

**Bolivia: Report on the Observance of Standards and Codes—FATF Recommendations
for Anti-Money Laundering and Combating the Financing of Terrorism**

This Report on the Observance of Standards and Codes on the *FATF Recommendations for Anti-Money Laundering and Combating the Financing of Terrorism* was prepared by Grupo de Acción Financiera de Sudamérica (GAFISUD), the South American FATF-style regional body, using the comprehensive methodology endorsed by the Financial Action Task Force. It is based on the information available at the time it was completed in **November 2002**. The views expressed in this document are those of the team members and do not necessarily reflect the views of the government of **Bolivia** or the Executive Board of the IMF. ROSCs do not rate countries' observance of standards and codes or make pass-fail judgments. Consequently, no overall assessment of the effectiveness of the anti-money laundering and combating the financing of terrorism regime is provided.

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BOLIVIA

Report on Observance of Standards and Codes—FATF Recommendations for Anti-Money Laundering and Combating the Financing of Terrorism

Introduction

1. This Report on the Observance of Standards and Codes for the FATF 40 Recommendations for Anti-Money Laundering and 8 Special Recommendations Combating the Financing of Terrorism was prepared by the same team of experts that assessed Bolivia's Anti-Money Laundering System in October 2002, within the multilateral evaluation framework of GAFISUD (the Financial Action Task Force of South America) using the FATF methodology that was in place back then. The member countries of the VI Plenary Meeting of GAFISUD, held in Montevideo (Uruguay) on December 2002, accepted the IMF/WB's request of writing an additional report using the new IMF/WB templates.

2. This ROSC draws on the information gathered during the experts' visit to Bolivia in October 28-31, 2002, and on some additional data kindly submitted by the authorities for the purpose of filling out the new templates. It provides a summary of the level of observance with the FATF 40+8 Recommendations, and provides recommendations to strengthen observance. The views expressed in this document are those of the assessment team and summarize the opinions that were approved by the Plenary of GAFISUD.

3. The IMF/WB translated the original drafts of the detailed assessment and the ROSC into English, and provided their comments. This final ROSC already includes the changes made by the assessment team in light of the IMF/WB comments, and it was further reviewed and approved by the Bolivian authorities.

4. The assessment team was coordinated by Fernando Rosado, Executive Secretary of GAFISUD, and it was comprised of the following experts: Esteban Fullin (legal expert, from SeDroNar, Argentina), Ernesto López (financial expert, from Banco de la República, Colombia), and Tales A. Eickhoff (operational expert, from COAF, Brasil).

Information and Methodology used for the Assessment

5. In preparing the detailed assessment, the experts reviewed the relevant AML/CFT laws and regulations, and supervisory and regulatory systems in place to deter money laundering and financing of terrorism among prudentially regulated financial institutions. In addition, the team reviewed the regulatory systems in place for non-prudentially regulated sectors that are macro-relevant, specifically money transmitting services and currency exchange houses, as well as the capacity and implementation of criminal law enforcement systems.

Main Findings

6. Bolivia's system to prevent and suppress money laundering fulfills most of the FATF 40 recommendations and applies to the insurance, stock market, and financial sectors. However, the system does not include other activities that are susceptible to money laundering, such as currency exchange houses, money transfer agencies and NGOs engaged in micro-finance activities, non of which are regulated or supervised by the authorities (NGOs are only subject to license from the Ministry of Finance, or from the Ministry of Foreign Affairs when they have foreign capital). These are aspects that the authorities hope to rectify in the medium term.

7. Throughout this report, the use of the term "financial institutions" or "financial sector" is meant to encompass all banking and non-banking financial intermediaries and auxiliaries that are supervised by the Superintendency of Banks and Financial Institutions, to which AML regulations apply indistinctively. They are described in more detail under heading B of this Report (Preventive Measures for Financial Institutions).

8. Actual results in terms of prevention, detection, and suppression are still modest. To date, there have been no reports of suspicious transactions from the insurance and stock market sectors, nor from financial institutions other than banks. Nor have there been any convictions for money laundering.

9. The Bolivian Financial Intelligence Unit (FIU) has been in operation since about 1999 and is a member of the Egmont Group. It has unlimited access to financial institutions' information and banking secrecy cannot be invoked against it, and it is permitted to share its information with other domestic and foreign authorities.

