases the beneficiary certificates; and
  4. Where it is deemed that he has contributed or invested to evade taxes, as determined by the Presidential Decree.
- (4) The contribution imposts referred to in paragraph (2) shall be an amount calculated by applying the following bearing rates to respective amounts of contributions:
- |                               |                                                                          |
|-------------------------------|--------------------------------------------------------------------------|
| <Amount of Contributions>     | <Bearing Rates>                                                          |
| Not more than one billion won | 10/100 of the amount of contributions                                    |
| More than one billion won     | One hundred million won + 15/100 of the amount exceeding one billion won |
- (5) The contribution method of contribution imposts and other necessary matters shall be determined by the Presidential Decree.

#### **Article 11 (Promoting Real Name Financial Transactions and Total Taxation)**

Organizations in exclusive charge established under Article 11 of the previous Emergency Order shall exist until the time as determined by the Presidential Decree.

**Article 12 Deleted. <by Act No. 6051, Dec. 28, 1999>**

**Article 13 (Amendment of Other Acts and Relations with Other Acts and Subordinate Statutes)**

- (1) through (7) Omitted.
- (8) Where other Acts and subordinate statutes cite the previous Emergency Order or its provisions at the time of the entry into force of this Act, this Act or the corresponding provisions of this Act shall be deemed to have been cited if this includes the provisions corresponding to them.

**Article 14 (Examples of Application pursuant to Amendment of Other Acts)**

- (1) The amended provisions of the Inheritance Tax and Gift Tax Act under Article 13 (3) of the Addenda shall apply to the determination of inheritance taxes or gift taxes levied for the first time after the entry into force of this Act.
- (2) The amended provisions of the Act on Special Tax for Rural Development under Article 13 (7) of the Addenda shall apply to the payment of income derived for the first time after January 1, 1998.

**ADDENDA <Act No. 5552, Sep. 16, 1998>**

**Article 1 (Enforcement Date)**

This Act shall enter into force on the first day of the month following the month to which the date of its promulgation belongs.

Articles 2 through 4 Omitted.

**ADDENDA <Act No. 6051, Dec. 28, 1999>**

**Article 1 (Enforcement Date)**

This Act shall enter into force on January 1, 2000: Provided, That ... (Omitted.) ... the provisions of Article 12 of the Act on Real Name Financial Transactions and Guarantee of Secrecy (Act No. 5493) amended under the provisions of Article 6 (2) of this Addenda shall enter into force on January 1, 2001.

Articles 2 through 5 Omitted.

**Article 6 (Amendment to Other Acts) Omitted.**

**Article 7 (Examples of Application pursuant to Amendment to Other Acts)**

The provisions of the Act on Special Rural Development Tax amended under Article 6 (1) of this Addenda or the provisions of Article 5 of the Act on Real Name Financial Transactions and Guarantee of Secrecy amended under Article 6 (2) of this Addenda shall apply to the portion of income accrued on and after the date of its promulgation. In this case, the tax rate (15/100) to be applied on and after January 1, 2001 shall apply to the portion of income accrued on and after January 1, 2001.

**ADDENDA <Act No. 6062, Dec. 28, 1999>**

**Article 1 (Enforcement Date)**

This Act shall enter into force on March 1, 2000.

Articles 2 and 3 Omitted.

**ADDENDA <Act No. 6429, Mar. 28, 2001>**

**Article 1 (Enforcement Date)**

This Act shall enter into force on the date as prescribed by the Presidential Decree within the limit not exceeding two years from the date of its promulgation. (Proviso Omitted.) Enforcement date of this Act shall be March 1, 2002, pursuant to the Presidential Decree No. 17519, February 25, 2002 Articles 2 through 11 Omitted.

**ADDENDUM <Act No. 6682, Mar. 30, 2002>**

This Act shall enter into force on July 1, 2002.

**ADDENDUM <Act No. 7115, Jan. 29, 2004>**

This Act shall enter into force six months after the date of its promulgation.

**ADDENDA <Act No. 7189, Mar. 12, 2004>**

Article 1 (Enforcement Date)

This Act shall enter into force on the date of its promulgation.

Articles 2 through 18 Omitted.

**ADDENDUM <Act No. 7886, Mar. 24, 2006>**

This Act shall enter into force three months after the date of its promulgation.

**ADDENDA <Act No. 8863, Feb. 29, 2008>**

Article 1 (Enforcement Date)

This Act shall enter into force on the date of its promulgation.

Articles 2 through 5 Omitted.

**FINANCIAL TRANSACTION REPORTS ACT**

Amended February 29, 2008

(unofficial translation)

**Article 1 (Purpose)**

The purpose of *the Financial Transaction Reports Act* (hereinafter the “Act”) is to set forth matters related to the filing and the use of financial transaction reports required to regulate money laundering activities and financing for offences of public intimidation using financial transactions including foreign currency transactions, thereby preventing crimes and contributing to establishment of a sound and transparent financial system.

**Article 2 (Definitions)**

For the purpose of this Act, the definitions of the terms shall be as follows:

1. “Reporting entities” include the following:
  - a. Korea Development Bank, Export-Import Bank of Korea, Industrial Bank of Korea, and other financial institutions governed by *the Banking Act*;
  - b. Long-term credit banks governed by *the Long-Term Credit Banks Act*;
  - c. Investment trading companies, investment brokerage companies, collective investment companies, trust companies, securities finance companies, merchant banks and institutions providing book entry services governed by *the Act on the Capital Market and Financial Investment Services*;
  - d. Mutual savings banks and Korea Federation of Savings Banks governed by *the Mutual Savings Banks Act*;
  - e. Agricultural cooperatives and the National Agricultural Cooperatives Federation governed by *the Agricultural Cooperatives Act*;
  - f. Fisheries cooperatives and the National Federation of Fisheries Cooperatives governed by *the Fisheries Cooperatives Act*;
  - g. Credit cooperatives and the Central Credit Cooperative Association governed by *the Credit Cooperatives Act*;

- h. Community credit cooperatives and the Korean Federation of Community Credit Cooperatives governed by *the Saemaul Savings Depository Act*;
  - i. Deleted;
  - j. Deleted;
  - k. Insurance companies governed by *the Insurance Business Act*;
  - l. Postal offices governed by *the Postal Savings and Insurance Act*;
  - m. Deleted; and
  - n. Casinos licensed under the *Tourism Promotion Act* (hereinafter “casinos”); and
  - o. Others who conduct financial transactions referred to in Paragraph 2 of this Article as prescribed in the *Presidential Enforcement Decree of the Financial Transaction Reports Act* (the “*Enforcement Decree*” hereinafter).
2. “Financial transactions” include each of the following:
- a) transactions in which reporting entities receive, sell and purchase, repurchase, mediate, discount, issue, redeem, are entrusted with, register, or exchange financial assets (“financial assets” as defined in Article 2 Paragraph 2 of the *Real Name Financial Transactions and Guarantee of Secrecy*, or in which reporting entities pay interest, money discounted, or dividends of those financial assets or act for such payment, or other transactions involving financial assets as determined by the *Enforcement Rule of the Real Name Financial Transactions and Guarantee of Secrecy*;
  - b) Financial transactions in the derivatives market pursuant to ‘*the Act on the Capital Market and Financial Investment Services*, and other financial transactions as stipulated in the *Presidential Enforcement Decree*.
  - c) exchange of cash into instruments used as substitutes for cash or checks in a casino specified by the *Presidential Enforcement Decree* and vice versa
3. “Illegal assets” include:
- a) Criminal proceeds and related properties as defined in Article 2 Paragraph 4 of the *Proceeds of Crime Act* (hereinafter the “*POCA*”); and
  - b) Illegal profits, etc. referred to in Article 2 Paragraph 5 of the *Act on Special Cases Concerning Prevention of Illegal Trafficking in Narcotics, etc.*
  - c) “Funds for public intimidation offences” as is defined in Article 2 Paragraph 1 of the “*Prohibition of Financing for Offences of Public Intimidation Act*”
4. “Money laundering” means any of the following:
- a) an offence prescribed in Article 3 of the *POCA*;
  - b) an offences prescribed in Article 7 of the *Act on Prevention of Illegal Trafficking of Narcotic Substances*; and
  - c) Disguising of facts related to acquisition or disposition of assets or the origin of assets, or concealing such assets with the intention of committing offences prescribed in Article 9 of the *Punishment of Tax Evaders Act*, Article 270 of the *Customs Act*, or Article 8 of the *Act on the Aggravated Punishment of Specific Crimes*
5. “Financing for offences of public intimidation” means any act that constitutes an offence prescribed in Article 6 Paragraph 1 of the “*Prohibition of Financing for Offences of Public Intimidation Act*”

### **Article 3 (Korea Financial Intelligence Unit)**

- 1. Korea Financial Intelligence Unit (hereinafter “KoFIU”) shall be established under the Financial Services Commission to perform the following functions:
  - 1. Compiling, analyzing, and disseminating information that are reported to it pursuant to Articles 4, 4-2, and 6 of this Act <Amended Jan.17, 2005>;
  - 2. Supervision and inspection of financial institutions’ operations in accordance with Articles 4, 4-2, 5, and 5-2 of this Act <Amended Jan.17, 2005>;
  - 3. Cooperation and exchange of information with foreign financial intelligence units pursuant to Article 4 ⑥ 2 of this Act; and
  - 4. Activities related to the *Prohibition of Financing for Offences of Public Intimidation Act*; and
  - 5. Other activities related to the activities described in 1 through 4 above as prescribed in the *Presidential Enforcement Decree*.

