FINANCIAL SECTOR ASSESSMENT PROGRAM

SUDAN

DETAILED ASSESSMENT OF
OBSERVANCE OF THE
AML/CFT STANDARD

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INTERNATIONAL MONETARY FUND
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THE WORLD BANK
FINANCIAL SECTOR VICE PRESIDENCY
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A. Preface

The evaluation of the anti-money laundering (AML) and combating the financing of terrorism (CFT) regime of Sudan was based on the Forty Recommendations 2003 and the Eight Special Recommendations on Terrorist Financing 2001 of the Financial Action Task Force (FATF), and was prepared using the AML/CFT Methodology 2004. The evaluation was based on the laws, regulations and other materials supplied by Sudan (Appendix II), and information obtained by the evaluation team during its on-site visit to Sudan from November 30, 2004 to December 15, 2004. During the on-site the evaluation team met with officials and representatives of all relevant government agencies and the private sector. A list of the bodies met is set out in Appendix III.

The evaluation was conducted by a team of assessors composed of World Bank experts in legal, law enforcement and regulatory issues. The evaluation team consisted of: Ms. Heba Shamseldin (World Bank), Mr. Martin Comley (World Bank) and Ms. Chinyere Egwuagu (World Bank). The experts reviewed the institutional framework, the relevant AML/CFT laws, regulations, guidelines and other requirements, and the regulatory and other systems in place to deter money laundering (ML) and the financing of terrorism (FT) through financial institutions and Designated Non-Financial Businesses and Professions (DNFBP), as well as examining the capacity, the implementation and the effectiveness of all these systems.

This report provides a summary of the AML/CFT measures in place in Sudan as at the date of the on-site visit. It describes and analyzes those measures, and sets out Sudan’s levels of compliance with the FATF 40+8 Recommendations (see Table 1) It also provides recommendations on how certain aspects of the system could be strengthened (see Table 2).

B. Executive Summary

General

Crime statistics over past two years, and meetings with the competent authorities, reveal there is a general increase in the level of crimes involving financial gains, people and drug smuggling as well as customs duty evasion. Indicators suggest that this criminality is of an organized nature. There are also 3 to 4 cases of serious fraud per year; the value of each individual case is more than the current capitalization of several domestic banks, which poses obvious risks to the stability and soundness of the financial sector.

Sudan’s geography and level of development result in long unprotected borders, which could be exploited by criminals. The authorities characterize recent terrorism as domestic, infrequent, of small scale, and typically occurring as a result of conflict amongst different sects. The ease of use of banks for domestic and international money remittances by non-bank clients, with little oversight, pose risks of both terrorist financing and money laundering.
In recent years Sudan has shown an increased willingness to join the international effort in combating money laundering and terrorist financing. Nevertheless, it needs to develop a clearer overall strategy, and address the capacity constraints that limit its progress. The authorities involved seem to have emphasized making the Administrative Committee operational, setting up a preventive regulatory framework, and clarifying the relationships between the various relevant authorities involved.

**Legal Systems and Related Institutional Measures**

The current institutional framework for preventing money laundering and terrorist financing control and prevention in Sudan is comprised of the Bank of Sudan (BOS), what is known as the Administrative Committee, the Minister of Finance, and the 1373 Committee. Their powers and responsibilities are derived from the Anti-Money Laundering Regulations (2002), the Money Laundering (Combating) Act 2003, and United Nations Security Council Resolution 1373. Both the Administrative Committee and the 1373 Committee are high-level inter-agency bodies that aim at coordinating efforts amongst the various authorities involved. While the 1373 Committee has good liaison with operational staff, the Administrative Committee remains too remote from the operational base that is required to make an AML/CFT system effective.

Sudanese law criminalizes money laundering in line with the definitions of the Vienna and Palermo Conventions. Provisions in Sudanese law regarding intent, the liability of legal and natural persons, and criminal evidence are consistent with international standards. The law provides list of specific predicate offences, but this list does not include all designated categories of offences as set forth in the FATF Recommendations. Omitted categories include: organized criminal groups, counterfeiting and piracy of products, and insider trading. It is noteworthy that Sudan has had an Illicit and Suspicious Enrichment Act since 1989. By criminalizing wealth that could be linked to corruption or interest-based earning (illicit enrichment) and wealth whose source cannot be explained (suspicious enrichment), the law addresses some aspects of the proceeds of crime in a way that makes it relevant to money laundering control. Also, the experience gained in implementing the Act since 1989 will be useful in enforcing the new money laundering legal provisions.

The MLCA has not been enforced, which limits its effectiveness and makes it impossible to determine how the list approach will be implemented and how it will affect the burden of proof and the capacity to prosecute for money laundering. Also, while the general provisions in the criminal code on ancillary liability are broadly consistent with international standards, the anti-money laundering provisions holds liable those who commit acts ancillary to the predicate offences, but not those who commit acts ancillary to the money laundering offence itself. It is therefore recommended that the law should be amended to make the list of predicate offences consistent with international standards; the rules on ancillary liability should be amended to clearly refer to aiding and abetting money laundering, and regulatory and law enforcement agencies should be trained in the implementation and enforcement of the AML/CFT laws and regulations.
While the money laundering provisions include terrorism as a predicate offence, terrorist financing is not an offence in Sudan, even though Sudan has repeatedly confirmed in international forums its commitment to the criminality of terrorist financing. While assisting and facilitating terrorism are criminalized in the Terrorism Act of 2001, this is not sufficient to meet international standards and from a practical perspective might result in obstructing international cooperation for lack of dual criminality. It is recommended that terrorist financing be criminalized immediately.

Criminal law in Sudan recognizes forfeiture as a criminal penalty. Forfeiture is established as a criminal sanction in the relevant laws for money laundering, terrorism, and illicit and suspicious enrichment. The forfeiture provisions of the Money Laundering Control Act (MLCA) fall short of the international standard in that they only apply to laundered funds and their proceeds and they do not apply to the instrumentalities of money laundering nor the proceeds of the predicate offences. The provisions of the MLCA raise another concern in that they permit the use of the confiscated funds to reward the agencies involved in confiscation. This might lead to corruption and abuse and to acting on basis of the wrong incentives. In order to address the shortcomings of the confiscation regime, it is recommended that Sudan should amend the law to extend confiscation to the instrumentalities of crime and to clearly prohibit the use of confiscated funds to reward those involved in taking confiscation action.

The confiscation provisions in the Terrorism Act (2001) are draconian as they potentially allow confiscation of all of the defendant’s property, which cannot be justified and is contrary to the principle of proportionality that is endorsed by the international standards. It is therefore recommended that Sudan amend the Terrorism Act to limit the scope of confiscation to assets that are the proceeds of, or used in, or intended or allocated for use in the financing of terrorism, terrorist acts or terrorist organizations and supplement this with financial penalties when necessary.

The rules on identification, tracing, freezing and seizing of assets are under-developed. Sudan uses existing powers of the BOS and the law enforcement agencies to freeze and seize assets, but the system lacks a clear statutory framework and leaves bona fide parties insufficiently protected. Clearer statutory rules on identification, tracing, seizing, and freezing assets should be introduced. The rights of bona fide persons should be safeguarded. Adequate de-listing and review procedures should be introduced and implemented.

Sudan has implemented some of the Security Council Resolutions on Terrorism. It has circulated lists of individuals and entities identified as terrorists by the Security Council and ensured that no assets belonging to or controlled by the listed persons or entities are present in Sudan. So far, Sudan has relied on existing powers to carry out its obligations. It has not yet implemented the legislative and regulatory measures required by the Resolutions for the purposes of facilitating the freezing, seizing and identification of assets. For example, Sudan does not have adequate procedures for authorizing access to frozen funds or unfreezing funds.
The institutional framework for the enforcement of money laundering and terrorist financing laws is not yet in place. The FIU functions remain fragmented. While the MLCA requires reports to be made to the Administrative Committee formed by the Act, the AML Regulations (2002), which are still in force, require reporting to the BOS. The current draft regulations that aim to update the AML Regulations continue to require banks to report to the BOS. Also, the MLCA allocates the analysis function to the unit in the BOS rather than to the “Administrative Committee.” Neither the Administrative Committee nor the BOS AML Unit are sufficiently resourced and staffed. Law enforcement agencies in general have not received any training in the enforcement of AML/CFT provisions. Clarifying the institutional framework generally and setting up a single financial intelligence unit, adequately staffed, empowered and resourced, is the single most important step toward having an effective AML/CFT system in Sudan.

**Preventive Measures – Financial Institutions**

The MLCA extends its obligations to “financial institutions” defined very broadly to include not only banks and nonbank financial institutions but also to include all “companies.” This definition is too broad and unrealistic. Despite the broad scope of the definition, it does not cover some of the businesses and professions that are required to be covered by AML/CFT regulations under the international standard. Furthermore, none of the covered institutions, apart from banks, are aware of their preventive obligations. With the exception of the BOS, no other supervisory agency has assumed AML/CFT regulatory and supervisory obligations. In effect, apart from some general obligations in the banking sector, there is no regulatory and supervisory framework in Sudan to prevent the abuse of financial sector for money laundering and terrorist financing.