10. The institutional regulatory and financial intelligence responsibilities for combating money laundering are concentrated in the FIU, which is formally part of the Superintendency of Banks, but has broad autonomy and it functions as if it were an independent agency. Supervision of AML/CFT mechanisms is delegated on financial institutions' external auditors. The sectoral superintendencies do not supervise compliance with anti-money laundering standards, even though they already hold the necessary legal powers to do it. The FIU, on the other hand, does not have the legal authority and the operational capabilities to perform on-site supervision, hence it is planning to initiate visits in coordination with the two Superintendencies.

11. There is no high-ranking authority promoting an integrated anti-money laundering policy. Instead, this is left in the hands of the FIU, which lacks the means to push for legislative reforms on its own or to strengthen the efficacy of the system to suppress money laundering.

12. Money laundering was defined as a criminal offense in 1997 under the name of "laundering of illicit gains," with a penalty of 1-6 years' imprisonment. Although the criminal classification covers various predicate offenses, it still needs to be expanded to cover all serious predicate offences. With regard to the financing of terrorism, the Penal Code defines terrorism as a criminal offence, but it is appropriate to point out that the financing of terrorism, apart from commitments assumed at the international level, is not specifically regulated in Bolivia's domestic legislation, it may only be inferred.

13. Bolivia is a signatory of the Vienna Convention of 1988 and can grant extradition for offenses related to drug trafficking, but not for money laundering arising from offenses other than drug

trafficking. The legal system permits confiscation of goods related to the laundering of illicit gains, although a great effort is needed to ensure that such goods are handled efficiently and transparently.

14. The Bolivian authorities are aware of the need to continue to improve the legislation aimed at combating this offense, overcome the limitations of the criminal classification, and strengthen the imposition and supervision of controls. This will enable them to combat more effectively the phenomena of corruption, smuggling, and drug trafficking that afflict the country and generate most of the gains subject to laundering.

15. One of the initiatives that the FIU has undertaken to this end is the drafting of a law to expand the criminal classification and extend the obligation to prevent money laundering to new sectors, such as currency exchange houses. By the same token, the Superintendency of Banks and Financial Institutions will issue a regulation to strengthen the accountability of financial institutions' external auditors. Lastly, it will begin in the near future to apply the Interinstitutional Cooperation Agreement recently signed by various public entities involved in anti-money laundering efforts, with the aim of achieving better results in terms of cases brought to trial, convictions, and goods confiscated.

A. Criminal Justice Measures and International Cooperation

(a) Criminalization of ML and FT

16. The offense of laundering illicit gains was included in the Penal Code (CP) by Law 1768 of March 10, 1997. Bolivian legislation contains three categories of predicate offenses: those linked to illegal trafficking in controlled substances; offenses committed by government officials in the exercise of their duties, and offenses committed by criminal organizations. As can be seen, these categories encompass more than one offense. The offenses linked to illegal trafficking in controlled substances include all the offenses covered by the Law 1008 of July 19, 1988 on the Regime applicable to Coca and Controlled Substances, and those committed by government officials in the exercise of their duties include all the offenses described in the Penal Code under the headings Offenses Committed by Government Officials and Abuse of Power, including, in particular, embezzlement, misappropriation, and passive bribery.

17. The category of offenses committed by criminal organizations was introduced by the same law that classifies the laundering of illicit gains as an offense, and these offenses are only punishable if they are committed by three or more persons organized in a permanent manner, subject to disciplinary rules or controls. Such offenses are the following: genocide, destruction or damage to government property and national resources, abduction of a minor or incompetent person, deprivation of freedom, mistreatment or torture, kidnapping, laundering of illicit gains, manufacture of or illegal trafficking in controlled substances, environmental offenses, offenses against intellectual property, or the use of commercial buildings to commit such offenses. (CP Article 132 bis).

18. Bolivia does not therefore define the following as predicate offenses: illegal arms trafficking, trafficking in human beings, (including illegal immigrants), trafficking in organs, prostitution, pornography, extortion, terrorism, or fraud, all of which are considered serious offenses by the CICAD (Inter-American Drug Abuse Control Commission) Model Regulation for the criminalization of money laundering.

19. The penalty for the offense of laundering illicit gains is from one to six years of imprisonment and a fine of 100 to 500 days minimum salaries. According to the law itself, this criminal classification will

apply even if the offenses giving rise to the illicit gains have been committed wholly or partly in another country, provided that the offenses are considered as such in both countries.