2. KoFIU shall perform its duties as an independent unit. KoFIU's employees shall not be engaged in any duty other than those set out in this *Act* or the *Prohibition of Financing for Offences of Public Intimidation Act*.
3. The number of regular staff, organizational structure, operational system, and other matters related to KoFIU shall be determined by the *Presidential Enforcement Decree* taking into consideration the functional independence and political neutrality of KoFIU.
4. The Commissioner of KoFIU (herein the "Commissioner") shall report annually to the National Assembly all of the following with respect to the operation of KoFIU under ① above:
  1. Number of reports filed by financial institutions pursuant to Article 4;
  2. Number of cases where specific financial transaction information was disseminated to law enforcement agencies pursuant to Article 7;
  3. Number of information exchanges with foreign FIUs pursuant to Article 8; and
  4. Other statistical data related to the operation of KoFIU.

#### **Article 4 (Suspicious Transaction Reports)**

1. A reporting entity shall report without delay to the Commissioner if any of the following is the case in accordance with relevant provisions in the *Presidential Enforcement Decree*:
  1. If it has a reasonable ground to suspect that the fund that they received in relation to a financial transaction is an illegal asset or that the customer is engaged in money laundering or financing for offences of public intimidation and the amount involved in the transaction equals or exceeds the threshold prescribed in the *Presidential Enforcement Decree*;
  2. If it has a reasonable ground to suspect that the customer is making financial transactions divided into smaller amounts to evade the provision in Paragraph 1 above and the total amount of such related transactions equals or exceeds the thresholds prescribed in the *Presidential Enforcement Decree*; or
  3. If it has filed a report to the competent law enforcement agency pursuant to Article 5 Paragraph 1 of the *POCA* or Article 5 Paragraph ② of the *Prohibition of Financing for Offence of Public Intimidation Act*..
2. A reporting entity may file a report to the Commissioner when it has a reasonable ground to suspect that the fund that it received in relation to a financial transaction is an illegal asset or that the customer is engaged in money laundering or financing for offences of public intimidation even if the amount of transaction is less than the threshold referred to in ① 1 above or the threshold for the total amount of related transactions referred to in 2. above.
3. A reporting entity shall clearly state the ground for the suspicion when filing a report pursuant to 1. or 2. above.
4. A reporting entity shall keep the following records with regards to a report that it files pursuant to 1. or 2. above for five years starting from the date of such filing in accordance with the provisions in the *Presidential Enforcement Decree*:
  1. Customer identification information that includes the real name of the customer;
  2. Records of the financial transaction for which the report was filed in accordance with ① or ② above; and
  3. Documentation of the ground for suspicion.
5. The Commissioner may view or make photocopies of the records that a reporting entity keeps pursuant to ④ above when required to analyze whether a report filed meets the description of a financial transaction referred to in 1. or 2. above.
6. No employee of a reporting entity shall divulge to any other person including the counterparty of the transaction about which a report has been filed or will be filed pursuant to Paragraph 1. or 2. above the fact that a report has been or will be filed. Provided, that this does not apply when any of the following is the case:
  1. sharing of information within the reporting entity is necessary to prevent money laundering or financing for offences of public intimidation; and

2. submitting a report equivalent to a report prescribed in Paragraph 1. or 2. above to a foreign government agency that is responsible for operations specified in each of the subparagraphs of Article 3 Paragraph 1. ("foreign FIU" hereinafter) in accordance with a law and subordinate statutes of such foreign country
7. A reporting entity filing a report pursuant to 1. or 2. above (including employees thereof) shall have no liability to pay for damages to the customer who is the subject of such report or related persons thereof except if it files a false report by intention or gross negligence.

#### **Article 4-2 (Currency Transaction Reports)**

1. A reporting entity shall report to the Commissioner any payment or receipt of cash (except foreign currencies) or such similar means of payment as are designated in the *Presidential Enforcement Decree* in the amount or in excess of the threshold prescribed in the *Presidential Enforcement Decree* within the maximum limit of KRW 50 million within thirty(30) days of handling such payment or receipt. The following, however, are exceptions to the foregoing provision:
  1. Payment or receipt of cash or similar means of payment with a reporting entity(except those stipulated in the *Presidential Enforcement Decree*);
  2. Payment or receipt of cash or similar means of payment between a reporting entity and central governments, local governments, or other government agencies specified in the *Presidential Enforcement Decree*;
  3. Such routine payment or receipt of cash or similar means of payment that pose low risk of money laundering as are specified in the *Presidential Enforcement Decree*
2. A reporting entity shall report to the Commissioner if it has a reasonable ground that a customer is making financial transactions divided into smaller amounts with the intention of evading the provision in 1. above.
3. The Commissioner may designate and operate the following agencies as intermediary agencies in relation to currency transaction reports (hereinafter "intermediary agencies"):
  1. The Korea Federation of Banks established with the license from the Financial Services Commission in accordance with Article 32 of the *Civil Act*;
  2. The Korean Financial Investment Association established under the Article 283 of the *Act on the Capital Market and Financial Investment Services*;
  3. Korea Federation of Savings Bank set up in accordance with the Article 25 of the *Mutual Savings Banks Act*.
4. Specific matters related to the method of report by a reporting entity pursuant to 1. and 2. and designation and operation of intermediary agencies pursuant to 3. above shall be prescribed in the *Presidential Enforcement Decree*.

#### **Article 5 (Designation of Reporting Officer)**

Reporting entities (except the entities specified in the *Presidential Enforcement Decree*) shall take the following measures to facilitate their report pursuant to Article 4 1, 2, and Article 4-2 and to effectively prevent money laundering and financing for offences of public intimidation:

1. Designation of persons responsible for the report stipulated in Article 4 1., 2. and Article 4-2 and establishment of an internal reporting system;
2. Establishment and implementation of internal guidelines for prevention of money laundering and financing for offences of public intimidation; and
3. Training and education of employees regarding prevention of money laundering and financing for offences of public intimidation.

#### **Article 5-2 (Customer Due Diligence)**

1. Reporting entities other than those specified in the *Presidential Enforcement Decree* shall take the following measures to prevent money laundering and financing for offences of public intimidation using financial transactions. In implementing such measures, a reporting entity shall establish and apply internal guidelines:
  1. Checking the customer identification information stipulated in the *Presidential Enforcement Decree* when the customer opens a new account or when the customer makes an occasional financial transaction in the amount or in excess of the threshold prescribed in the *Presidential Enforcement Decree*

2. Checking if the customer is the beneficial owner and obtaining information regarding the purpose of the transaction when it is suspected that the customer is engaged in money laundering or financing for offence of public intimidation
2. The internal guidelines referred to in Paragraph 1. shall include details regarding contents, procedures, and methods of adequate measures designed to prevent money laundering and financing for offences of public intimidation according to types of customers or types of financial transactions
3. Specific matters regarding the customer due diligence measures referred to in Paragraph 1. such as the types of financial transaction/customers subject to such measures, specific criteria, procedure, methods of such measures, and other necessary matters shall be prescribed in the *Presidential Enforcement Decree*.

#### **Article 6 (Foreign Exchange Transaction Records)**

1. The Governor of the Bank of Korea, the commissioners of customs services, and other persons specified in the *Presidential Enforcement Decree* shall provide to the Commissioner records related to the approvals given or reports filed in accordance with Article 17 of the *Foreign Exchange Transactions Act* and records related to the reports prescribed in Article 21 of this *Act*.
2. Matters related to the scope of data sent to the Commissioner of KoFIU pursuant to 1. above and the procedure for the provision of such data shall be prescribed in the *Presidential Decree*.