Sudanese law establishes adequate exceptions to banking confidentiality to ensure that confidentiality does not obstruct law enforcement and supervisory measures. There is no distinction in the law between domestic and foreign proceedings in the application of the exceptions to confidentiality. This approach is consistent with international standards.

The provisions of the MLCA and the AML Regulations for banks prohibit opening anonymous accounts and require customer identification. In the absence of implementing regulations of the MLCA, only banks are under regulatory obligations to identify their customers. The customer due diligence framework remains substantially lacking. For example, the rules are unclear on customer identification for occasional customers, there are no special CDD requirements for politically exposed persons or correspondence relationships, and no rules on CDD for existing customers. Most importantly, there is no adequate supervision of the adequacy of banks’ identifications practices and no enforcement action has ever been taken for failure to comply.

The relevant legal provisions require maintenance of records for a period of not less than five years. There are no regulations or clear guidelines on the nature of the records to be maintained. With the exception of foreign exchange companies, there are no clear requirements relating to CDD or record-keeping for wire transfer transactions. In response to
foreign regulatory requirements, banks have now updated their practices to contain full originator information. Wire transfer transactions on behalf of third parties are prevalent in Sudan and are not subject to any scrutiny by the banks. This provides potential for abuse for laundering and terrorist financing.

Both the MLCA and the AML Regulations (2002) impose a requirement of suspicious transactions reporting. The obligation imposed by the AML Regulations (2002) applies only to banks, while the MLCA extends its obligations to “financial institutions” defined very broadly. The institutional problems discussed above aside, the reporting requirements have not been implemented by the banks. Reports since 2002 averaged 3 per year mostly relating to advanced fee fraud. The BOS has not taken enforcement action against any bank for failure to comply.

There is conflict between the MLCA (2004) and the AML Regulations (2002). The different arrangements for suspicious transactions reporting under the two instruments and its implications for the nature and functions of the financial intelligence unit is only one example of the problems of discrepancy between the two instruments. The BOS is currently in the process of updating the AML regulations. The Draft Circular on “Combating Money Laundering Operations” that was reviewed by the assessors did not resolve the key conflicts and did not fill in the gaps.

Based on interviews with BOS officials and State Security Officers, capital control liberalization has contributed to the reduced use of informal money (hawala) and value transfer systems in Sudan. This is because of the effect of liberalization in reducing the costs of money transfer and the facility of making money transfers through the more secure formal means. Informal operators still exist nevertheless. Their advantage lies in their capacity to reach customers in remote places. Sudan prohibits unlicensed money transfer operations. Consequently, there is no system in place to license or register such operators. It is recommended that Sudan acknowledge the existence of informal operators and adopt a system of registration and/or licensing that permits preventing their use for terrorist financing and money laundering purposes.

The regulatory framework for money laundering and terrorist financing prevention in the financial sector is nearly absent. There is an immediate need to address this deficiency especially in view of the imminent entry of new foreign entities into the sector. The sporadic regulatory requirements that are now in place need to be overhauled. A consolidated and consistent framework needs to be put in place. Other financial market supervisors, such as the Insurance Supervisory Authority, should assume AML/CFT supervisory responsibilities. The securities market needs a viable and effective regulator. These steps cannot be taken unless the Administrative Committee becomes effectively operational.

**Preventive Measures–Designated Nonfinancial Businesses and Professions**

The definition of financial institutions in the MLCA, which includes all companies, is unrealistically broad, However the MLCS also should address some specific nonfinancial
institutions and professions. It specifically refers to travel agencies as businesses subject to AML/CFT regulations, but it does not apply any AML/CFT requirements to accountants, lawyers, and dealers in precious metal and stones. This is despite the fact that lawyers and accountants do provide company formation services and conduct various financial and commercial transactions on behalf of their clients. Local law enforcement experience also reveals that real estate is the favored asset for the investment of illicit and suspicious proceeds. It is therefore recommended that Sudan carry out thorough risk assessment of the vulnerabilities of these and other businesses and professions and take statutory, regulatory and other necessary measures to address these vulnerabilities.

Legal Persons and Arrangements & Nonprofit Organizations

All companies must be registered at the registrar of companies. For registration purposes, the law requires comprehensive information about the company, its owners and directors, and its place of operation. Companies are also required to report any changes in this information. The registrar, however, lacks the necessary automation and advanced research facility that are needed to make cross-checks possible. Such facilities are important tools for detecting the abuse of corporate vehicles for money laundering and terrorist financing purposes.

There are many Non-Profit Organizations (NPOs) operating in Sudan. NPOs are subject to the jurisdiction of the Ministry of Humanitarian Cooperation, which is set up with the intention of regulating and monitoring the operations of NPOs in Sudan. A draft law to give the Ministry powers to monitor the financial operations of NPOs is still at an early stage. The Ministry’s jurisdiction would be restricted to NPOs that operate nationally. Regionally operating NPOs are subject to the jurisdiction of the states. The Ministry lacks the human, financial and technical capacity to carry out its functions. The capacity is even less available in the regions, which leaves regionally operating NPOs without any controls. Sudan needs to address the issue of preventing the abuse of this sector based on rigorous risk assessment and without hampering the legitimate operations of the sector. The Ministry’s and the states’ capacities should be strengthened and enhanced to perform this function.

National and International Cooperation

Sudan has taken measures to implement the Security Council Resolutions on Terrorism. This is overseen by the 1373 Committee which co-ordinates and deals with cooperation at both the national and international level relating to terrorism and terrorist financing. The Committee has circulated lists of individuals and entities identified as terrorists by the Security Council and ensured that no assets belonging to or controlled by the listed persons or entities are present in Sudan. So far, Sudan has relied on existing powers to carry out its obligations. It has not yet implemented the legislative and regulatory measures required by the Resolutions for the purposes of facilitating the freezing, seizing and identification of assets. For example, Sudan does not have adequate procedures for authorizing access to frozen funds or unfreezing funds.
In the case of money laundering there is no “central authority” responsible for coordination and cooperation at either a national or international level. Sudan cooperates internationally in penal matters on basis of principles of comity and reciprocity through the Prosecutor Generals office and is allowed to use its powers to render assistance in evidence gathering to foreign authorities on a case by case basis. The principle of dual criminality is not applied in a manner restrictive of international cooperation. There is however need to enhance the statutory framework for international cooperation in order to ensure consistency and to secure the admissibility of evidence in foreign courts. As the FIU only exists in name, effective cooperation through this mechanism has not been approached. At a national level cooperation of the competent authorities is generally ad-hoc and undertaken only on a case by case basis. Law Enforcement Authorities (LEA) international cooperation is generally confined to contact through the national Interpol office. There is also a need to enhance the mechanism of information sharing at agency level with foreign counterparts.

C. General

General information on Sudan

1. In early 1999, Sudan initiated the process of liberalizing the economy through deregulation and encouraging private sector participation. The economy seems to be responding positively to this move, which is evident in the recent GDP growth and the increasing foreign investors, especially from the Arab region. According to select economic indicators from Sudanese authorities, GDP grew from 5.5 percent in 2003 to 6.6 in 2004. Also, the growth of the oil sector has attracted foreign investment. The economy is expected to grow further after the peace process.

2. Sudan has a federal system of government administered under a military regime. At the highest-level Sudan is governed as a federal republic based on the constitution and at the local level is governed by local councils in accordance with the law. Although Sudan has a federal structure with 26 states to ensure adequate representation of its many diverse groups, it remains a strong central government. In 1992, a 300-member National Assembly was created. The assembly exercises legislative authority or any other power accorded it by the constitution.

3. The current constitution was issued in July 1, 1998 and has been in force since January 1999. The system comprises an executive and legislative branch and an independent judiciary. The judiciary was established as an independent body called the judicial authority, which administers justice according to the constitution and law, with a set of guarantees to ensure the sovereignty of law and justice. The judiciary is not subject to the authority of the executive branch. The judicial authority consists of the High Court, Court of Appeals, and Courts of First Instance. The legal system in Sudan is based on English common law and Islamic law.

4. External sources on corruption in Sudan suggest that it constitutes a serious challenge to development and growth. Some sources describe corruption as endemic and
attribute the slow progress in the privatization program to the effects of corrupt practices on the incentives and confidence of potential foreign investors. The same sources also suggest pervasive corruption in the customs service. The Sudan scored as low as 2.2 on the Transparency International “Corruption Perception Index” in 2004. The same source suggested that corrupt practices exist in the oil sector. External reports as well as evidence gathered during our on-site visit suggest that there is evidence of political interference in the banking sector.

5. Contrary to these reports, discussions with a foreign investor in the Sudan conveyed favorable perception of the smoothness and integrity of the bureaucratic process in the country in as much as it relates to facilitating foreign investment. The Sudan also have a well functioning “Illicit and Suspicious Enrichment” law, which prosecutes individuals for signs of wealth that cannot be justified from legal sources. Complaints to the Office of Public Prosecutor for Illicit and Suspicion Enrichment can be filed by any person regardless of personal harm (Al-Hesba). Anecdotal evidence suggests that while there might be a general culture of nepotism, there is no large scale embezzlement and expatriation of public funds.