20. Regarding the crime of terrorism, the Penal Code classifies the offense of terrorism (Article 133) among the offenses against public order.

21. In January 2002, Bolivia also ratified the "International Convention for the Suppression of the Financing of Terrorism" approved by the United Nations General Assembly on December 9, 1999. Among other measures, this Convention requires the States Party to criminalize the financing of terrorism, establish a mechanism for the confiscation of the goods used in the offense and the proceeds derived there from, consider sharing the goods with other countries, extradite or prosecute persons accused of committing this offense, and cooperate to the greatest extent possible with other countries in investigations and other matters.

22. Finally, the Convention urges the parties to take certain preventive measures such as the policy of "know your customer," prohibiting the opening of numbered accounts, and the requirement to report suspicious transactions. In addition, they must also consider adopting control measures over money transfer agencies, monitor the cross-border transport of cash, etc.

23. With regard to whether the offense of financing terrorism may be considered a predicate offense to money laundering, the following applies, only through technical legal interpretation, which in the area of criminal law may prove controversial, can the financing of terrorism be included among the offenses related to the activities of criminal organizations, it's not specifically mentioned. In this regard it is appropriate to point out that the financing of terrorism itself, apart from commitments assumed at the international level, is not specifically regulated in Bolivia's domestic legislation. Articles 20 and 23 of the Penal Code, outline that any person who cooperates in the execution of a crime will be a participant of it, therefore as terrorism is an offence, it's financing could be sanctioned according to the Bolivian legislation.

24. Article 185-ter of the Penal Code provides for administrative penalties applicable to financial institutions and their officers in case of violation of the anti-money laundering regulations. Nevertheless, there is no criminal or administrative provision that entitles the authorities to liquidate a legal entity which incurs in money laundering.

(b) Confiscation of Proceeds of Crime or Property used to Finance Terrorism

25. As explained above, the offense of terrorism is an offense against public order and is defined in Article 133 of the Bolivian Penal Code but it does not classify the financing of terrorism as an offense or provide for the seizure of the goods involved, nevertheless it does establish the principle of confiscation and, in accordance with the *Nuevo Código de Procedimiento Penal* (New Code of Criminal Procedure), the principle of seizure.

26. In fact, Article 71 of the Penal Code states that the commission of an offense entails the loss of the instruments with which it was committed and of the proceeds thereof. The instruments confiscated can be sold at public auction, if they are legally tradable, to cover civil liability in cases of insolvency; otherwise, they are destroyed or rendered useless.

27. The judge, by well-founded decision, may order the seizure of the goods, which must be inventoried, stamped with a warning (as appropriate), and delivered to the Directorate of

Registration, Control, and Administration of Confiscated Goods for the administration thereof (Article 253). In no case may essential personal property in the residence of the accused or personal effects of the accused and his/her family be seized. (Article 253).

(c) The FIU and processes for Receiving, Analyzing, and Disseminating Intelligence: Functions and authority

28. Under the current legislation, the detailed regulation of anti-money laundering controls in Bolivia is the responsibility of the FIU, which it fulfills by means of instructions addressed to the various regulated sectors.

29. The activities of the FIU were regulated by Supreme Decree 24.771, of July 31, 1997, granting it the powers of a “decentralized agency with functional, administrative, and operational autonomy”, although it formally reports to the *Superintendency of Banks and Fis*, and it gets its funding largely from this Superintendency. After overcoming initial budgetary difficulties, it began operations in 1999.

30. The FIU can request cooperation, obtain confidential information, and have access to any database or file of any government agency without the need to disclose the information obtained. It must, however, submit to the competent authorities such duly substantiated information as may be needed for the relevant criminal investigation and prosecution. During the proceedings, the FIU continues to provide technical assistance in the case.

31. The FIU has broad access to customer profiles and account information from all the regulated institutions, but not from businesses or persons that are not covered by AML law. It can also request cooperation from all governmental agencies and have access to their databases, documents, files and any other official information. Unfortunately, this information is rarely kept in computerized databases and the FIU does not have any on-line information service. The FIU's access to the few commercial databases available in Bolivia is also rudimentary, because of its budgetary restraints.