#### **Article 7 (Dissemination of Information to Law Enforcement Agencies)**

1. The Commissioner shall provide the following information (hereinafter referred to as “specific financial transaction information”) to the Prosecutor General, the Commissioner of the National Tax Service, The Commissioner of the Korea Customs Service, the National Election Commission, or the Financial Services Commission when it is deemed necessary for investigation of criminal cases involving illegal assets, money laundering, or financing for offences of public intimidation, investigation into violation of laws or regulations regarding tax, customs duties, or political funds, or for supervision of the financial sector (hereinafter referred to as “investigation of specified offences”):
  1. Information reported by reporting entities in accordance with Article 4 Paragraph 1. or 2.;
  2. Information provided by foreign FIUs in accordance with Article 8 Paragraph 1.; and
  3. Information generated as a result of compilation or analysis of information referred to in Paragraph 1. or 2. above or in Article 4-2 or Article 6.
2. The Commissioner shall provide to the Commissioner of the National Police Agency financial transaction information specified in the *Presidential Enforcement Decree* when it is deemed necessary for investigation of criminal cases involving illegal assets, money laundering or financing for offences of public intimidation.
3. Deleted
4. The Prosecutor General, the Commissioner of the National Police Agency, the Commissioner of the National Tax Service, the Commissioner of the National Customs Service, the National Election Commission, and the Financial Services Commission (hereinafter “law enforcement and regulatory agencies”) can request that the Commissioner of KoFIU provide information specified in Paragraph 1. Subparagraph 3 above when it is deemed necessary for investigation of specified offences in accordance with the provisions in the *Presidential Enforcement Decree*.
5. The information request referred to in Paragraph ④ above shall be made in a written form stating the information below:
  1. Personal information of the subject;
  2. The intended use of the information; and
  3. Contents of the information requested

6. No employee of KoFIU shall provide information when the information request is made not in conformity with the provisions in Paragraph ⑤ above.
7. When providing information in accordance with Paragraphs 1. through 4. above, the Commissioner of KoFIU shall keep record of the names of the KoFIU employees who were engaged in the analysis of the information, the content of the information provided, and the reason for providing the information for five years starting from the date such information is provided in accordance with the provisions in the *Presidential Enforcement Decree*.

#### **Article 8 (Exchange of Information with foreign FIUs)**

1. The Commissioner may exchange specific financial transaction information with foreign FIU based on the principle of reciprocity when it is deemed necessary for achievement of the objectives of this *Act*.
2. The Commissioner may provide specific financial transaction information to a foreign FIU in accordance with Paragraph 1. above provided that the following conditions are met:
  1. Specific financial transaction information provided by KoFIU to a foreign FIU shall not be used for any purpose other than those for which such information is sought and provided;
  2. The fact that such information was provided shall be kept confidential; and
  3. Specific financial transaction information provided to a foreign FIU shall not be used in any investigation or court proceeding of criminal cases without prior consent of the Commissioner.
3. When requested by a foreign authority, the Commissioner may consent to use of specific financial transaction information provided to a foreign FIU in accordance with Paragraph 1. above in an investigation or court proceeding of a criminal case related to the provided information on the condition that there is consent of the Minister of Justice.

#### **Article 9 (Confidentiality of Financial Transaction Information)**

1. The staff of the KoFIU, employees of intermediary agencies, and persons engaged in investigation of specified offences related to the financial transaction information provided in accordance with Article 7 of this *Act* shall keep confidential all information that he/she obtains in the course of performing his/her duties and the information received in accordance with Article 10 of this *Act* and shall not use such information for any purpose other than those for which such information was provided. No one shall request that an employee of the KoFIU, employees of intermediary agencies, or any person involved in investigation of specified offences to disclose specific financial transaction information or information provided in accordance with Article 10 of this *Act* or to use such information for any purpose other than those for which such information was provided. <Amended Jan.17, 2005>
2. Specific financial transaction information disseminated pursuant to Article 7 cannot be used as evidence in any court proceedings.
3. An employee of a reporting entity engaged in filing of a report referred to in Article 4 Paragraph 1. or 2. may refuse to testify in a trial related to the aforementioned report, except in trials under Article 13 or 14. This provision, however, shall not apply in case where such testimony is required for public interest.

#### **Article 10 (Request for Records)**

1. The Commissioner of KoFIU may request the head of a relevant government authority to provide administrative records(except financial transaction information) specified in the *Presidential Enforcement Decree* when such information is deemed necessary for analysis of specific financial transaction information (for the purpose of this Article, “specific financial transaction information” shall not include information referred to in Article 7 Paragraph 1. Subparagraph 3) and information received in accordance with Article 4-2 or Article 6. <Amended Jan.17, 2005>
2. Subject to the provisions in the *Presidential Enforcement Decree*, the Commissioner of KoFIU may request the head of a credit information provider designated under Article 17 of the *Use and Protection of Credit*

*Information Act* to provide credit information(except financial transaction information) when such information is deemed necessary for analysis of specific financial transaction information. Such request shall be made in a written form stating the intended use of such information.

3. In analyzing specific financial transaction information, the Commissioner of KoFIU may make request for information or records on financial transactions using foreign exchange transactions in accordance with the *Foreign Exchange Transactions Act* to the heads of reporting entities provided that the financial transaction information meets the description of financial information set forth in Article 4 1. or 2.. Such information request shall be made in a written form stating the following information:
  1. Personal information of the customer;
  2. Intended use of the requested information; and
  3. Contents of requested information or records.
4. The request for information or records referred to in Paragraphs 1. through 3. above shall be limited to the minimum necessary.

#### **Article 11 (Supervision and/or Examination of Reporting Entities)**

1. The Commissioner may supervise reporting entities' operations under Articles 4, 4-2, 5, and 5-2 of this *Act*, issue orders or directives required for such supervision, and have his/her staff conduct examinations of reporting entities. <Amended Jan.17, 2005>
2. When a violation of this *Act* or orders/directives issued under this *Act* is detected as a result of an examination referred to in Paragraph ① above, the Commissioner may take necessary measures such as issue of correction order or demand of discipline of persons involved.
3. Subject to the provisions in the *Presidential Enforcement Decree*, the Commissioner may entrust the examination of reporting entities referred to in Paragraph ① above or measures referred to in Paragraph ② above to the Governor of the Bank of Korea, the Governor of the Financial Supervisory Service established under the *Act on Establishment of Financial Services Commission*, or other persons set forth in the *Presidential Enforcement Decree* so that such examination or measures can be carried out by their staffs.
4. Any person conducting examination in accordance with Paragraph 1. or 3. above shall carry certificates indicating such authority and shall present them to the relevant persons.

#### **Article 12 (Relation to Other Laws)**

1. Provisions in Articles 4, 4-2, Articles 6 through 8, and Article 10 shall take priority over Article 4 of the *Act on Real Name Financial Transactions and Guarantee of Secrecy*, Article 23, 27 of the *Use and Protection of Credit Information Act*, and Article 22 of the *Foreign Exchange Transactions Act*.
2. Article 24-2 of the *Use and Protection of Credit Information Act* is not applied to the information provided by financial institutions and intermediate agencies in accordance with this *Act*.

#### **Article 13 (Penalty)**

Any person who falls under any of the following shall be subject to imprisonment for a period not exceeding five years or a fine in an amount not exceeding 30 million won:

1. Any person who, by abusing his/her official authority, accesses and/or makes photocopies of records kept by a reporting entity or requests the head of a reporting entity to provide such records when conditions under Article 4 Paragraph 5. or Article 10 Paragraph 3. are not met.
2. Any person who, in violation of Article 9 Paragraph 1., discloses specific financial transaction information obtained in the course of performing his/her duty or information or records received in accordance with Article 10, or use such information for any purpose other than those for which such information was provided, or any person, in violation of Article 9 Paragraph 1., requests provision of specific financial transaction information or

information provided to KoFIU under Article 10 or requests to use them for any purpose other than those for which such information was provided.

#### **Article 14 (Penal Regulations)**

Any person who falls under any of the followings shall be subject to imprisonment for a period not exceeding 1 year or a fine in an amount not exceeding 5 million won:

1. Any person who makes a false report in relation to the reporting obligation under Article 4 Paragraphs 1. and 2., Article 4-2 Paragraphs 1. and 2. <Amended Jan.17, 2005>; and
2. Any person who violates the provisions under Article 4 Paragraph 6..

#### **Article 15 (Dual Imposition of Imprisonment and Fine)**

A person who commits an offence referred to in Article 13 or 14 may be punished by both imprisonment and a fine.

#### **Article 16 (Dual Punishment)**

When a representative of a legal entity, an agent of a legal entity or an individual, or an employee of a legal entity commits a violation referred to in Article 14 in the course of performing his/her duties, then in addition to penalty imposed on the offender, a fine under the aforementioned Article shall be imposed on such legal entity or individual using the agent.

#### **Article 17 (Administrative Fine)**

1. A person who falls under any of the following shall be subject to a fine in an amount not exceeding 10 million won:
  1. Any person who fails to fulfill his/her obligation to file reports under Article 4 Paragraph 1. Subparagraph 1 or 2 or Article 4-2 Paragraph 1. or 2. <Amended Jan.17, 2005>;
  2. Any person who refuses to comply with an order, a directive, or an examination referred to in Article 11 Paragraphs 1. through 3., or anyone who rejects, obstructs or evades such order, directive, or examination;
2. Administrative fines under Paragraph 1. Subparagraph 1 or 2 shall be charged and collected by the Commissioner subject to provisions in the *Presidential Enforcement Decree*.
3. Any person who refuses to comply with fines imposed in accordance with Paragraph 2. above may appeal to the Commissioner within 30 days of the notification of such penalty.
4. When a person appeals in accordance with Paragraph 3. above with regards to an administrative fine imposed in accordance with 2., the Commissioner shall, without delay, notify the competent court of such fact. Upon receiving such a notice, the competent court shall try the case in accordance with the *Non-Contentious Case Litigation Procedure Act*.
5. If neither an appeal is filed nor is the administrative fine paid within the prescribed period of time referred to in Paragraph 3. above, then the administrative fine shall be collected in accordance with examples of collection of national taxes in arrear.