6. Sudan is undergoing major economic and institutional reforms. The IMF Report on the First Review of the 2003 Staff Monitored Program (2003) confirmed that “the collection and accounting of the government’s oil revenue has been improved” and that the privatization program is accelerating. The reform program that is currently underway is specifically geared toward improving the investment climate and promoting economic growth by enhancing the legal and institutional environment.

7. Sudan is on the verge of making legal reforms that will change the current constitutional framework and hopefully create a system that is more inclusive and representative of the different ethnic and religious groups in Sudan.

General Situation of Money Laundering and Financing of Terrorism

8. Crime statistics and meetings with various competent authorities have revealed that there is a general increase in acquisitive crime over the last two years. There is also an increase in the level of smuggling of people and drugs as well as customs duty evasion. The Customs Department suggested that these crimes are of an organized nature. There are currently 3 to 4 cases of serious fraud per year. The value of each individual case is more than the current capitalization of several domestic banks, which poses obvious risks to the stability and soundness of the financial sector.

9. Civil unrest in the South and the West, while domestically distinguished from terrorism, creates vulnerabilities with respect to the flows of funds for illicit arms and ammunition, and these vulnerabilities are likely to be exploited by terrorists and terrorist organizations. Sudan has been previously exposed to groups and individuals with direct involvement in transnational terrorism, though the current trends in terrorism seem to be
domestic, infrequent and of small scale. It typically occurs as a result of conflict amongst different fundamentalist groups.

Overview of the Financial Sector and DNFBP

10. **Framework:** The financial sector in Sudan operates based on Islamic banking and financing principles in the north. The four principles governing this system are the absence of interest-based transactions (*riba*); the avoidance of economic activities involving speculation (*ghirar*); the introduction of an Islamic tax, (*zakat*); and the discouragement of the production of goods and services that are inconsistent with Islamic values (*haram*). The financial sector will experience changes when a conventional financial system is reintroduced in some areas following the implementation of the Comprehensive Peace Accord, which will also involve major constitutional changes and adjustment of the entire legal system.

11. **Size:** Sudan has a relatively small financial sector. However, if recent trends in growth continue (or even accelerate following the peace accords), the financial sector could become a systemically important part of the economy. According to Sudanese authorities, there are a total of 55 financial institutions operating in Sudan. The financial institutions operating in Sudan include the BOS, 26 commercial and specialized banks, 15 insurance and reinsurance companies, 9 foreign exchange bureaux, the Khartoum Stock Exchange, the government securities market, and one larger and several smaller microfinance institutions. In addition to the dedicated microfinance institutions, some banks (for example, the Farmers Commercial Bank) provide microfinance or pro-poor services.

12. **Banks:** Banks dominate the financial sector. The activities of Sudanese banks are still very basic; such payment of salaries, issuance of letters of credit for purchase of farming equipment, lending, and money transfers. The banking services are not efficient in providing access by international standards. Sudan lacks a wide network of banks and no efficient means exist to facilitate interbank activities such as money transfers. Additionally, some essential services such as mortgage financing, consumer credit, education loans, health service loans as well as electronic banking services are absent. The banks have adequate and appropriate regulations, however implementation is weak and compliance is low.

13. **Foreign Exchange Bureaux:** There currently 14 foreign exchange bureaux operating in Sudan. 13 are publicly traded companies registered in the Sudan and one is a branch of a foreign company “The UAE Exchange Center.” Four bureaux operate only in the capital “Khartoum” while the remaining 10 operate branches in both the Capital and the States. The total value of inward money transfers through all operating foreign exchange companies over a period of 5 days was $219,361.37, and the total outward money transfers was $308,409.19. The foreign exchange sector is subject to the supervision of a special department in the BOS. Sudan prohibits any money transfer system outside the licensed banking and foreign exchange sectors.

14. **Insurance:** The insurance sector is relatively small in comparison to other countries in the region however it has growth potential. Of the 15 insurance and reinsurance
companies, one company, Sheikan Insurance and Reinsurance had more than half of total gross premium income in 2004. 92.2 percent of the claims paid in 2003 were related to motor vehicle policies.

15. **Securities and Stock:** The securities sector is marginal. The Khartoum Stock Exchange, established in 1994, has 47 companies listed, of which only about 6 are very active. The Sudanese Telecommunications Company, SUDATEL, has about 50% of the stock market and is attractive even to foreign investors. The Khartoum Stock Exchange is not automated. There is however growth in issuance, innovation and trading in government certificates (known as Sukuks), equity, and mutual funds made up of the certificates or equity.

16. **Microfinance:** The microfinance sector is barely sustainable. Efforts are being made to develop this sector as a means of providing access to individuals at the lowest end of the economic spectrum. Financial institutions in Sudan can take advantage of the developing financial sector to implement measures that will promote corporate governance and transparency in operations. These measures are particularly crucial at this time, in preparation for the influx of new businesses and capital flows expected after the peace accord.

17. **DNFBPs:** The designated nonfinancial businesses and professions (DNFBPs) that present potential money laundering risk and are present in Sudan include accountants, and lawyers. The Sudanese Association of Accountants was formed in 1988. There is a legal vacuum currently thus there are no regulations governing accounting in Sudan because the government is in a process of creating a new law that will make accounting organizations a part of a larger government body. Many accountants are concerned about this development because it means that they cannot regulate themselves as a professional body anymore. Previously, the requirements for an accountant included relevant education in accounting, certification, continued professional education and a registered name. There is no indication of what the professional requirements for accountants will be, under the provisions of the new law. There are 13 accounting forms operating in Sudan. There is no information on the size or number of DNFBPs in Sudan.

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

18. The core commercial legislation in Sudan is the Companies Act of 1925. It is an outdated law that recognizes traditional forms of legal persons and organizes them according to basic principles of company law. Attempts at updating the law that started in 2001 have not yet achieved their results.

19. According to the Companies Act of 1925, “a company means a company formed and registered under this Act, and having the liability of its members limited to the amount, if any, unpaid on the shares respectively held by them.” [Art. 2(2)] A company could place restrictions on the right to transfer its shares, limit its membership to less than fifty members and prohibits the invitation to the public to subscribe to its shares or debentures. Such
company under the act is defined as a “private company.” Absent any of these restrictions, the company will be described as a public company.

20. Until 1970, the total number of companies in Sudan did not exceed 2,000. Nationalizations in 1970 had the effect of increasing the scale of the public sector and halting the growth of the private sector. These trends were reversed in 1973 with the adoption of an open door policy following which the corporate sector continued to grow influenced by various policy and economic developments. Liberalization policies in 1992 and the start of oil export in August 1999 had the most profound effect on the growth of corporate sector including both local and foreign corporations. There are currently 23,679 registered companies, 5,374 of which are branches of international corporations in Sudan. 19% of the registered companies are public and 81% are private. Following the establishment of the Khartoum Stock Exchange in 1994, public shareholding companies were introduced to Sudan. There are currently 47 such companies listed on the Khartoum Stock Exchange.

21. Registration is a prerequisite for incorporation under the Act. Registration is done by the filing of an application to the registrar of companies and submitting the Memorandum of Association. Registration is subject to the approval of the Minister of Finance and National Economy, who also retain the discretion to cancel the registration of a company on public interest grounds. Every company must have registered office in Sudan. The situation of this office and any change thereof must be notified to the registrar and recorded. Each company must file with the registrar a copy of the register containing the names and addresses and the occupations of its directors.

22. The company is owned by shareholders referred to as members of the company. The law requires the company to keep a register of its members containing their names and addresses and date of beginning and end of the membership. It also requires the company to update this register on annual basis. The list should include the required information on all the past and present members as well as the names and addresses of the directors and the managers of the company. A signed copy of this list should be filed with the registrar. The registrar should also be notified of any consolidation of share capital, conversion of shares into stock, or re-conversion into shares.

23. The Act is outdated in that its rules on corporate governance are elementary and much is left to the company’s articles of association. Art. 71 provides that “the company shall be managed by the directors” It grants the directors all the powers of the company except those that must be exercised by the company in general meeting according to the Act or regulations made ex ante by the company in general meeting.

24. The Act imposes certain requirements on foreign ownership. Art. 4(1) provides that any transfer of ownership to non-Sudanese owners shall be subject to the previous written consent of the Minister of Finance and National Economy. The Act also requires any company incorporated outside Sudan to establish a place of business in Sudan to register with the registrar of companies and include a certified copy of the charter, a list of directors consistent with the requirements of the Act, the names and addresses of one or more persons...
authorized to accept on behalf of the company service of process and any notices required to be served on the company, and a certified copy of power of attorney enabling some person ordinarily resident in Sudan to act for the company in Sudan. [Art. 248 (2)]. The registration is subject to authorization from the Minister of Finance and National Economy. [Art. 248(3)] Foreign investment is also regulated by Investment Promotion Law (1999).

25. Sudanese law does not recognize trusts as legal arrangements.

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

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

26. Sudan does not have a clearly defined and documented strategy on the implementation plan and priorities for combating money laundering and terrorist financing.