32. At the time of the visit, the FIU had gained positive recognition among the judiciary for his effective collaboration and it showed reasonably good operational expertise. Notwithstanding the above-mentioned achievements, it still needs to improve its effectiveness. In more than 3 years of suspicious-activity reporting from the regulated institutions, the FIU had submitted to the competent authorities cases comprising only 8 SARs (suspicious activity reports). The main difficulties that hamper the effectiveness of its analysis functions seem to be:

a) Articles 18 and 40 of Decree 24771 of 1997, require the FIU to be almost certain of the commission of a crime before referring a matter to the judiciary, a nearly impossible standard to meet.

b) The FIU can only analyze and report cases suspected to be related with money laundering, but not with any other crime. Article 185-ter of the Penal Code even seems to limit the FIU's ability to use its information to investigate the [already limited list of] predicate offences of money laundering. This situation also causes an impossibility to share information on other crimes, like terrorist financing.

33. **Keeping of statistics**—The FIU monitors statistics on the following categories: (i) total cases; (ii) source of cases – suspicious transaction reports and other sources; (iii) state of progress of cases, divided into: submitted to the relevant authority; archived for lack of information; awaiting further information; and in the process of investigation; and (iv) training programs.

34. The main sources for the initiation of analysis by the FIU are: information provided by regulated entities in suspicious transactions reports (60%) and requisitions from fiscal and (mostly) judicial authorities (38%)

35. **Resources—** The Supreme Decree governing the FIU clearly sets out its sources of financing. The largest percentage of its budget comes from the Superintendency of Banks and Financial Institutions (SBEF), which, in turn, derives its resources from a regulatory tax of 0.1 percent (one per mil) levied annually on the total amount of assets of the regulated institutions. At the time of the visit (October 2002), the FIU had an approved budget of the order of US\$496,098 for the year 2002, and expected an increment for financial year 2003 to approximately US\$654,304. Nevertheless, the actual budget for 2003 was not increased due to a cabinet crisis that caused the change of the Minister of Financial Services who supported the FIU's programs, and after a new law transferred the Superintendencies' surplus to the national budget. The latter is symptomatic of a lack of political support for the FIU.

36. With regard to staffing, the FIU currently has 15 employees, who, at the time of the assessment visit, did not include any legal specialists (lawyers), as the one who had been on the staff had still not been replaced. This limits the ability of the FIU to perform the analysis for which it is responsible and the quality of the instructions it needs to issue. At the time of the assessment visit, lawyers were already applying for the position.

37. The above-mentioned resources are inadequate for the FIU to attempt engaging in supervisory activities, something that the other authorities have always thought it to be the FIU's responsibility, hence the lack of AML on-site supervision in Bolivia. Supervision should be clearly assumed by the sectoral superintendencies, who are better equipped and trained for the task, in addition to the fact that it is them, and not the FIU, who have the necessary legal powers to do it. On the other hand, the FIU should provide assistance to supervisors on ML and retain competence to directly supervise any other entities that might be obliged to keep AML/CFT mechanisms but are not under other authority's supervision (i.e. money services businesses, once they are covered by AML regulations).

(d) Law enforcement and prosecution authorities, powers, and duties

38. The offense of laundering illicit gains is classified in the criminal legislation as a criminal action and therefore liable to prosecution pursuant to law. The whole process is divided in three parts, the preliminary investigation, the prosecution where charges are formulated and the evidence is collected, and finally, the investigating judge (juez de instruccion) decides either to transfer the case to the "tribunal de sentencia" to trial or to withdraw the case. After conducting a preliminary investigation, when any agency of the government believes that it has evidence of a violation of a law, it has to present it's findings to the Office of the Attorney General, which is responsible for the investigation, the accusation, and participating in all the proceedings (CPP Articles 16, 20 and related articles). The investigation is therefore carried out by this Office starting the face of the prosecution (derived from a decision of the judge). Therefore, the role of judges in the investigation of money laundering is limited. However certain actions during this investigation can be taken only upon the authorization of a judge (warrants to search and seize evidence, etc and the judge, as explained previously, is the one who decides whether the prosecution is held or not and whether, once close the prosecution, the case is transferred to trial or not). During this face of the process the Procedural Penal Code establishes a general provision with a wide range of means to collect evidence, including the seizure of documents and the production of records, it also includes provisional measures which permitted to restrain criminal property.