#### **Addendum <2001.9.27>**

1. (Effective Date)  
This *Act* shall take effect two months after the promulgation.
2. (Scope of Information Request by the Commissioner)  
The scope of the information or records that the Commissioner may request from the head of a reporting entity in accordance with Article 10 Paragraph ③ Subparagraph 3 shall be limited to information or records of financial transactions conducted after this *Act* comes into effect.

3. (Amendment of Other Acts)

The *Political Fund Act* shall be amended as follows:

The following Article 24-4 shall be added.

Article 24-4. (Investigation of Specific Financial Transaction Information)

1. The competent election commission shall be responsible for investigation of specific financial transaction information provided to the National Election Commission pursuant to Article 7 Paragraph ③ of the *Financial Transaction Reports Act*.
2. When carrying out an investigation pursuant to Paragraph ①, the competent election commissions may request relevant political parties, their supporters' associations, and other relevant persons to submit explanatory materials.
3. For matters related to investigation and submission of explanatory materials in accordance with ① or ②, the procedure for filing of appeals described in Article 24-2 shall be applied mutatis mutandis.

**Addendum (the Fisheries Cooperatives Act); <Dec.31, 2004>**

Article 1 (Effective date)

This Act shall take effect after six months from the date of its promulgation.

Articles 2 through 14 Omitted

Article 15 (Amendment of Other Acts)

1., 12. shall be Omitted

13. *The Financial Transaction Reports Act* shall be amended as follows.

"Fisheries cooperatives" In the Article 2 ① f shall be replaced by "Cooperatives".

Article 16 Omitted

**Addendum <Jan.17, 2005>**

(1) (Effective Date)

This Act shall come into effect on the day it is promulgated with the exception of Articles 4-2 and 5-2, which shall come into effect one year after the date of the promulgation.

(2) (Application of Provisions Regarding Currency Transaction Report)

Provisions in Article 4-2 shall be applied starting with the first cash receipt/payment after this Act comes into effect.

(3) (Amendment of Other Acts)

The *Political Fund Act* shall be amended as follows:

Article 24-4 shall be deleted.

In Article 32 Paragraph ②, "Article 24-2 (Access to Information on Assets, Income, and Expenditure and Provision of Photocopies) Paragraph ⑤ [Including mutatis mutandis application of Article 24-4 (Investigation of Specific Financial Transaction Information) Paragraph ③]" shall be replaced by "Article 24-2 (Access to Information on Assets, Income, and Expenditure and Provision of Photocopies) Paragraph ⑤".

**Addendum (the Act on Capital Market and Financial Investment Services) <Aug. 3, 2007>**

Article 1 (Effective Date)

This Act shall take effect after one year and six months from the date of its promulgation.

Article 2 through 41 Omitted

Article 42 (Amendment of Other Acts) 1. to <54> shall be omitted.

<55> The *Financial Transaction Reports Act* shall be amended as follows.

Article 2 1. c shall be amended as follows, and i, j, m shall be deleted.

Investment trading companies, investment brokerage companies, collective investment companies, trust companies, securities finance companies, merchant banks and institutions providing book entry services governed by *the Capital Market and Financial Investment Business Act*;  
<56> through <67> Omitted

Articles 43 and 44 Omitted.

#### **Addendum <Dec. 21, 2007>**

##### **Article 1 (Effective Date)**

This *Act* shall come into effect on the day it is promulgated with the exception of Articles 1, Article 2 1. n, 2. c, 3. c, 5., Article 3 Paragraph 1 4., 5., Paragraph 2, Article 4 Paragraph 1, 2, 6 1. (part related with financing of public intimidation), Article 4-2 Paragraph 1 1., Paragraph 3, 4, Article 5, 5-2, Article 7 1., 2., Article 9 1. and Article 12 2. (part related with an intermediate agency), which shall come into effect one year after the date of the promulgation.

##### **Article 2 (Application of Money Laundering Activities)**

Provisions in Article 2 4. c shall be applied starting with the first money laundering activity after the *Act* takes effect.

##### **Article 3 (Interim Measures on Administrative Fine)**

Administrative Fine shall be imposed on acts that occurred before the enforcement of *the Act* in accordance with previous provisions.

##### **Article 4 (Interim Measures on *the Capital Market and Financial Investment Business Act*)**

1. The transactions in the derivatives market pursuant to Article 2 2. b is regarded as the futures transactions stipulated in Article 3 1., 2. of the *Futures Trading Act* before Feb. 4, 2009.
2. Korea Financial Investment Association pursuant to Article 4-2 Paragraph 3 2. is regarded as Korea Securities Dealers Association established in accordance with Article 162 of the *Securities Trading Act* before Feb. 4, 2009.

#### **Addendum (Act on Establishment of Financial Supervisory Organizations) <2008.2.29>**

Article 1 (Effective Date) This *Act* shall come into effect on the day it is promulgated.

Articles 2 through 4 Omitted

Article 5 (Amendment of Other Acts) ① through <57> Omitted

<58> Financial Transaction Reports Act shall be partially amended as follows;

‘Decree of the Minister of Finance and Economy’ in Article 2 Paragraph 2 Subparagraph a shall be amended to ‘Decree of the Prime Minister’.

‘Minister of Finance and Economy’ in Article 3 Paragraph 1 shall be amended to ‘Financial Services Commission’.

‘Minister of Finance and Economy’ in Article 4-2 Paragraph 3 Subparagraph 1 shall be amended to ‘Financial Services Commission’.

‘Financial Supervisory Committee’ in Article 7 Paragraphs 1 and 4 shall be amended to ‘Financial Services Commission’.

‘Act on Establishment of Financial Supervisory Organizations’ in Article 11 Paragraph 3 shall be amended to ‘Act on Establishment of Financial Services Commission’.

<59> through <85> Omitted

## PROHIBITION OF FINANCING FOR OFFENCES OF PUBLIC INTIMIDATION ACT

Act #8697 Enacted December 21, 2007

Amended February 29, 2008

### Article 1 (Purpose)

The purpose of this *Prohibition of Financing for Offences of Public Intimidation Act* (the “Act” hereinafter) is to implement the ‘*International Convention for the Suppression of the Financing of Terrorism*(1999)’ by setting forth matters necessary to prohibit financing for offences of public intimidation.

### Article 2 (Definition)

Definitions of some of the terms used in this *Act* shall be as follows:

1. “*Funds for Public intimidation Offences*” mean any funds or assets collected, provided, delivered, or kept for use in any of the following acts committed with the intention to intimidate the public or to interfere with the exercise of rights of a national, local, or foreign government (including any foreign local government or international organization established by an international treaty or an international agreement) or to force by intimidation such a government to do something that is outside its duty:
  - a. Any act of murdering a person, posing a threat to human life by causing bodily injury, or arresting, detaining, or capturing a person or taking a person hostage
  - b. Any act against an aircraft (“*aircraft*” as is defined in Article 2 Paragraph 1 of the *Aviation Act*; the same applies hereinafter) involving any of the following:
    - (1) Any act of crashing, overturning, or destroying an aircraft in service (“in service” as is defined in Article 2 Paragraph 1 of the *Aviation Safety and Security Act*; the same applies hereinafter), or causing damage to such an aircraft that is likely to jeopardize the safety of such aircraft;
    - (2) Any act of seizing or exercising control of an aircraft in service by force, by threat thereof, or by any other form of intimidation;
    - (3) Any act of endangering the safe operation of an aircraft by damaging an air navigation facility or interfering with the operation thereof
  - c. Any act against a ship (“*ship*” as is defined in Article 2 Paragraph 1 of the *Law on Punishment of Acts against Ships and Marine Structures*; the same applies hereinafter) or a marine structure (“marine structure” as is defined in Article 2 Paragraph 5 of the *Law on Punishment of Acts against Ships and Marine Structures*; the same applies hereinafter) involving any of the following:
    - (1) Any act of destroying a ship in service (“in service” as is defined in Article 2 Paragraph 2 of the *Law on Punishment on Acts against Ships and Marine Structures*; the same applies hereinafter) or a marine structure or causing damage to a ship, a marine structure, or its cargo so as to endanger the safe navigation of such ship;
    - (2) Any act of seizing a ship in service or a marine structure or exercising control of a ship in service by force, by threat thereof, or by any form of intimidation;
    - (3) Any act of destroying, seriously damaging, or causing malfunctioning of a maritime navigational facility or rendering such a facility incapable of operation so as to endanger the safe navigation of a ship
  - d. Any act of placing or detonating an explosive, an incendiary weapon, or a device that is designed or have the capability to cause death, serious bodily injury or substantial damage to property in or against any of the following or using them in any other ways:
    - (1) Any vehicle, used by the public, for transportation of people or cargo, such as train, train run by electricity, or automobile excluding those referred to in Subparagraph (2);
    - (2) Any infrastructure facility used for operation of a vehicle referred to in Subparagraph (1) or any road, park, station, or any other similar public facility;
    - (3) Any facility used to supply electricity or gas, any waterworks to provide drinking water, any facility to