27. Discussions with the authorities including the AML Unit at the BOS (BOS) and members of the Administrative Committee, which was formed by The Money Laundering (Combating) Act (2003) as the highest administrative committee dealing with money laundering, indicated that the three main focus areas currently are: (1) creating a General Secretariat for the Administrative Committee as a permanent organ assisting the Committee in performing its functions. (2) Introducing new AML regulations updating the 2002 regulations in line with the new law. (3) Developing a framework that defines the relationship and differentiate between the functions of the AML Unit at the BOS, the Administrative Committee, and the 1373 Committee that oversees CFT efforts.

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

28. The AML/CFT institutional framework in Sudan consists of four main institutions: The BOS, the Administrative Committee, the Minister of Finance, and the 1373 Committee.

29. The BOS responsibilities are derived from the AML Regulations (2002) and the Money Laundering Act (2003). Under the Regulations, the BOS is responsible for supervising the implementation of the regulations by the banks and receiving and analyzing the STRs submitted by banks according to the regulations. The BOS formed a special unit comprising of five part-time staff members charged with the latter function. The Money Laundering Act (2003) confirms the role of the BOS in combating money laundering and charges it with the functions of monitoring international movement of funds through the financial institutions, providing analytical services of suspicious transactions in coordination with the Administrative Committee, and developing an understanding of money laundering typologies.

30. The Administrative Committee was created by the 2003 Act as the higher administrative authority in fighting money laundering. It is a high-level committee comprising of: Prosecutor General as Chairman, Deputy Governor of BOS as Deputy Chairman, Under-Secretary of the Ministry of Foreign Relations, Under-Secretary of the
Ministry of Foreign Trade, Under-Secretary of the Ministry of Finance and National Economy, Director of the Crimes General Administration (Investigations), Director of Interpol, Director of the Customs Police General Administration, Secretary-General of the Taxation Chambers, Director-General of the Banking Development Organ as Rapporteur, Head of Economic Sector Security Circuit, and Director-General National Information Centre.

31. The Administrative Committee is charged with setting up the overall strategy for AML, performing the FIU function, facilitating international cooperation, and making regulations necessary to implement the Act. amongst other functions. The Administrative Committee is subject to the supervision of the Minister of Finance whose assent is also required for passing any regulations prepared by the Committee in implementation of the Act.

32. The 1373 Committee is also a high level Committee with close links to the operational staff. This Committee comprises: National Security & Intelligence (the Chair), Military Intelligence, Intelligence Bureau, Ministry of the Interior (the police), BOS, the Ministry of Justice and the Ministry of Foreign Affairs. The function of the 1373 Committee is to liaise with the Counter-Terrorism Committee of the UN Security Council. The Committee also deals with issues of freezing assets relating to terrorism generally in cooperation with the international community.

33. In addition to the above bodies, the following agencies are also relevant even though they do not as yet have explicit AML/CFT responsibilities:

- The Insurance Supervisory Authority whose responsibility is to supervise insurance businesses.

- The Ministry of Humanitarian Aid whose function is to register and supervise all nonprofit organizations operating in Sudan. Under the draft law, which is currently considered by the Prime Minister, the Ministry will have direct responsibilities for monitoring the funding and use of funds by the NPOs.

- The Khartoum Stock Exchange as the only agency with semi-supervisory powers of the securities markets in Sudan.

34. The Illicit and Suspicious Enrichment Prosecutor Office created by the Act of 1989. The overlap between money laundering laws and illicit enrichment laws and the somewhat established experience of the Illicit Enrichment Prosecutor office in this area renders the work of this office of direct relationship to the developing system of anti-money laundering in Sudan.

c. Approach concerning risk
Sudan has not yet conducted any risk assessment exercise. Its approach to AML/CFT has been so far responsive to international pressure and drawing on the international experience in this area. There is therefore no systematic approach to risk that could be discerned.

D. Detailed Assessment

Legal System and Related Institutional Measures

Criminalization of Money Laundering (R.1 & 2)

Description and Analysis


36. **The Physical and Material Elements of the Offence:** article 3 of the MLCA criminalizes the acts of: (1) transacting any financial operation; (2) transmitting, transferring, depositing or withdrawing; or (3) acquiring, possessing, receiving or using when such acts are carried out in relation to money obtained or resulting from a prescribed list of offences. The definition of the material element reflects generally the definition of money laundering in Vienna and Palermo Conventions.

37. **The Laundered Property:** The MLCA criminalizes the laundering of the proceeds of listed offences without any restriction in relation to the value of the property involved. Proving that the property is the proceeds of an offence does not require prior conviction of a predicate offence. The law does not include such a condition and this interpretation was confirmed by the Prosecutor General during the on-site visit.

38. **The Scope of the Predicate Offence:** The MLCA adopts a list approach to the definition of the predicate offence without designation of a threshold. The predicate offences are listed in art 3(2), which includes:

- (a) traffic in narcotics and psychotropics;
- (b) practice of prostitution, gambling and slavery;
- (c) bribery, misappropriation, theft, larceny, cheating or damage to public property or the public interest;
- (d) forgery, counterfeiting, quackery or hocus-pocus;
- (e) unlawful traffic in arms and ammunition;
f) damage to environmental health;

g) abduction, piracy and terrorism;

h) tax, or customs evasion;

i) stealing, or smuggling antiquities;

j) peoples money, which are unlawfully possessed by person;

k) any other offences having connection, as may be provided by international, or regional agreements; on condition that Sudan shall be a party thereto.

The list does not include offences in the categories of:

a) Participation in an organized criminal group;

b) Counterfeiting and piracy of products;

c) Murder, grievous bodily injury;

d) Insider trading and market manipulation.

39. Furthermore, while the list covers terrorism generically, the absence of a “terrorist financing offence” in Sudanese law renders it uncovered by the Act as a predicate offence.

40. Extraterritorially Committed Predicate Offences: There is no specification in the law regarding the place in which the predicate offence is committed and hence it is unclear whether offences committed abroad are covered. The Prosecutor General confirmed that the law will extend to predicate offences committed abroad. This interpretation is supported by the fact that item (j) on the list “people’s money, which are unlawfully possessed by person” refers to funds corruptly appropriated in foreign jurisdictions.

41. Laundering One’s Own Illicit Funds: The law does not restrict money laundering to laundering another person’s proceeds. Thus, there is nothing in the law to prevent the prosecution of a person for laundering the proceeds of his own criminal conduct.

42. Ancillary Offences: Article 3(3) as drafted does not cover conspiring, joining, abetting, assisting or helping in the commission of the money laundering offence proscribed in art.3(1). Section 3(3) should be amended to refer to the offence of money laundering provided for in sub-section (1) instead of the list of predicate offences provided for in sub-section (2) as it now reads. The language of the article is inconsistent in that it suggests that a person who assists another in committing narcotics trafficking, for example, shall be deemed to have committed the offence of money laundering.

43. It is important to note that articles 21-26 of the Criminal Act (1991) criminalize agreement to commit an offence (criminal conspiracy), inducing another to commit an offence (abetment) and assisting in the commissions of any act that constitutes an offence. These provisions set general principles that apply to all offences including money-laundering offences.

44. Under the Criminal Act 1991, “attempt to commit” an offence is an offence punishable by “imprisonment for a term which may not exceed one-half of the maximum
term prescribed for that offence.” Attempt, therefore, need not be specifically proscribed under the MLCA provisions.

45. **Predicate offence committed abroad where the conduct is not an offence**: The law is not clear on whether the predicate offence extends to conduct that does not constitute an offence in the country where it has been committed. The Prosecutor General did not provide conclusive answer to this question.

46. **The Mental Element of the ML Offence**: Art. 3(1) does not define the mental element of the offence in every case. The conduct listed in subparagraphs (a) and (b) of the offence require intent to conceal or camouflage. Subparagraph (c) does not include any reference to the mental element of the offence. The general principles as set out in the Criminal Act (1991) apply.

47. Art. 8(2) of the Criminal Act (1991) establish “intent” or “negligence” as preconditions for responsibility for an unlawful act. Art. 3 defines intention stating that: “a person is said to cause a consequence intentionally, if he causes it by using means intending thereby to cause the consequence, or by using means which he, at the time of using them, knows that the same causes such consequence, or has reason to believe that they are likely to cause it”

48. Art. 3 also defines “has reason to believe” stating that “a person is said to have reason to believe if he has cause, or the circumstances are such as to cause similar person to believe.”

49. **Proving the Mental Element**: the “has reason to believe” standard defined above incorporates objective factual circumstances within the definition of intention. Furthermore, the Law of Evidence (1994), establishes in art. 7 “circumstantial facts” as “relevant facts.” According to this article, “circumstantial facts” include any fact that reveals any state of mind, intention or feeling in connection with the “disputed fact.” The Law of Evidence also establishes the evidentiary value of presumptions. In discussing these principles with the Prosecutor General, he confirmed that intention could be proved by inference from objective factual circumstances.