39. Once the prosecution is concluded, the case is transferred to a *Tribunal de Sentencia* composed of two technical judges and three citizen judges. During the investigation, the Office of the Attorney General has the Technical Judicial Police and the Institute of Forensic Investigation under its direction as assistants during the proceedings

40. The judicial police inquiries regarding controlled substances are carried out by the Special Counternarcotics Force (FELCN). Created in 1989, the FELCN is involved in the fight against the laundering of illicit gains via its financial analysis unit, which, although responsible for investigations of the financial aspect of drug trafficking, is far more often concerned with money laundering. It is aided in its work by specially assigned prosecutors with whom it cooperates directly, both in the investigative stage and throughout the criminal proceedings. The FELCN reported that in the course of 2002 it had carried out 87 investigations involving assets.

41. The Office of the Attorney General, the National Police, the FELCN, and the FIU decided to sign an interinstitutional agreement. Its purpose is to facilitate the conducting of coordinated investigations between the agencies and providing access to expeditious means of exchanging data to enable, those involved, to obtain accurate information within the limits established in the current legislation. By means of this agreement, an interinstitutional operational working group is created, with regular monthly meetings for coordination among the agencies. All other data and required evidence may only be produced under judicial control, as the judiciary is exempt from banking secrecy and other similar regulations.

(e) International Cooperation: Mutual legal assistance on requests, statistics on information exchange, arrangements for coordinating seizure

42. In Bolivia, international cooperation takes place generally in accordance with the *Código de Procedimiento Penal* (Law 1970), which is applied by default in the absence of a bilateral or multilateral treaty. In this case, requests are transmitted by the Ministry of Foreign Affairs and Worship, provided that and insofar as such requests are not in violation of the Political Constitution of Bolivia or the *Código Procesal Penal* (Code of Criminal Procedure predating the new code), with authority given to the Judiciary ultimately to order the act requested by the petitioning country. If there is any type of prior international agreement, its specific provisions will be followed. Generally, treaties require dual criminality of money laundering for the provision of mutual assistance.

43. The legislation states that maximum assistance is to be given in the event of requests from foreign authorities (CPP Article 138). With regard to “international investigations” the same legislation (CPP Article 148) enables these to be conducted when the criminal organization is operating in the country and has international ties. In this case, the Public Prosecutor’s Office is authorized, subject to judicial supervision, to coordinate the investigation with other countries or international organizations, depending on whether joint investigative teams are needed and investigation agreements can be concluded.

44. Article 283 of the *Código Procesal Penal* provides a definition of the concept of *entrega vigilada* (supply for enforcement purposes), albeit solely with regard to illicit trafficking in controlled substances.

45. In the area of extradition, Bolivia’s ability to extradite for money laundering offences is largely restricted, Article 3 of the Penal Code establishes as a general principle that no person subject to Bolivian jurisdiction may be extradited to another country, unless an international treaty or reciprocity

agreement specifies otherwise. (It is appropriate to recall in this respect, that the 1988 Vienna Convention can be taken as a basis for extradition in cases where no treaty exists, but obviously this would be limited solely to laundering offenses stemming from illegal trafficking in controlled substances).

46. In the absence of international treaties or agreements, the code makes no provision for extradition for offenses involving the laundering of illicit gains. Consequently, as there is no international agreement on this subject, Bolivian legislation, in addition to requiring dual criminality, only provides for extradition for offenses punishable by imprisonment where the legal minimum is two or more years and, in the case of Bolivian nationals, penalties of more than two years, which is at variance with the punishment for the laundering of illicit gains, which is from one to six years.

47. Regarding terrorism, as it is a criminal offence punishable by imprisonment from fifteen to twenty years, it is extraditable only requiring dual criminality.

48. It is appropriate to point out that there is an extradition treaty between Bolivia and the United States, which authorizes extradition for offenses punishable by sentences of more than one year. Under this arrangement, no provision is made for refusing to extradite nationals of the two countries when extradition is requested for offenses related to terrorism, organized criminal activity, and illegal trafficking in controlled substances.

49. In the Bolivian legal context no specific provision is made for sharing confiscated goods with other countries.

50. In the specific area of financing terrorism, in January 2002 Bolivia signed the "International Convention for the Suppression of the Financing of Terrorism" approved by the United Nations General Assembly on December 9, 1999. This document, as explained above, requires countries to adopt measures to identify, detect, secure, confiscate, or seize all funds used or allocated, as well as also the proceeds obtained. Moreover, it recommends consideration of the possibility of concluding agreements to share funds derived from confiscations with other countries. No regulation adopted in relation to these obligations has been reported.