- use telecommunication, or any other similar facility that is provided for common use or is used by the public;
  - (4) Any facility to produce, refine, process, transport, or store raw materials such as petroleum, inflammable gas, coal or any other fuels;
  - (5) Any building, aircraft, ship that is accessible to the public, excluding those referred to in Subparagraphs (1) through (4)
- e. Any act relating to nuclear materials (“*nuclear materials*” as defined in Article 2 Paragraph 1 of the *Protection of Nuclear Facilities and Prevention of Radiation Disasters Act*; the same applies hereinafter), radioactive materials (“*radioactive materials*” as defined in Article 2 Paragraph 5 of the *Atomic Energy Act*; the same applies hereinafter), or nuclear facilities (“*nuclear facilities*” as defined in Article 2 Paragraph 2 of the *Protection of Nuclear Facilities and Prevention of Radiation Disasters Act*; the same applies hereinafter), involving any of the following:
- (1) Any act of causing death, serious bodily injury, or substantial damage to property or any other act endangering the public safety by destroying a nuclear reactor;
  - (2) Any act of posing a serious risk to human life or body by unlawful handling of radioactive material, a nuclear reactor and related facilities, a nuclear fuel cycle facility, or a radiation generating device;
  - (3) Any act of giving and receiving, possessing, owning, storing, using, transporting, altering, disposing, or dispersing nuclear materials;
  - (4) Any act of releasing radioactive materials or leaking radioactive ray by destroying or damaging nuclear material or a nuclear facility, or doing any act to give rise to such a result, or disturbing normal operation of a nuclear facility
2. A “financial transaction” means any of the financial transactions referred to in Article 2 Paragraph 2 of the *Financial Transaction Reports Act*.

### **Article 3 (Application of the Act to Foreign Exchange Transactions and Foreigners)**

- 1. This Act applies to each of the transactions referred to in Article 2 Paragraph 1 of the *Foreign Exchange Transactions Act*.
- 2. This Act applies to any person who falls under any of the following:
  - 1. Any foreigner (including stateless persons) who commits an offence under Article 6 Paragraph 1 of this Act outside the territory of the Republic of Korea to harm any Korean public facility such as an embassy and facilities that belong thereto or any Korean national;
  - 2. Any foreigner who is within the territory of the Republic of Korea after committing an offence under Article 6 Paragraph 1 of this Act outside the territory of the Republic of Korea

### **Article 4 (Designation of Restricted Persons and Restriction of Financial Transactions)**

- 1. The Financial Services Commission may designate a natural person, legal person, or a group as a restricted person and publicly announce such designation when any of the following is the case:
  - 1. When it is deemed necessary to prevent financing for offences of public intimidation in order to implement an international treaty to which Korea is a party or a generally accepted international law;
  - 2. When it is deemed necessary to prevent financing for offences of public intimidation in order to contribute to the international efforts to maintain global peace and security
- 2. The Financial Services Commission shall have prior consultation with the following before designating a restricted person and announce such designation pursuant to Paragraph 1 above:
  - 1. The Minister of Justice
  - 2. The Minister of Foreign Affairs and Trade
- 3. The Financial Services Commission may require any person designated and announced as a restricted person to seek approval in accordance with the provisions in the Presidential Enforcement Decree before conducting a financial transaction with a reporting entity (“*reporting entity*” as is defined in Article 2 Paragraph 1 of the *Financial Transaction Reports Act*; the same applies hereinafter) or making a payment or accepting a receipt in

relation to such transaction. The Financial Services Commission may delegate to the Governor of the Bank of Korea the authority to grant such approval.

4. When a person designated and announced as a restricted person does not fall under any of the subparagraphs of Paragraph ① above, the Financial Services Commission shall revoke such designation and announce the revocation. Provisions in Paragraph ② shall apply to such revocation.
5. Any person who objects any of the following actions may file an appeal in accordance with the provisions in the Presidential Decree:
  1. Designation as a restricted person pursuant to Paragraph ①;
  2. Denial of approval stipulated in Paragraph ③

#### **Article 5 (Duty of Reporting Entities and Their Employees)**

- ☐ Reporting entities as are defined by the *Financial Transaction Reports Act* (including employees thereof) shall not conduct any financial transaction or make a payment or take a receipt in relation to such financial transaction with any person designated and announced as a restricted person pursuant to Article 4 Paragraph ① of this *Act* except where such transaction is approved pursuant to Article 4 Paragraph ③.
- ☐ Employees of reporting entities shall report, without delay, to the competent law enforcement agency notwithstanding any other legal provision, when they come to the knowledge that the funds that they received are funds for public intimidation offences, that a restricted person is conducting a financial transaction or making a payment or taking a receipt without an approval referred to in Article 4 Paragraph ③, or that the customer is committing an act that constitutes an offence under Article 6 Paragraph ①.
- ☐ An employee of a reporting entity who reported or is going to report under Paragraph ② shall not divulge such fact to the customer who is the subject of the report or any other person related to the customer. This, however, does not apply to any case where it is deemed necessary to divulge such fact to other employees in the same reporting entity to prevent financing for offences of public intimidation.

#### **Article 6 (Penal Regulations)**

- ① Any person who falls under any of the following shall be subject to imprisonment not exceeding 10 years or a fine not exceeding KRW 100 million:
  1. Any person who collects, provides, delivers, or keeps funds or assets with the knowledge that such funds or assets are used as funds for public intimidation offences;
  2. Any person who encourages or requests collection, provision, delivery, or keeping of funds or assets with the knowledge that such funds or assets are used as funds for public intimidation offences;
- ② Any person who falls under any of the following shall be subject to imprisonment not exceeding three years or a fine not exceeding KRW 30 million:
  1. Any person who obtains the approval stipulated in Article 4 Paragraph ③ through deceitful means or any other unlawful means and conducts a financial transaction or makes a payment or accepts a receipt in relation to such transaction under such approval;
  2. Any person who conducts a financial transaction or makes a payment or accepts a receipt in relation to such transaction without due approval stipulated in Article 4 Paragraph ③
  3. Any employee of a reporting entity who handles a financial transaction in violation of Article 5 Paragraph ① of this *Act*
- ③ Any person who falls under any of the following shall be subject to imprisonment not exceeding two years or a fine not exceeding KRW 10 million:
  1. Any person who, in violation of Article 5 Paragraph ② of this *Act*, fails to report to the competent law enforcement agency;
  2. Any person who, in violation of Article 5 Paragraph ③ of this *Act*, divulges the fact that a report has been

filed or will be filed

- ④ Any person who attempts to commit an offence under Paragraph ① Subparagraph 1 shall be punished.
- ⑤ A person who commits an offence stipulated in Paragraphs ① through ③ may be punished by both imprisonment and a fine
- ⑥ If the representative of a legal person, an agent, an employee or any other hired person of a legal person or a natural person commits an offence prescribed in Paragraphs ① through ③ in connection with the duties of the said legal or natural person, not only shall such an actor be punished, but the legal person or the natural person who is the principal shall also be punished by imprisonment or a fine under the respective Paragraph.

#### **Article 7 (Administrative Fine)**

- (1) Any reporting entity that violates Article 5 Paragraph ① of this Act (confined to cases where an employee of such entity violates Article 5 Paragraph ① by negligence) shall be subject to a fine not exceeding KRW 20 million.
- (2) Administrative fine under Paragraph ① shall be imposed and collected by the Financial Services Commission in accordance with the Presidential Enforcement Decree.
- (3) A person who objects to imposition of an administrative fine stipulated in Paragraph ② may appeal to the Financial Services Commission within 30 days of the notification of imposition of such fine.
- (4) When a person appeals in accordance with Paragraph ③ above with regards to an administrative fine imposed in accordance with Paragraph ②, the Financial Services Commission shall, without delay, notify the competent court of such fact, and the competent court shall conduct a trial over the administrative fine in accordance with the *Non-Contentious Case Litigation Procedure Act*.
- (5) If neither an appeal is filed nor the administrative fine is paid within the prescribed period of time referred to in Paragraph ③ above, then the administrative fine shall be collected according to examples of collection of national taxes in arrear.

#### **ADDENDUM <2007.12.21>**

This Act shall come into force after 1 year from the date of its promulgation.

#### **Addendum (Act on Establishment of Financial Supervisory Organizations) <2008.2.29>**

Article 1 (Effective Date) This Act shall come into force from the day of its promulgation.