50. **Liability of Legal Persons**: Art. 3(5) of the MLCA establishes the criminal liability of corporate persons for the offences of money laundering. This is in fact narrower than the general principle established in the Criminal Act (1991), where “person” is defined as including “a natural person and any company or association or group of persons, whether incorporated or not. The liability of legal persons under article 3(5) of MLCA does not preclude civil or administrative liability.

51. **Sanctions**: Art. 22 imposes imprisonment for a term not exceeding 10 years or a fine not exceeding double the amount or assets subject of the offence. For corporate persons, the penalty is a fine not exceeding the amount or value of the assets subject of the offence. In addition, art. 22(2) imposes compulsory confiscation of “the money and assets, subject of the offence, and the returns thereof.”
52. **Other Relevant Features:** The Illicit and Suspicious Enrichment Act (1989) criminalizes illicit enrichment derived from corruption or interest-based lending (art. 6) and suspicious enrichment which includes any assets that appear with any person, for which he cannot show a legitimate source. The Act has been effectively implemented since 1989. It relies in its implementation on reports from any person that becomes aware of such illicit or suspicious enrichment. Art. 13 grants the perpetrator immunity from prosecution if he declares his illicit or suspicious wealth, returns the funds, and discloses the source of the funds.

53. This Act addresses some aspects of the problem of money laundering and as such it was taken into consideration in assessing the effectiveness of money laundering control in Sudan. The Act however is not sufficient by itself to deal with the problem as a whole.

**Recommendations and Comments**

- The offence of money laundering remains ineffective. No prosecutions for money laundering has yet been initiated. It is important that the police and the prosecution become aware of the offence, its scope, and the possibilities for its application.
- The scope of the predicate offence falls short of international standards. The law should be amended to include offences in all the designated categories.
- Section 3(3) on “ancillary offences” should be amended to refer to the offence provided for in sub-section (1) instead of (2) as it now reads. The current drafting of the section is confusing and the amendment will ensure liability for offences that are ancillary to money laundering. It will re-enforce the general provisions of the Criminal Act (1991).

**Compliance with Recommendations 1 & 2**

<table>
<thead>
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<th>Rating</th>
<th>Summary of factors underlying rating</th>
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| R.1 LC  | 1. There has been no prosecutions so far for money laundering, which brings into question the effectiveness of the implementation, investigation and enforcement of the law.  
2. The scope of the predicate offence falls short of international standards. |
| R.2 LC  | 1. No prosecutions have been initiated for money laundering which brings into question the effectiveness of the law. |

**Criminalization of Terrorist Financing (SR.II)**

**Description and Analysis**
54. **Relevant Legal Provisions:** Terrorism offences are penalized under the Terrorism (Combating) Act (2001). “Terrorism offences and acts” are penalized under Chapter Two of the Act. The definitions of “terrorism,” “Terrorism Offences,” and “Political Offences” provided in article 2 are also relevant to understanding the legal framework for combating terrorism in Sudan.

55. **Criminalization of Terrorist Financing:** There is no specific criminalization of terrorist financing as an independent offence in Sudanese Law.

56. Article 2 of the Terrorism (Combating) Act (2001) defines terrorism generically as any act of violence that aims at causing panic amongst the people and terrorizing them regardless of any motive or objective. Terrorism includes any act of violence that is intended to harm people or property (both public and private). Specific intent to achieve death or bodily injury is not required. It is sufficient to endanger life or freedom without need for actual harm or injury.

57. Chapter Two of the Act includes a generic definition of “terrorism offences” and a list of specific terrorism offences. Article 5 criminalizes any act carried out in execution of a “terrorist objective” against “the State, its security, its people, its property, its public utilities, or its public or private facilities. Such acts are punishable by death or life imprisonment.

58. Article 6 criminalizes “terrorist criminal organizations” by criminalizing the management of a network that organizes or plans to commit any terrorism offence(s) regardless of the place of the network’s operations. Such acts are criminal under article 6 where they constitute a threat to life, property, or public tranquility. The commission of the acts defined in article 6 constitutes a terrorism offence punishable by death or life imprisonment.

59. Articles 7-12 criminalize as terrorist offences: “hijacking aircrafts,” “illegal acts jeopardizing the safety of an aircraft,” “hijacking ships,” “hijacking vehicles of land transport,” “detaining individuals and harming them,” and “harming the environment.”

60. The aforementioned articles also criminalize any act of abetment, attempt or facilitation in action, speech or publication of the commission of any of the above acts as defined in the provisions.

61. Financing activities could be penalized as acts of facilitation within the scope of articles 5-12 of the Act. This should include financing terrorist acts as defined in article 5 and articles 7-12, and financing terrorist organizations as defined in article 6. This approach is generally assessed as an insufficient substitute for an independent offence of terrorist financing, even in the Sudanese context where assistance and facilitation are punishable even when the offence has not been committed or attempted (article 26 of the Criminal Act 1991).
62. According to the authorities, there have not been any cases of prosecution for acts of financing independently from the acts of violence. It is therefore difficult to assess to what extent could the facilitation provisions be effectively used against financiers of terrorism.

63. **Link to a specific terrorist act:** The current framework is also unclear on whether the prosecution will have to prove that the financing was intended for use in the commission of a *particular* act of terrorism. Basic principles of ancillary liability will support such a limiting interpretation, which might undermine the success of prosecutions for terrorist financing as an act of facilitation.

64. **Attempt:** It is unclear whether it is criminal to *attempt* to facilitate an act of terrorism under Sudanese law.

65. **Money laundering:** Terrorism in general is a predicate offence for money laundering under the Money Laundering Act, but financing of terrorism is not. Introducing a specific offence of terrorist financing is important in order to cover the proceeds of the full range of possible financing activities within the scope of money laundering control laws and regulations.

66. **Jurisdiction:** Sudan assumes extraterritorial jurisdiction over terrorism offences. Article 3(d) of the Terrorism (Combating) Act (2001) provides that the Act applies to any person who is accused of committing a terrorist offence, attempting to commit a terrorist offence or abetting the commission of a terrorist offence outside Sudan subject to the principle of dual criminality and the consent of the state where the act has been committed to apply the provisions of this law. Article 3(h) confirms that the law applies to the offences described under article 3(d) even in the absence of any harm to the interests of Sudan or its national security.

67. Article 6 of the Act also criminalizes managing criminal terrorist organizations regardless of the place of operation of such organizations.

68. In the absence of an independent offence of terrorist financing, it is not clear how the condition of dual criminality will be evaluated in the case where the act committed abroad is an act of terrorist financing that is penalized as such under the foreign law.

69. **Mental Element:** The Terrorism (Combating) Act (2001) does not contain specific reference to the mental element of terrorism offences, but the principles as set out in the Criminal Act (1991) should apply. These principles are discussed above. The general principles of the Act, which apply to all criminal offences unless otherwise stipulated, are generally consistent with Recommendations. This should be read however as a general trend in Sudanese law that cannot be confirmed with regard to the acts of terrorist financing until an offence of financing terrorism is created.

70. **Proving the Mental Element:** The general principle in Sudanese law is that the mental element could be inferred from objective factual circumstances (see above).
71. **Liability of Legal Persons:** The general principle in Sudanese law is that criminal liability extends to both natural and legal persons. Terrorism (Combating) Act (2001), while it does not exclude the liability of legal persons, in certain instances it does not address the potential liability of legal persons with sanctions consistent with their nature. Article 5 on the general terrorism offence and article 6 on criminal terrorist organizations only refer to death or imprisonment and, with the exception of confiscation as a generally applicable sanction, it does not provide any sanctions that could be applied to legal persons in the case of liability for articles 5 & 6 acts. This omission needs to be addressed in the Act. The general principles set out in the Criminal Act (1991) do not set any general rules on this matter.

72. The general principle as discussed above is that criminal liability does not exclude other types of liability.

73. **Sanctions:** Absent a specific offence of terrorist financing, such acts are only likely to be prosecuted as acts of facilitation. The Terrorism (Combating) Act 2001 punishes assisting and facilitation by the same punishment prescribed for the actual carrying out of the acts of violence. Article 18(1) imposes mandatory confiscation of any assets or instruments that are proved to have been used in any way in relation with to commission of the offence.

74. Article 18(2) gives the court the discretion to order the confiscation of all the assets of any accused person who has been proved guilty of committing a terrorist offence, or of abetting, attempting, conspiring, planning, facilitating, assisting or encouraging such an act. The scope of confiscation is very broad and amounts to stripping the convict of all his ownership, use and exploitation rights with regard to any assets whatever their form and wherever they are located.

**Recommendations and Comments**

75. It is recommended that an independent offence of terrorist financing should be introduced. Detailed provisions dealing with various aspects of liability for the financing of terrorism should be introduced consistent with international standards.

**Compliance with Special Recommendation II**

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<th>Rating</th>
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<td>SR.II</td>
<td>NC</td>
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Sudanese law does not include an offence of terrorist financing. [While the overall framework of liability for assisting and facilitation could have somewhat mitigated this shortcoming, there is no evidence that the current legal framework has been used to prosecute financiers of terrorism. There is therefore no evidence of effectiveness to be taken into consideration in determining the rating of compliance.]