51. Bolivia joined in the efforts of the international community by incorporating in its domestic legislation United Nations Security Council Resolutions 1368, 1373, and 1377 of 2001, and R 56/1 of the General Assembly, as well as Resolutions RC 23 and 24/1/01 of the Twenty-Third Consultative Meeting of Ministers of Foreign Affairs, acting as advisory body for the Inter-American Treaty of Reciprocal Assistance (TIAR) within the framework of the Organization of American States (OAS). In April 2002 Bolivia ratified the OAS Convention of 1971 to Prevent and Punish Acts of Terrorism. Lastly, it signed, but has not yet ratified, the United Nations Convention against Transnational Organized Crime, and the Inter-American Convention against Terrorism, according to which, the States Party must establish a legal and administrative system to prevent, combat, and eradicate the financing of terrorism and achieve effective international cooperation thereon.

52. Lastly, the Bolivian FIU is a member of the Egmont Group and actively provides information within the context of this organization.

B. Preventive Measures for Financial Institutions:

(a) Prudentially-Regulated Sectors

53. Scope All financial, stock market, and insurance sector institutions, including banking and non-banking businesses, are required to adopt the same anti-money laundering controls. This does not apply to other activities or occupations susceptible to laundering, such as currency exchange houses or money transfer agencies. The financial institutions to which very similar AML regulations apply are (the rest are insurance and stock exchange sectors):

- a) Banking Sector: Comprised of 13 banks (of which 4 have foreign capital), with approximately 120,000 customers and deposits of US\$2,900 millions accounting for 90% of all resources in the financial system.
- b) Non Banking Institutions:
 - 7 "Private Financial Funds" focused on short-term credit for small businesses. Previously, these funds were foreign capital NGO's specialized in small-rural financing, which accepted to be licensed and regulated by the Superintendency of Banks in order to expand their activities.
 - 11 "Savings and Loans Mutual Institutions" specialized in long-term home mortgages of US\$15,000 average.
 - 43 "Savings and Loans Cooperatives of an Open Nature" with approximately 300,000 customers who hold deposits of US\$1,000 on average.
- c) "Auxiliary Financial Services" encompassing all Leasing and Factoring Companies, Clearing Houses, Bureaus of Credit and bank-owned General Warehouses.

54. Supervision So far, Bolivia's money laundering supervision strategy has been based on the system of mandatory internal and external audits of financial institutions. The FIU is not responsible for supervising compliance with anti-money laundering standards, but for requesting, "through the respective superintendencies, that external audits be carried out to verify compliance with the requirements imposed on the regulated entities." The FIU is also in charge of substantiating all sanctions for the violation of AML regulations, which are later imposed by the Superintendent.

55. The Superintendency of Banks and Financial Institutions and the Superintendency of Pensions, Securities, and Insurance are legally competent to supervise regulatory compliance in general, but in practice, they do not verify compliance with anti-money laundering standards and believe this to be a function of the FIU's resort. They do have, though, the following responsibilities indirectly related to the prevention of money laundering: (i) assess the moral and technical qualifications of the management of all financial institutions, as a requirement for granting operating licenses; (ii) regulate and supervise the internal and external control systems of the supervised entities; (iii) in the specific case of the Superintendency of Banks and Financial Institutions, "to conduct inspections into the laundering of illicit gains and to sign agreements with international organizations with similar functions" and "exchange information relating to the laundering of illicit gains with other similar international institutions and organizations, as well as ... foreign or international judicial authorities."

56. Preventive Measures The preventive system is based on the following control mechanisms, which must be applied by the regulated entities: (i) identification of customers and knowledge of their occupation; (ii) detection of unusual transactions; (iii) reporting of suspicious transactions to the FIU; and (iv) the retention of records for 10 years. It is also mandatory (v) to have available written

manuals and an officer responsible for the application of controls, and (vi) to carry out periodic internal and external audits on the implementation of these measures.

57. In its regulations, the FIU has identified a wide variety of “unusual transactions” to be taken into account and has provided a sufficiently comprehensive definition of the concept of “unusual.” However, it is still necessary to give the institutions clear direction to obtain a financial profile of their customers and to monitor their accounts on the basis of said profile. At present, the data on a customer’s income and savings capacity are only mandatory for credit risk assessment (before granting a loan), and not to establish parameters of normality applicable to each customer.