Articles 2 through 4 Omitted

Article 5 (Amendment of Other Laws) ① through <58> Omitted

<59> The Prohibition of Financing for Offences of Public Intimidation shall be amended as follows;

‘Minister of Finance and Economy’ in Article 4 Paragraphs 1, 2, and 4 and Article 7 Paragraph 4 shall be amended to ‘Financial Services Commission’.

‘Minister of Finance and Economy’ in Article 4 Paragraph 3 shall be amended to ‘Financial Services Commission’.

‘Minister of Finance and Economy’ in Article 7 Paragraph 2 shall be amended to ‘Financial Services Commission’.

‘Minister of Finance and Economy’ in Article 7 Paragraph 3 shall be amended to ‘Financial Services Commission’.

<60> through <85> Omitted

**THE PROCEEDS OF CRIME ACT**  
as amended December 21, 2007

**Article 1 (Purpose)**

The purpose of *the Proceeds of Crime Act* (the “Act” hereinafter) is to regulate concealment of proceeds from predicate offences and disguise of such proceeds as funds generated from legitimate sources and to set forth special provisions regarding confiscation of proceeds of predicate offences and confiscation of corresponding value, thereby contributing to maintaining social order through eradication of economic factors that induces the designated crimes.

**Article 2 (Definitions)**

Definitions of some of the terms used in this Act shall be as follows:

1. "Predicate Offences" mean crimes that are committed for the purpose of obtaining improper property gains and are listed in the Schedule (hereinafter, referred to as "Serious Crimes") or in Article 2 Paragraph 2.b. of this Act. Predicate Offences include offences that are in the relationship described in Article 40 of the *Criminal Act* with an offence included in the Serious Crimes or those offences listed in Paragraph 2.b below. Predicate offences also include offences committed by a foreigner outside of the territory of the Republic of Korea that constitutes an offence in the country where it is committed and would constitute a predicate offence if it were committed in the territory of the Republic of Korea.
2. "Criminal proceeds" mean any of the following:
  - a. Properties generated by any act that constitutes a Serious Crime or properties received as a compensation for such an act
  - b. Funds or assets related to the offences prescribed in Article 19 Paragraph 2 (1) of *the Act on Punishment of Prostitution Brokerage* (applied only to the act of providing funds, land, or buildings with the knowledge that such properties are provided for prostitution or brokerage of prostitution), Article 5 Paragraph 2 and Article 6 (applies only to the attempt for any crime prescribed in Article 5 Paragraph 2) of *the Punishment of Violence Act*, Article 3 Paragraph ① of *the Act on Offering of Bribe to Foreign Public Officials in International Business Transactions*, Article 4 of *the Act on Aggravated Punishment of Economic Crimes*, and Articles 8 ~ 16 of *the Act on Crimes within the Jurisdiction of the International Criminal Court*.
3. "Properties derived from criminal proceeds" are properties generated from criminal proceeds, properties acquired as fruits of criminal proceeds and properties acquired as price of such properties, and any other properties that result from possession or disposition of criminal proceeds.
4. "Criminal proceeds and related properties" include criminal proceeds, properties derived from criminal proceeds, and criminal proceeds or properties derived from criminal proceeds intermingled with properties obtained from legitimate sources.

**Article 3 (Concealment and Disguise of Criminal Proceeds and Related Properties)**

- ① Any person who commits any of the following acts shall be subject to imprisonment not exceeding 5 years or a fine not exceeding 30 million won.
  1. Disguising acquisition or disposition of criminal proceeds and related properties
  2. Disguising the origin of criminal proceeds.
  3. Concealing criminal proceeds and related properties for the purpose of facilitating a predicate offence or disguising illegally obtained properties as properties obtained from legitimate sources.
- ② Attempt to commit any of the offences listed in ① above shall be punished.

- ③ Preparation or conspiracy to commit any of the offences listed in ① above shall be subject to imprisonment not exceeding 2 years or a fine not exceeding 10 million won.

#### **Article 4 (Acceptance of Criminal Proceeds and Related Properties)**

Any person who knowingly accepts criminal proceeds and related properties shall be subject to imprisonment not exceeding three 3 years or a fine not exceeding 20 million won. However, this provision does not apply to a person to receive criminal proceeds or related properties provided in relation to fulfillment of legal obligations or obligations under a contract which he/she entered into without the knowledge that it would be fulfilled with criminal proceeds or related properties.

#### **Article 5 (Reports by Financial Institutions)**

- ① An employee of a reporting institution under Article 2 Paragraph 1 of the *Financial Transaction Reports Act* (hereinafter referred to as, "Reporting Institution") shall report without delay to the competent law enforcement agency notwithstanding any other legal provisions when he/she finds out that properties received in relation to financial transactions under Article 2 Paragraph 2 of the aforementioned act are criminal proceeds and related properties or that the customer conducting a financial transaction is committing an offence under Article 3 of this Act.
- ② No person filing a report pursuant to ① above shall divulge such fact to the customer(s) related to the transaction that is the subject of the report or related persons.
- ③ Any person who violates the provisions in □ or □ above shall be subject to imprisonment not exceeding 2 years or a fine not exceeding 10 million won.

#### **Article 6 (Imposition of Both Imprisonment and a Fine)**

Any person who commits an offence under Article 3, 4, or Article 5③ may be punished by both imprisonment and a fine.

#### **Article 7 (Punishment of a Legal Entity)**

When a representative of a legal entity, an agent of a legal entity or an individual, or an employee of a legal entity violates Article 3, Article 4, or Article 5 of this Act, then in addition to punishment imposed on the actual offender, a fine under the relevant article of this Act shall be imposed on the legal entity or the individual.

#### **Article 7-2 (Offences Committed Outside the National Territory)**

Provisions in Article 3 of the *Criminal Act* apply to the offences prescribed in Articles 3 and 4 of this Act.

#### **Article 8 (Confiscation of Criminal Proceeds and Related Properties)**

- ① Any of the following properties may be confiscated:
1. Criminal proceeds
  2. Properties derived from criminal proceeds
  3. Criminal proceeds and related properties associated with offences under Article 3 or Article 4 of this Act
  4. Properties originating from criminal activities under Article 3 or 4 or properties received as compensation for such criminal activities
  5. Properties acquired as return on properties specified in Article 3 or Article 4 of this Act, properties acquired as a return on such properties, or properties generated as a result of possession or disposition of such properties
- ② In case the properties which can be confiscated pursuant to Paragraph ① above (hereinafter referred to as "properties subject to confiscation") are intermingled with other properties, then part of the intermingled

properties in the amount or volume corresponding to the properties subject to confiscation (applies only to the properties subject to confiscation that is part of the intermingled properties) may be confiscated.

- ③ Notwithstanding the provision in Paragraph ① above, the properties cannot be confiscated if properties referred to in each subparagraph of the aforementioned Paragraph are properties extorted from the victims of crimes against property, Article 5-2 ① Subparagraph 1 or ② Subparagraph 1 of *the Act on Aggravated Punishment of Specific Offences*, or offences under Articles 650, 652, and 654 of *the Act on Rehabilitation and Bankruptcy of Debtors*, or properties generated from possession or disposition of such proceeds. In case a part of any of the properties referred to in Paragraph ① are property of a criminal victim, this part cannot be confiscated.

#### **Article 9 (Conditions for Confiscation)**

- ① Confiscation pursuant to Article 8 ① of this *Act* shall be confined to cases where properties subject to confiscation or intermingled properties do not belong to any third party other than the offender. However, in case a person other than the offender obtains properties subject to confiscation or intermingled properties with the knowledge that the properties are criminal proceeds (except the cases that meet the conditions stipulated in the conditional phrase of Article 4 of this *Act*), the properties subject to confiscation or intermingled properties can be forfeited even if the properties belong to a person other than the offender.
- ② Hereditary building rights, mortgage, or other rights established on properties confiscated pursuant to Article 8① of this *Act* shall be maintained if such rights are established by any person other than the offenders before the occurrence of the crime or if such rights are established by any person other than the offenders after the occurrence of the crime without the knowledge that the properties were criminal proceeds.

#### **Article 10 (Collection of equivalent value)**

- ① In case criminal proceeds cannot be confiscated pursuant to Article 8① of this *Act* or in case confiscation of properties is deemed improper due to the nature of the properties, the state of the use of such properties, rights of persons other than the offenders or other such circumstances, then the value corresponding to the proceeds subject to confiscation can be collected.
- ② Notwithstanding the provisions in ① above, the corresponding value cannot be collected in case the properties listed in Article 8① are properties extorted from criminal victims.

#### **Article 11 (Mutual Legal Assistance)**

Mutual legal assistance may be rendered to a foreign country asking for assistance in relation to a criminal proceeding in such foreign country regarding an offence that corresponds to a Predicate Offence under this *Act* or an offence under Article 3 or 4 of this *Act* to execute final ruling for confiscation of criminal proceeds or confiscation of corresponding value or to take provisional measures for confiscation of criminal proceeds or confiscation of corresponding value except in any of the following circumstances:

1. The offence that is the subject of such request would not constitute a predicate offence or an offence under Article 3 or 4 of this *Act* if committed within the territory of the Republic of Korea;
2. There is no undertaking from the requesting country that it will reciprocate when the Republic of Korea make a similar request;
3. Such request falls under any of the conditions listed in Article 64 ·① of *the Act on Prevention of Illegal Trafficking of Narcotic Substances*.