**Confiscation, freezing and seizing of proceeds of crime (R.3)**
Description and Analysis


77. **Confiscation of Property:** The Sudanese Criminal Act (1991) recognizes forfeiture as one form of the penal sanctions that could be imposed for a breach of a criminal provision. The Act however does not set any general rules on the application of forfeiture. Determination of such application is therefore left to individual criminal acts.

78. Article 22(2) of the MLCA provides that “the money and assets, subject of the offence [of money laundering], and the returns thereof, shall be confiscated.” Article 2 provides that “money” “mean all types of currencies, national and foreign, financial assets, whatever the type thereof, tangible or intangible, movable or immovable, financial and commercial stock, and bonds and documents which evidence acquiring money or a title, relating thereto.”

79. Article 22(2) of the MLCA is therefore restricted to the confiscation of laundered funds. It does not deal with confiscation of the proceeds from money laundering, instrumentalities used or intended for use in the commission of money laundering. It therefore falls short of the international standard in this regard and should be amended as indicated in Recommendation 3.

80. Article 14 of the Illicit and Suspicious Enrichment Law provides that the court may seize the assets that are subject to illicit or suspicious enrichment and is required to order the confiscation of the funds upon conviction or substantiation of the illicit or suspicious enrichment as the case may be. The scope of the assets to be seized and confiscated is defined by the scope of the offences of illicit and suspicious enrichment, this includes any assets that the accused cannot prove a legitimate source thereof. This power could be useful in the context of combating money laundering and could complement the provisions of MLCA if it was used concurrently. This would not however replace the confiscation provisions in MLCA.

81. **Provisional Measures:** Article 9(1)(d) of the MLCA gives the “Money Laundering Offences (Combating) Administrative Committee” [Hereinafter, the Administrative Committee] the power to “seize, or freeze such accounts and funds, as may be suspected.” These powers have been used in three cases of suspicion. Two of these cases were closed
following enquiry that revealed their legitimate nature. The third case was still pending at the
time of the on-site visit and the funds remained frozen.

82. The Illicit and Suspicious Enrichment Act of 1989, gives the court in article 14 the
power to seize the suspected assets.

83. Chapter III of the Criminal Procedure Act 1991 provides a general framework for
the “seizure of property and things.” This framework gives the Prosecution Attorney or the
Magistrate general powers that could be used in the context of any criminal offence.
Article 96 on “Attachment of property and things provide that: “The Prosecution Attorney, or
the Magistrate, as the case may be, may attach any document, property or anything found
during search, or bought before him, or owned by any person, which has relation to inquiry,
trial or execution, whenever he deems the same necessary.” Article 98 defines the procedure
for attachment as that used in civil procedure or “any such way, as the prosecution Attorney
or the Magistrate as the case may be , may deem fit.”

84. There is no reference to the requirement of providing prior notice to the party
concerned in the case of taking provisional measures. The law gives the competent authority
ample procedural discretion.

85. Apart from the general powers of search and seizure as methods for acquiring
evidence, and the general power referred to above to take any measure necessary to attach the
property, Sudanese law does not provide for specific tracing and identification powers and
procedures.

86. **Assets Held by Third Parties:** The framework for the confiscation of proceeds of
crime and related provisional measures does not cover assets held by third parties on behalf
of the accused or in his benefit. This is a serious loophole that needs to be addressed in order
to prevent the evasion of confiscation through the use of fronting techniques and complicit or
ignorant third parties. The Illicit and Suspicious Enrichment Act (1989) recognizes and
addresses this problem partially.

87. **Rights of Third Parties:** The law does not address the rights of bona fide third
parties except in the narrow context of voiding actions, which might affect third parties. It is
recommended that this matter should be explicitly addressed.

88. **Power to Void Actions:** Article 20 of the MLCA provides that any legal disposal
that aims at preventing the confiscation of assets or property shall be deemed void. The
 provision adds “and in this case, there shall not be restitution, to the bona fide disposer, save
the amount he has actually paid.” The law does not define what is meant by *bona fide*.

89. **Confiscation of Property of Criminal Organizations:** Article 65, which
criminalizes establishing or managing “Criminal and Terrorist Organizations” does not
impose confiscation as a sanction.
90. **Burden of Proof in Confiscation Cases:** With the exception of the law on Illicit and Suspicious Enrichment, where the burden of proof is upon the accused who must prove the legitimate source of his property, confiscation provisions do not provide for such reversal of the burden of proof.

**Recommendations and Comments**

91. On basis of the above analysis the assessors recommend the following:

- That the Confiscation provisions in the MLCA 2003 should be expanded to cover the proceeds of laundering, the proceeds of the predicate offence and the instrumentalities both used and intended for use. They should also be amended to allow for the confiscation of property of corresponding value to take into account situations where the actual objects or proceeds of crime could not be specifically identified.

- Sudan should introduce an offence of financing terrorism to ensure that the confiscation provisions of the Terrorism Act (2001) cover funds used to finance terrorism as defined by the various international instruments.

- The confiscation measure provided for in article 18(2) is too broad and does not provide sufficient safeguards to the accused. The scope of confiscation in Article 18(2) should be restricted to the funds that have some link to the terrorist acts. A narrower confiscation measure is consistent with the international standard in this regard.

- The Law should clarify the powers relating to identification and tracing of property. Special consideration should be given to identification and tracing of intangible assets.

- The law should provide adequate protection for bona fide third parties.
Compliance with Recommendations 3

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<th>Rating</th>
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<tr>
<td>R.3</td>
<td>PC</td>
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<td>The law gives some powers of seizing, freezing and confiscation. However, it falls short of the international standard in many significant ways:</td>
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<td></td>
<td>1. The scope of property subject to confiscation is too narrow.</td>
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<td>2. There is no criminalization of terrorist financing which limits the effectiveness of confiscation measures in this regard.</td>
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<td>3. Tracing and identification measures are unclear.</td>
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<td>4. There is not sufficient protection in the law of bona fide third parties.</td>
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<td>5. No confiscation has been carried out under the law which brings into question effectiveness of the implementation, investigation and enforcement of the law.</td>
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Freezing of funds used for terrorist financing (SR.III)

Description and Analysis


93. **Freezing, Seizing and Confiscation of Terrorism-Related Funds:** As discussed above, Article 96 of the Criminal Procedure Act 1991 gives the Prosecution Attorney or the Magistrate the power to attach “any document, property or anything found during search, or bought before him, or owned by any person, which has relation to inquiry, trial or execution, whenever he deems the same necessary.” Article 98 defines the procedure for attachment as that used in civil procedure or “any such way, as the prosecution Attorney or the Magistrate as the case may be , may deem fit.” These general powers apply to all offences including terrorism offences.

94. Article 18(1) of the Terrorism (Combating Act) “requires the competent court to confiscate all real estate and other property, equipment, arms, means of conveyance or other things proved to have been used in committing or attempting to commit, or in facilitating or assisting in the commission of terrorist offences or in harboring those who plot, perpetrate,
instigate or encourage such offences or have been charged with so doing, whether by word, deed, publication, failure to act or consent to the perpetration thereof, with the knowledge of the owner of the property, whether he made use thereof personally or through any of his subordinates or persons working with him.”

95. This provision provides for the confiscation of the instrumentalities of terrorism offences and defines what would amount to an instrumentality in very broad terms. It extends to instrumentalities intended for use to the extent that the offence has been attempted or criminal acts of assistance and facilitation have taken place. The confiscation provided for is criminal confiscation that would apply upon conviction of an offence. Note however that Sudanese law does not establish an independent offence of terrorist financing. So to the extent that the provisions of the Act or any other act do not create criminal liability for distinct acts of terrorist financing, such acts will not be covered by the confiscation measures provided for here.

96. Article 18(2) of the Terrorism (Combating) Act 2001 gives the court the discretion to confiscate “any real or other property, assets, equipment or funds owned by [an accused] whose involvement in a terrorist act has been substantiated and to deprive him of any benefit or the utilization of any other resources, funds or property, whether in Sudan or abroad.” The court may also seize or freeze the property for the purpose of subsequent confiscation.

97. The definition of the assets subject to confiscation and provisional measures is sufficiently broad but the link between the assets and the person against whom the measures are carried out is not consistent with the international standard in this regard. The provision covers assets that are owned or held directly by the accused and not those that are held by a third party under the indirect control of the accused or for his personal benefit. It is recommended that the scope of the confiscation provisions should be amended to include such assets. This will prevent the evasion of the measures by using third parties and fronting techniques. Sudanese law is familiar with such techniques and addresses them partially in the Illicit and Suspicious Enrichment Act.

98. The confiscation powers under article 18 are draconian in that it allows the courts to strip the convicted of all his assets regardless of their link to the offence. The scope of this provision is substantially broader than the scope of SRIII and Article 8 of the Terrorist Financing Convention and therefore not required by either instrument and not proportionate to the crime. This is a matter of concern, especially if section (3) of article 18 of the Act is taken into consideration, which allows the use of the confiscated funds for the purpose of rewarding the agencies charged with combating terrorism and any other agencies.