58. The law expressly prohibits “making either the customer or any other person aware of the report of a suspicious transaction” and exonerate from prosecution anyone reporting suspicious transactions in compliance with the law. To date, practically no reports of suspicious transactions have been made from the stock market or insurance sectors, or from financial institutions other than banks. This is probably due to the following regulatory shortcomings: a) the exoneration applicable to financial institutions’ when filing SARs is clearly provided in the law, while the same exoneration for the insurance and stock market sectors is provided only in the FIU’s instructions, which implies a legal risk for the later; b) regulated institutions are required to contact clients in all cases where an unusual transaction is identified, before making a SAR, a requirement that could lead to tipping off customers.

59. According to the Banking Law, “if the FIU does not issue a written instruction to the financial intermediary within forty-eight (48) hours [following a report], the latter shall assume that its relationship with the customer cannot continue.”

60. Short- and medium-term challenges to prevention through the financial system

- Initiate on-site supervision programs immediately to verify compliance with anti-money laundering controls by all regulated entities. Supervision of financial institutions, insurance and stock market institutions and intermediaries, should be conducted by the competent superintendencies and not by the FIU, as noted above;
- Promote more effective controls by all regulated nonbank entities
- Strengthen knowledge of customers and the detection of unusual transactions by making it mandatory to obtain information on the amount of a customer’s income and analyze transactions that are incongruous with his/her financial profile.

(b) Non-prudentially–regulated sectors that are macro relevant:

61. It is believed that there are some one thousand (1,000) currency exchange houses, approximately 50 of which are located on the border with Argentina. There is no assessment of the qualifications of the companies and individuals engaged in foreign exchange activities and the international transfer of currency, nor of the volume of resources they mobilize. However, the FIU and the Banking Superintendency staff, with whom the assessment team met, explained that these activities are widespread in Bolivia. Due to the risk involved in deregulating this market, the FIU plans to propose its inclusion among the regulated entities in a future draft law (together with the international money transfer agencies).

62. The recently created private pension fund management companies are supervised by the Superintendency of Pensions, Securities, and Insurances, but are still not included among the entities required to monitor money laundering.

63. In Bolivia, numerous nongovernmental organizations (NGOs) with foreign capital are involved in micro-credit activities. In cases where the capital comes from foreign governments, these organizations must register with the Finance Ministry; otherwise, a license must be obtained from the Ministry of Foreign Affairs. When their volume of business is sufficiently large they can choose to become financial institutions subject to licensing and supervision by the Superintendency of Banking and Financial Institutions, which enables them to expand their services to the public. It would be advisable, in granting licenses to such financial NGOs, to take anti-money laundering criteria into account.

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Summary assessment against the FATF Recommendations

Table 1. Recommended Action Plan to Improve Compliance with the FATF Recommendations

Reference FATF Recommendation	Recommended Action
40 Recommendations for AML	
General framework of the Recommendations (FATF 1-3)	The current scheme should be maintained.
Scope of the criminal offense of money laundering (FATF 4-6)	<ul style="list-style-type: none"> - Expand the list of predicate offenses to money laundering, to cover all serious crimes. - Although terrorism is classified in the Penal Code as an offense, the financing of terrorism should also be so classified and incorporated in the list of offenses that are predicate to money laundering.
Provisional measures and confiscation (FATF 7)	The current scheme should be maintained.
General role of financial system in combating ML (FATF 8-9)	Money transfer agents and currency exchange houses should be subject to anti-money laundering supervision and controls similar to those required for the financial system.
Customer identification and record-keeping rules (FATF 10-13)	Issue standards enabling and requiring insurance, stock market, and all financial sector institutions (either bank and non-bank) to obtain from their customers sufficient information to allow them to compare their financial profile with the amount and nature of their transactions (know-your-customer obligations should go beyond simply knowing the customer's occupation, and include his income, expenses, other sources of funds, etc).