## **Article 12 (Mutatis Mutandis Application of the Act on Prevention of Illegal Trafficking of Narcotic Substances)**

The provisions of Articles 19 through 63, Article 64 Paragraph 2 and Articles 65 through 78 of *the Act on Prevention of Illegal Trafficking of Narcotic Substances* shall apply mutatis mutandis to confiscation of illegal proceeds, confiscation of corresponding value, and mutual legal assistance pursuant to this Act.

## **Addenda <Act #6517, Sep.27, 2001>**

- ① (Effective Date) This Act enters into force 2 months after the date it is promulgated.
- ② (Application of Provisions Regarding Concealment and Receiving of Criminal Proceeds and Related Properties) The provisions of Articles 3 and 4 shall apply to activities conducted after enforcement of this Act in relation to criminal proceeds generated before the enforcement of this Act.
- ③ (Amendment of Other Acts) *The Act on the Persons Performing the Duties of Judicial Police Officers and Scope of Their Duties* shall be amended as follows:  
Article 6 Paragraph 14 shall be amended as follows:

14. Persons specified in Article 5 Paragraph 19 shall have authorities regarding the following crimes:

- a. Following violations occurring in the jurisdiction of the office to which he/she belongs: Violations of *the Customs Duties Act*, violations of *the Foreign Trade Act*, infringements of intellectual property rights relating to customs clearance of imported/exported goods, violations of *the Foreign Exchange Transactions Act* relating to the illegal carriage of monetary instruments, precious metals or securities, violations of *the Foreign Exchange Transactions Act* relating to export/import transactions and service transactions related thereto;
- b. Violations of *the Proceeds of Crime Act* that occur in the jurisdiction of his/her office relating to crimes stipulated in Paragraph a above; and
- c. Crimes involving narcotics, psychotropic substances and hemp occurring at airports, harbors, and bonded areas in the jurisdiction of his/her office where airplanes and ships make enters/exits the Republic of Korea.

## **Addenda (Act on Punishment of Prostitution Brokerage) <Act #7196 March 22, 2004>**

Article 1 (Effective Date)

This Act enters into force six (6) months after its promulgations.

Articles 2 through 4 omitted

Article 5 (Amendment of Other Acts)

① The *Proceeds of Crime Act* shall be amended as follows:

In Article 2 Paragraph ② Subparagraph b, the phrase “Article 25 ① Subparagraph 3 of the *Prevention of Prostitution Act*” shall be amended to read as “Article 19 ② Subparagraph 1 of the *Act on Punishment of Prostitution Brokerage* (applied only to the act of providing funds, land, or buildings with the knowledge that such properties are provided for prostitution or brokerage of prostitution)”

Item 13 of the Schedule shall be amended to read as follows:

13. Crimes under Article 18 or Article 19 ② (except the act of providing funds, land, or buildings with the knowledge that such properties are provided for prostitution or brokerage of prostitution), Articles 22 and 23 (applied only to attempt for offences under Articles 18 and 19)

③ through □ omitted

**Addenda (Act on Rehabilitation and Bankruptcy of Debtors)**  
**<Act #7428, Mar.31, 2005>**

Article 1 (Effective Date)

This Act enters into force one (1) year after its promulgation.

Articles 2 through 4 omitted

Article 5 (Amendment of Other Acts)

① through <41> omitted

<42> Parts of the Proceeds of Crime Act shall be amended to read as follows:

In Article 8③, the phrase “crimes under Articles 366, 368, and 370” shall be amended to read as “crimes under Articles 650, 652, and 654 of the *Act on Rehabilitation and Bankruptcy of Debtors*”.

<43> through <145> omitted

Article 6 omitted

**Addenda <Act #7625 July 29, 2005>**

① (Effective Date)

This Act enters into force one (1) year after its promulgation.

□ (Transitory Provision Regarding Confiscation of Criminal proceeds and Confiscation of Corresponding Value)

For confiscation of criminal proceeds or confiscation of corresponding value in relation to violation of Article 74-2 of the *Food Sanitation Act* [except violation of Article 8 (including the cases where Article 69 is applied mutatis mutandis) or Article 22-1], Article 43 of the *Act on Health Supplements* (applied only to cases where Article 23 is violated), or Article 2-1 of the *Act on Special Measures Regarding Regulation of Crimes Against Public Health* (applied only to the cases where Article 6 of the *Food Sanitation Act* is violated) occurred before the enforcement of this Act, the respective acts governing such violations will continue to apply even after the enforcement of this Act.

**Addenda (Act on Promotion of the Game Industry)**  
**<Act #7941 April 28, 2006>**

Article 1 (Effective Date)

This Act enters into force six (6) months after its promulgation.

Articles 2 through 9 are omitted.

Article 10 (Amendment of Other Acts)

① through ③ are omitted.

④ Parts of the *Proceeds of Crime Act* shall be amended to read as follows:

Item 14 of the Schedule shall be amended to read as follows:

14. Crimes under Article 44 Paragraph 1 of the *Act on Promotion of the Game Industry*

Article 11 omitted

**[Schedule] < Amended March 22, 2004, July 29, 2005, April 28, 2006>**

Serious Crimes (Article 2 Paragraph 1)

1. Offences prescribed by the *Criminal Act*

- a. Offences under Article 114 ① in Part 2 Chapter 5 “Crimes Injurious to Public Peace”
- b. Offences under Articles 129 through 133 in Part 2 Chapter 7 “Crimes Regarding Public Officers’ Duties”
- c. Offences under Articles 207, 208, 212, (applied only to attempt to commit an offence under Article 207 or

- 208) and 213 in Part 2 Chapter 18 “Crimes Concerning Currencies”
- d. Offences under Articles 214 through 217, Article 223(applied only to attempted offences of Articles 214 through 217), and Article 224(applied only to preparation and conspiracy of offences prescribed in Articles 214 and 215) in Part 2 Chapter 19 “Crimes Concerning Valuable Securities and Postage and Revenue Stamps”
  - e. Offences under Articles 225 through 227-2, Article 228 ①, Article 229(except Article 228 ②), Articles 231 through 234, and Article 235[applied only to the attempted offences of Articles 225 through 227-2, Article 228 ①, and Article 229(except offences of Article 228 ②), and Articles 231 through 234] in Part 2 Chapter 20 “Crimes Concerning Documents”
  - f. Offences under Articles 246 ② and 247 in Part 2 Chapter 23 “Crimes Concerning Gambling and Lottery”
  - g. Offences under Article 250, Article 254(applied only to attempted offence of Article 250), and Article 255(applied only to preparation and conspiracy of offences of Article 250) in Part 2 Chapter 24 “Crimes of Homicide”
  - h. Offences under Articles 314 and 315 in Part 2 Chapter 34 “Crimes Concerning Credit, Business, and Auction”
  - i. Offences under Articles 323 through 324-5, Article 325, and Article 326 in Part 2 Chapter 37 “Crimes of Obstructing another from Exercising His Right”
  - j. Offences under Articles 329 through 331, Articles 333 through 340, Article 342(except attempted offences of Article 331-2, 332 and 341), and Article 343 in Part 2 Chapter 38 “Crimes of Larceny and Robbery”
  - k. Offences under Articles 350 and 352(applied only to attempted offence of Article 350) in Part 2 Chapter 39 “Crimes of Fraud and Extortion”
  - l. Offences under Articles 347 and 351(applied only to habitual offence of Article 347) in Part 2 Chapter 39 “Crimes of Fraud and Extortion” and under Article 355 or 356(applied only to the cases where the sum of the properties acquired or derived by the offender or by a third party from the offence is 300 million won or over and less than 500 million won) in Part 2 Chapter 40 “Crimes of Embezzlement and Breach of Trust”
  - m. Offences under Article 355 in Part 2 Chapter 40 “Crimes of Embezzlement and Breach of Trust” committed by government accountants specified in Articles 2 □, □ or □ (applied only to persons who work as assistants of the persons stipulated in Article 2 ① or ② and perform parts of the accounting works) of the *Act on Duties of Government Accountants* knowing that such acts will inflict losses on the national government or a local government entity
  - n. Offences under Article 362 in Part 2 Chapter 41 “Crimes Concerning Stolen Properties”
2. Offences prescribed in Articles 23, 24, 26, and 27 of the *Bicycle and Motor Boat Racing Act*
  3. Offences prescribed in Articles 269 and 271 ② (applied only to attempted offence of Article 269) of the *Customs Act*
  4. Offences prescribed in Article 54 Paragraph 3 of the *Foreign Trade Act*
  5. Offences prescribed in Article 111 of the *Attorney at Law Act*
  6. Offences prescribed in Article 5 of the *Illegal Check Control Act*
  7. Offences prescribed in Article 30 ① of the *Act on Special Cases Concerning Regulation and Punishment of Speculative Acts, etc.*
  8. Offences prescribed in Articles 622 and 624 (applied only to attempted offence of Article 622) of the *Commercial Act*
  9. Offences prescribed in Article 93 of the *Trademark Act*
  10. Offences prescribed in Article 443 and Article 445 Paragraph 42 of the *Act on Capital Market and Financial Investment*
  11. Offences prescribed in Article 40 Paragraph 1 and Article 42 of the *Child Welfare Act*
  12. Offences prescribed in Articles 70 ①, ② 3, and ⑤ of the *Specialized Credit Financial Business Act*
  13. Offences prescribed in Articles 18, 19 ② (excluding the act of providing funds, land, or buildings with the knowledge that such properties are provided for prostitution), 22, and 23 (applied only to attempted offences of Articles 18 and 19) of the *Act on Punishment of Acts of Arranging Sexual Traffic*
  14. Offences prescribed in Article 44 ① of the *Act on Promotion of the Game Industry*
  15. Offences prescribed in Article 30 ① and ② of the *Political Fund Act*
  16. Deleted <August 3, 2007>
  17. Offences prescribed in Articles 46 and 47 ① of the *Employment Security Act*