99. It is therefore recommended that confiscation should be confined to the assets that could be linked to the commission of the offence in the broad sense defined by SRIII, article 8 of the Financing of Terrorism Convention and S/RES/1373. Sudan should also introduce an independent offence of terrorist financing to ensure that such acts come within the scope of the confiscation powers provided by the Act.
100. The Terrorism (Combating) Act 2001 does not address the rights of bona fide third parties or the voidance of actions aimed at evading confiscation measures. Therefore, to the extent that the confiscation measures are not carried out under the provisions of the MLCA, such powers and safeguards do not seem to be explicitly available.

101. The anti-terrorism provisions do not provide any additional powers or guidance on the question of identification and tracing of assets. They are therefore subject to the same general rules of evidence gathering and suffer the same weaknesses. It is recommended that the overall framework for confiscation and related provisional measures should be re-examined, elaborated and updated.

102. The BOS Act (2002) in article 43 gives the Governor or whomever he authorizes the power to issue directives and instructions to any bank or any person that undertakes banking activity or any segment thereof. Such instructions and directives are mandatory under the threat of penalty. The same power is confirmed in article 8 of the Banking Regulation Act (2003).

103. Article 41(1)(a) of the Banking Regulation Act empowers the governor to “prevent any person in general or any bank in particular from entering into a transaction or certain banking transactions.” Article 41(2) gives the governor the power to “prohibit banking transactions completely or partially with any person, regardless of the person’s capacity, in any or all banks and financial institutions. The banned person may not manage an account or banking transactions on behalf of a third party. The Governor may lift the ban on the terms that he deems appropriate when the reasons for the ban no longer exist.”

104. Such general powers to take actions vis-à-vis banks could be and has been used to prevent the movement of funds suspected of being related to terrorism.

105. The powers of the Administrative Committee to seize or freeze suspected accounts and funds under the MLCA 2003 discussed above are also available for use against funds related or suspected of being linked to terrorism.

106. **Freezing Assets under S/Res/1267:** Sudan did not adopt any specific laws or procedures in order to implement its freezing and seizing obligations under the Security Council Resolutions. Instead it implemented these resolutions directly by relying on the existing powers of the relevant authorities and the text of the resolutions. During the on-site visit, the relevant authorities including the “Administrative Committee,” the BOS and the 1373 Committee confirmed that they found the powers available to them sufficient to meet their obligations under the Security Council Resolutions. The system did not seem to impose restrictive procedural requirements on the exercise of such powers. While there were cases where certain accounts and banks were examined for possible links with the Al-Qaeda and Bin Laden, e.g., the Alshamal Islamic Bank case, such cases were found to be unconnected to the listed names and the accounts were ultimately released.

107. **Freezing Assets under S/RES/1373:** The same description and analysis provided in relation to S/RES/1276 applies in the present context. Sudan did not develop domestically
any lists designating persons or entities whose assets are to be frozen. Instead, Sudan seems to be using the powers available to the competent authorities in order to respond to the request for freezing submitted to it from other countries. It is not clear why this is the case and it brings into question the degree to which the mechanisms required by Resolution 1373 to combat terrorism have been sufficiently internalized.

108. **Freezing Actions Taken by Other Countries:** Sudan considers for the purposes of freezing lists of designated persons submitted by other countries. The competent authorities referred specifically to the US OFAC list. In discussions with the authorities, they did not provide any specific legal basis for providing such assistance and exercising the powers of freezing vis-à-vis individuals and entities listed under other country’s mechanisms. They seemed to rely on the principles of comity and the flexible procedural requirements of the Criminal Procedures Act (1991). As indicated in the report of Sudan to the CTC on December 31 2001, No assets belonging to the designated persons on foreign lists have been identified or frozen. The same was confirmed by the authorities during the on-site visit.

109. **The Definition of Funds:** As indicated above, the definition of funds in terms of their link to the designated person is not clear. It is an aspect of the legal framework that remains unclear and on its face inadequate. The only evidence of going beyond direct ownership of assets to indirect ownership of assets comes from the events of 1996 where the attempts to interrupt channels of financing of suspected groups included “closing and liquidation of companies and related commercial activities, […] partly or wholly owned by Osama Bin Laden, and […] suspected of being controlled by an Egyptian Islamic Group.” (S/2001/1317 at p.5)

110. **Communication with the Financial Sector:** There is no documented description of the procedure for communicating with the financial sector when freezing action has been taken. The authorities seemed satisfied with their access and communication with the financial sector. The financial sector confirmed that they have responded to such instructions previously and took necessary action. It appears that the BOS is closely involved in any processes involving freezing of assets in the financial sector. It is also represented on both the Administrative Committee and the 1373 Committee. Communication with the financial sector typically occurs through this channel. This was confirmed by the BOS, the Prosecutor General and the financial sector. Generally the BOS has a very close relationship with the financial sector.

111. **Guidance to Financial Institutions:** Apart from the general obligation in the laws discussed above regarding compliance with the BOS’s instruction, there is no other clear guidance provided to the banks and other concerned entities regarding their obligations under the freezing mechanisms. There is a general need for guidance and awareness raising on all matters to AML/CFT in Sudan. The level of awareness in the financial sector was assessed to be very low.
112. **De-listing:** Sudan has not yet designated domestically any persons or entities for the purposes of freezing terrorism-related assets. There are no publicly-known procedures for de-listing. This is a matter that needs to be addressed urgently.

113. **Unfreezing Procedures:** There are no explicit publicly known procedures for unfreezing of funds that has been mistakenly frozen. There are set safeguards or guarantees of the prompt release of such funds. This is a major failure of the legal framework and could be detrimental to the rights of the individual and the operation of legitimate business. It is recommended that this should be rectified by introducing such mechanisms and publicizing them adequately.

114. **Access to frozen funds for expenses and other purposes:** There is no reference in the law to such powers. It should also be noted that article 98(8) on the disposal of attached property provides that the attached property is held in trust and must be kept as such. Disposal of the property, or its value in certain circumstances, shall not be permitted until the lapse of the criminal suit. The court shall then decide the manner by which the attached property may be disposed of.

115. **Review of Freezing Decisions:** Decisions to freeze by the Administrative Committee or the BOS are administrative decisions and therefore subject to judicial review. Should the decision to freeze the assets be issued by the Prosecutor General, it would be subject to appeal to the Judge of the Court of Appeal as provided under article 21(1) of the Criminal Procedure Act (1991).

116. **Enforcing the Obligations under SRIII:** As indicated above the implementation of SRIII was done through the general rules that gives relevant powers to the various agencies, including the “Administrative Committee,” the BOS, the prosecution attorneys, and the courts. There is no elaborate legal regime for the implementation of the freezing, seizing and confiscation obligations under the Act. The enforcement of such obligations upon the concerned institutions will rely on the general powers to sanction for failure to comply with instructions that are available to these agencies.

117. In the context of the “Administrative Committee,” there is no clear stipulation of the sanctions that would apply in case of failure to comply with its instructions. This ambiguity needs to be resolved and could be partly addressed by regulations issued by the Administrative Committee on basis of its powers under the Act.

118. The Banking Regulation Act gives the BOS extensive powers to sanction any failure to comply with the provisions of the Act, regulations, decrees or rules issued under it. Such failure is sanctioned by criminal, administrative and financial penalties. (Art. 58).

119. The authorities confirmed that their powers were sufficient to enforce their decisions under the Security Council Resolutions and in relation to financing of terrorism generally. In meetings with banks however the assessors were not satisfied that banks’ due diligence in implementation of instructions to identify accounts relating to listed persons were adequately conducted. There were no sanctions imposed on banks for failure to carry
out appropriate checks against the circulated lists. This raises concerns regarding the actual implementation of the instructions by the banks and the diligence of the monitoring process by the competent authorities particularly taking into consideration that some of the names listed are very common.

Recommendations and Comments

120. The Sudanese authorities have demonstrated clear commitment to implement the Security Council Resolutions on terrorism. In order to meet their obligations under the resolutions they utilized all the powers generally available to the relevant authorities. They also took advantage of the procedural flexibility that characterizes their legal system. The legal framework however suffers from obvious inadequacies and needs to be updated in order to facilitate the work of the competent authorities in controlling the flows of funds relating to terrorism. For that purpose we recommend the following:

- A distinct offence of financing terrorism needs to be introduced. The current confiscation provisions do not cover assets relating to these activities to the extent that they do not come within the present scope of criminal liability.

- Funds subject to confiscation should be clearly defined in the law to include funds that are not directly held or controlled by the accused.

- A detailed framework for identification and tracing should be introduced.

- The rights of bona fide third parties should be more clearly protected.

- More detailed publicly known procedures for delisting and reviewing the decisions to freeze need to be introduced to protect the rights of the individual.

- Appropriate procedures should be set up to provide access to frozen assets in certain circumstances consistently with S/RES/1452. (2002).

- Rules and guidance should be issued to clarify the obligations of the persons and entities that implement the confiscation, freezing and seizing measures.