Reference FATF Recommendation	Recommended Action
Increased diligence of financial institutions (FATF 14-19)	<ul style="list-style-type: none"> - Regulate the treatment of PEPs. - In the instructions addressed to the above-mentioned institutions, require them to monitor their customers on the basis of customer and account profiles, and to detect and analyze inconsistencies between the amount of a customer's transactions and his/her level of income. - Issue a mandatory regulation on the minimum information that must be contained in money transfer orders.
Measures to cope with countries with insufficient AML measures (FATF 20-21)	<ul style="list-style-type: none"> - Require the application of AML controls on branches and subsidiaries abroad. - Maintain up-to-date warning notices on noncooperating countries (circulation of the list to regulated institutions)
Other measures (FATF 22-25)	<ul style="list-style-type: none"> - Formally establish the obligation to declare cross-border money transfers and create a system to consolidate and share information internationally. - Complete the development of the system enabling the FIU to have on-line access to databases maintained by banks containing information on transactions exceeding \$10,000. - Promote measures aiming to reduce the preference of the general public for the use of cash, whether in local currency or in dollars.
Implementation & role of regulatory and other administrative authorities (FATF 26-29)	<ul style="list-style-type: none"> - Begin on-site verification of anti-money laundering controls on by the sectoral superintendencies- Train the superintendencies' inspectors on AML/CFT regulatory compliance, and enhance coordination between the superintendencies and the FIU.
Administrative Cooperation – Exchange of general information (FATF 30-31)	<p>The assessment team did not receive any information that would have enabled it to assess the application of these FATF recommendations.</p>
Administrative Cooperation – Exchange of information relating to suspicious transactions (FATF 32)	<p>Expand the powers of the FIU to include analysis, reporting and sharing of information on <u>any offense whatsoever</u> that generates illicit gains, and not solely on offenses to which the current criminal classification “laundering illicit gains” applies.</p>
Other forms of cooperation – Basis & means of cooperation in confiscation, mutual assistance, and extradition (FATF 33-35)	<p>Ratify the Palermo Convention of 2000 against Transnational Organized Crime and the 1990 Council of Europe Convention on Money Laundering, Search, Seizure and Confiscation of Proceeds of Crime.</p>
Other forms of cooperation – Focus of improved mutual assistance on money laundering issues (FATF 36-40)	<p>Ensure that the offense of money laundering is extraditable in all cases and that seized goods can be shared with other countries.</p>
8 Special recommendations on terrorist financing	

Reference FATF Recommendation	Recommended Action
I. Ratification and implementation of UN Instruments	Adopt a provision into the Penal Code making the financing of terrorism an offense. Adopt United Nations Security Council Resolution 1390.
II. Criminalizing the financing of terrorism and associated money laundering	Ensure that the offense of money laundering is extraditable in all cases and that seized goods can be shared with other countries. Terrorism finance should be adopted as a criminal offense.
III. Freezing and confiscating terrorist assets	Once the financing of terrorism is classified as an offense, and given the international commitments it has assumed, Bolivia will have no problem implementing an effective system for freezing and confiscating assets. Bolivia also has to make terrorism financing a predicate offense to money laundering
IV. Reporting suspicious transactions related to terrorism	Amend the legal framework to require suspicious transaction reporting related to terrorist financing and empower the FIU to receive, analyze and communicate to the competent authorities information related to terrorism financing; The FIU and financial supervisors should provide guidance to financial institutions on such reporting; ..
V. International Cooperation	Once the offense is classified, and given the international commitments it has assumed, Bolivia will be able to implement effective international cooperation.
VI. Alternative remittance	Subject all businesses authorized to provide international money transfer services to anti-money laundering controls and supervision.
VII. Wire transfers	Issue regulations on the minimum information to be included in wire transfers. Consider any omission of such information as an alarm signal.
VIII. Non-profit organizations	Examine the risk of money laundering through NGOs in Bolivia and adopt the necessary controls.

Table 2. Other Recommended Actions

Reference	Recommended Action
Strengthening FIU staff capabilities	<p>The FIU should not be responsible for supervising AML regulatory compliance by financial, insurance and stock market institutions and, instead, it should concentrate on its core function of receiving, analyzing and disseminating suspicious transactions' information. It is recommended that the Superintendencies be made responsible for the supervisory task</p> <p>If it is decided that the FIU should continue to be responsible for supervision of the regulated institutions it will be necessary to provide it with clear legal powers for it, to increase its technical and human resources, and to obtain specific training for them. In any case, regardless of the overall increase in the number of analysts on the FIU staff, it would appear that a legal specialist should be hired.</p>
Safeguarding the FIU budget	<p>Adopt the mechanisms required to ensure that the FIU has the budget it needs for its operations, taking into account the budget capacity of the Unit's various sources of financing, and avoid jeopardizing its existence for lack of resources, as was the case initially.</p>
Strengthening the training program	<p>Draw up and implement a continuous training plan, not just for the supervisory agencies, but also for all the regulated institutions. The Superintendency staff who will begin to support the task of on-site inspection of anti-money laundering controls must also be trained.</p> <p>Regulated institutions should be obliged to train their own staff without the need for the FIU to provide such training.</p>