18. Offences prescribed in Article 70 of the *Act on Control of Guns, Swords, and Chemical Agents*
19. Offences prescribed in Articles 3, 5, and 7 of the *Act on Aggravated Punishment of Specific Economic Crimes*
20. Offences prescribed in Articles 2, 3, 5, 5-2, 5-4, 6, 8(applied only to cases that involve illegal tax refund stipulated in Article 9 ① of the *Act on Punishment of Tax Evasion*), and 10 of the *Act on Aggravated Punishment of Specific Crimes*
21. Offences prescribed in Articles 366, 368, and 370 of the *Bankruptcy Act*
22. Offences prescribed in Articles 2 through 4, Article 5 ①, Article 6[applied only to attempted offences of Articles 2, 3, 4 ② (excluding offences under Articles 136, 255, 314, 315, 335, the latter part of Article 337, and the latter part of Article 340 ②, and Article 343) and Article 5] of the *Punishment of Violence, etc. Act*
23. Offences prescribed in Articles 50, 51, 53, 54, 58, and 60 of the *Korea Horse Racing Association Act*
24. Offences prescribed in Article 74-2[excluding violations of Article 8(including mutatis mutandis application of Article 8 in Article 69) and Article 22 □] of the *Food Sanitation Act*, Article 43(applied only to violation of Article 23) of the *Act on Food Supplements*, and Article 2 □ (applied only to violation of Article 6 of the *Food Sanitation Act*) of the *Special Act on Regulation of Crimes Against Public Health*

#### ANNEX 4: All Laws, Regulations and Other Material Received

| LAWS                                                                                                         |
|--------------------------------------------------------------------------------------------------------------|
| Constitution of the Republic of Korea (incorporating amendments to 1987)                                     |
| Act on Confiscation and Recovery of Proceeds of Corruption                                                   |
| Act on International Judicial Mutual Assistance in Criminal Matters                                          |
| Act on Punishment of Crimes Within the Jurisdiction of the International Criminal Court                      |
| Act on Real Name Financial Transaction and Guarantee of Secrecy (as amended 2008)                            |
| Act on Special Cases Concerning the Prevention of Illegal Trafficking in Narcotics etc                       |
| Act on Special Cases Concerning Prevention of Narcotics, Psychotropic Substances, and Hemp (as amended 1997) |
| Act on the Aggravated Punishment, etc of Specific Economic Crimes                                            |
| Act on The Control of Narcotics                                                                              |
| Act on the Establishment etc of Financial Services Commission                                                |
| Act on the Punishment of Acts of Arranging Sexual Traffic                                                    |
| Banking Act                                                                                                  |
| Capital Market and Financial Investment Business Act                                                         |
| Child Welfare Act                                                                                            |
| Civil Act                                                                                                    |
| Commercial Act (as amended 2001)                                                                             |
| Commercial Registry Act                                                                                      |
| Computer Programs Protection Act                                                                             |
| Control of Firearms, Swords, Explosives etc Act                                                              |
| Copyright Act                                                                                                |
| Corporate Tax Act (as amended February 2008)                                                                 |
| Criminal Act (as amended 2005)                                                                               |
| Criminal Procedure Act (as amended December 2007)                                                            |
| Customs Act (as amended April 2007)                                                                          |
| Election Commission Act (as amended August 2005)                                                             |
| Electronic Financial Transactions Act                                                                        |
| Extradition Act (as amended December 2005)                                                                   |
| Financial Holding Companies Act (as amended March 2008)                                                      |
| Financial Transaction Reports Act (as amended February 2008)                                                 |
| Foreign Exchange Transactions Act (as amended February 2008)                                                 |
| Framework Act on National Taxes (as amended February 2008)                                                   |
| Futures Trading Act (as amended March 2008)                                                                  |
| Income Tax Act (as amended March 2008)                                                                       |
| Indirect Investment Asset Management Business Act (as amended March 2008)                                    |
| Inheritance Tax and Gift Tax Act (as amended March 2008)                                                     |
| Insurance Business Act (as amended March 2008)                                                               |

| <b>LAWS</b>                                                                                                  |
|--------------------------------------------------------------------------------------------------------------|
| Merchant Banks Act (as amended March 2008)                                                                   |
| Monopoly Regulation and Fair Trade Act                                                                       |
| Mutual Savings Banks Act (as amended February 2008)                                                          |
| National Tax Collection Act (as amended December 2007)                                                       |
| Political Fund Act (as amended February 2008)                                                                |
| Procedure for the Punishment of Tax Evaders Act (as amended December 1999)                                   |
| Proceeds of Crime Act (as amended 2005)                                                                      |
| Prohibition of Financing for Offences of Public Intimidation Act (as amended February 2008)                  |
| Public Prosecutors Office Act                                                                                |
| Public Service Ethics Act                                                                                    |
| Punishment of Violence Act (as amended March 2006)                                                           |
| Securities and Exchange Act (as amended March 2008)                                                          |
| Specialized Credit Financial Business Act                                                                    |
| State Public Officials Act                                                                                   |
| Tourism Promotion Act (as amended March 2008)                                                                |
| Trademark Act (as amended May 2007)                                                                          |
| Trust Act                                                                                                    |
| Trust Business Act                                                                                           |
| Use and Protection of Credit Information Act (as amended February 2008)                                      |
| Value-added Tax Act (as amended December 2007)                                                               |
| <b>Decrees</b>                                                                                               |
| Enforcement Decree of the Act on Real Name Financial Transactions and Guarantee of Secrecy (as amended 2005) |
| Enforcement Decree of the Banking Act                                                                        |
| Enforcement Decree of the Corporate Tax Act (as amended 2007)                                                |
| Enforcement Decree of the Financial Transaction Reports Act (as amended 2005)                                |
| Enforcement Decree of the Foreign Exchange Transactions Act (as amended February 2008)                       |
| Enforcement Decree of the Futures Trading Act (as amended April 2008)                                        |
| Enforcement Decree of the Indirect Investment Asset Management Business Act                                  |
| Enforcement Decree of the Merchant Banks Act (as amended February 2008)                                      |
| Enforcement Decree of the Mutual Savings Banks Act (as amended February 2008)                                |
| Enforcement Decree of the Securities and Exchange Act (as amended February 2008)                             |
| Ministerial Enforcement Decree of the Act on Real Name Transactions and Guarantee of Secrecy (March 2008)    |
| <b>Regulations</b>                                                                                           |
| Enforcement Regulation of the Financial Transaction Reports Act                                              |
| Financial Transactions Report and Supervision Regulation                                                     |
| Guidelines on Payment and Receipt for Implementation of Duty to Keep International Peace and Safety          |
| Regulation on Examination and Sanctions Against Financial Institutions (as amended August 2006)              |
| Regulation on Foreign Exchange Transactions                                                                  |

| <b>LAWS</b>                                                              |
|--------------------------------------------------------------------------|
| Regulation on Supervision of Banking Business (as amended May 2007)      |
| Regulation on Supervision of Securities Businesses (as amended May 2007) |
| <b>Guidance</b>                                                          |
| AML Enforcement Guidelines                                               |
| <b>Other</b>                                                             |
| KCS organisation chart                                                   |
| Korea Customs Service video                                              |
| KoFIU presentation on IT for improving AML efficiency                    |
| National Police Agency AML Presentation                                  |
| Powerpoint presentation on the KoFIU IT system                           |
| Hyundai Securities Overview Presentation                                 |
| KEB Presentation on their AML System                                     |
| Korean Federation of Community Credit Co-operatives 2007 Annual Report   |
| Seven Luck Casino Presentation on CDD and Risk Management                |
| Shinhan Bank overview presentation                                       |

2009

© FATF/OECD and APG