- The authorities should monitor compliance with the decisions to freeze or confiscate. This should be supported by clear sanctions for failure to implement the freezing, seizing and confiscation measures should be introduced.
Compliance with Special Recommendation III

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<th>Rating</th>
<th>Summary of factors underlying rating</th>
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| SR.III PC | 1. There is no criminalization of terrorist financing, which limits the scope of confiscation measures in this regard.  
2. The definition of funds subject to confiscation does not address adequately funds indirectly held and controlled.  
3. There are no clear safeguards for bona fide third parties.  
4. There is not a clear process publicly known for delisting or reviewing the decisions to defreeze mistakenly frozen funds.  
5. The process of informing the banks and other relevant persons of their obligations and how to implement them is not adequate.  
6. No clear procedures have been set up to ensure access to the frozen funds where necessary consistently with Resolution 1452 (2002). |

Authorities

The Financial Intelligence Unit and its functions (R.26, 30 & 32)

Description and Analysis

121. The BOS AML regulations of 2002 introduced a basic reporting requirement, for banks, to report suspicious transactions to the BOS (which acted as an interim FIU 2002 – end 2003). This Unit originally had three BOS staff that undertook this as a part time function along with their other responsibilities within the Bank. This Unit has now grown to five staff that act as the BOS’s response to the MLCA 2003 and the Administrative Committee.

122. To date there have been, on average, three suspicious transaction report per year. These STR have, by and large, only been reports of ‘advance fee’ fraud and not of suspicion of money laundering or profit from crime this suggests a lack of understanding within the financial institutions of AML/CFT requirements. Little statistical or other data has been collected regarding the AML/CFT regime to date.

123. Suspicious Transaction Reporting requirements dealing with terrorism currently follow a separate path and are to be made to the 1373 Committee, the assessment team were not informed of any reports made by financial institutions regarding terrorist financing. There
is also no evidence, at present, that AML and CFT reporting requirements will be reconciled into one body; the FIU.

124. The MLCA 2003 establishes an Administrative Committee one of whose responsibilities is to establish and oversee a new FIU. To date this Committee has not formulated a strategic/policy framework for the implementation of AML/CFT as a whole nor has it formulated a strategic, policy, or operational framework for the creation of an “operation” FIU. This means that the Committee is currently operating from its member bodies/departments existing budgets, neither the Committee nor any future FIU has an independent budget to undertake its function.

125. Arrangements within the MLCA 2003 also give rise to some concern regarding the operational independence and autonomy that ensure freedom from undue influence or interference. Any future FIU will be part of / responsible to the Administrative Committee but this Committee is itself subject of supervision by the Minister of Finance [Art. 8 (3)]. There is no definition as to the level of ‘supervision’ the Minister may have in regard to the work of the Committee or the day-to-day function of the FIU.

126. Of particular concern is the fact that MLCA 2003 mandates reporting of money laundering to this body, which currently only comprises the executive committee (see details of membership in 1.5 above) who undertake this role in conjunction with their full time ministerial / other responsibilities.

127. Further potential confusion and or conflict may be caused by draft regulations to be issued by the BOS whereby they will require reporting by institutions they supervise still be made to the BOS.

128. Members of the Administrate and 1373 Committees and subordinate staff working to these committees have not received nor identified any specific training needs in predicate offences, ML / TF typologies, and investigation and prosecution techniques.

129. As specific AML/CFT responsibilities of an FIU or other LEA have not yet been properly defined nor do these bodies have dedicated responses AML/CFT consideration has not been given to confidentiality and integrity issues that specifically arise out of an AML/CFT regime.

Recommendations and Comments

130. As a matter of priority the Administrative Committee must set-out a strategic framework (Implementing Plan) to establish an overall AML/CFT regime for Sudan that:

- Seek to establish and separate the functions of the ‘executive’ Administrative Committee and the day-to-day / operational function of the Committee.
- Prioritize the establishment of an operational FIU and its cooperation and coordination with other bodies. (Ensuring the FIU is free from undue influence and interference).
- Requires the STRs to be reported to a single body (the FIU).
- Sets out clear reporting requirements and guidance in relating to those requirements for all FI and DNFBP.
- In coordination with the competent authorities setup a framework that meets AML/CFT training needs and requirements.
- In coordination with the competent authorities set out a framework for the collection, holding and analysis of AML/CFT statistics and the production of typologies and other reports.

### Compliance with Recommendations 26, 30 & 32

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<th>Rating</th>
<th>Summary of factors relevant to s.2.5 underlying overall rating</th>
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| R.26   | 1. There is no established / operational national center for the receipt etc of STR  
        2. No guidance is issued regarding reporting procedures  
        3. The Administrative Committee is a high level committee not best placed to undertake operational analysis and, other than through high level counterparts (in the Committee), does not have access to appropriate information to undertake such work.  
        4. To date the ‘old’ FIU or the new Administrative Committee have not held proper statistics, issued reports or be in a position whether typologies work could be undertaken. |
| R.30   | 1. There is no national or departmental strategic or other frameworks that sets out AML/CFT structure, staffing, funding regarding the FIU, LEA, prosecution, supervisors and other competent authorities.  
        2. No specific requirements regarding integrity etc have been considered in relation to AML/CFT.  
        3. None of the competent authorities have received specific AML/CFT training |
Law enforcement, prosecution and other competent authorities – the framework for the investigation and prosecution of offences, and for confiscation and freezing (R.27, 28, 30 & 32)

Description and Analysis

131. Sudan has a national police force administered from its headquarters in Khartoum, from an operational perspective policing is undertaken at Provincial and Section level from command units within the 26 States. Within the headquarters there are dedicated specialist teams dealing with: Planning; Training Identity / Immigration; Intelligence; Drugs; Financial Crimes; Crimes in Human Beings (which has a Terrorism Dept) and another unit dealing with Security and crimes against the State that also has terrorist responsibilities. Such specialist functions are not replicated within the State police commands where day-to-day policing is their priority.

132. The Financial Crime Unit at the Headquarters has 105 staff with a national responsibility for financial crime. At present none of these (or any other staff) staff are dedicated to deal with ML or TF, it is expected that approximately 8 staff will undertake this responsibility but they have not undergone any specialist training nor have any specialist equipment to take on these responsibilities. The situation is the same within the departments dealing with terrorism, there are not any staff dedicated to dealing with TF nor has any specialist training been provided to these staff. The training Unit at the headquarters has not yet started to consider what, if any, specialist training could be provided in these areas. Senior police officials met by the review team acknowledge these areas of weakness.

133. In tackling ML or TF, as with other serious criminal investigations, police routinely take witness statements as part of their normal police work and have access to make use of surveillance, informants and undercover techniques and with the authority of the Prosecutors Generals office they also have access to other forms of technical surveillance and search warrants including access to bank records. Police do hold and publish statistic data on reported crimes / crime trend which, over the past two years, show an increase in acquisitive crime. There are however no specific statistics that measure ML or TF or the effectiveness of such a regime.

134. Police representatives at the Ministry of Interior and with the Head of State Security deal with strategic planning in AML/CFT. At present there has not been any decision on how
to co-ordinate the various LEA responses to AML/CFT or what information can be provided to the FIU including access to criminal records.

135. The State Security service has an arm; Economic Sector Security Circuit, that looks at economic intelligence as a whole, within this Unit there are six departments one of which deals with Economic Crime of which ML and TF are part, however there are no dedicated officers dealing with ML or TF exclusively nor have their staff received any specialist training in these areas. Whilst not having specialist officers dealing with AML/CFT those interviewed were well informed about general financial crime and related matters and were active (if only at an intelligence level) in combating the serious fraud cases, approximately 3-4 per year and in illicit enrichment cases [see comments below]. As a security service they have access to surveillance and other techniques for intelligence gathering purposes and use these techniques to provide intelligence to other departments of the Security Service the Prosecutor Generals office and the police on a case-by-case basis.

136. The Prosecutor Generals office does not have a team that deal exclusively with ML or TF this is currently considered to be part of the routine work of the prosecutors’ office. Prosecutors have not received any specialist training in the areas of ML or TF. As the prosecutors office, through the police / security service or on their own behalf have not initiated any confiscation / freezing in relation to ML / TF its effectiveness cannot be measured.

137. The Prosecutors Generals office does however have a team that deals exclusively with the Illicit Enrichment law; these prosecutors do have more extensive investigative powers than normal prosecutors and are assisted as necessary and provided with information by the State Security and the Police. Through the prosecutors’ powers and the investigative and intelligence techniques of the LEA they have access to all surveillance and other evidence/intelligence gathering techniques. Whilst this is a specialist team the prosecutors are drawn from general prosecution duties and do not have any specialist training in financial crime/investigation techniques, there are no core staff retained within the unit and there is no set tenure period for staff who could be there for either some months or up to two years. The Unit is considered quite successful and deals with about 10 cases per month, however all cases do not necessarily go forward to prosecution; immunity from prosecution is offered in the law if the person admits his guilt, tells the prosecutor how the offence was committed and returns all the proceeds. Whilst there are lessons to be learned here in regard AML/CFT prosecutions the current Illicit Enrichment office should not be looked at as a substitute for increasing and enhancing the role of the prosecutor in AML/CFT areas.

138. The Customs service (which ultimately is part of the Police service) has approximately 2300 officers and more than 50 customs offices. Of the 2300 officers 400 are stationed at the HQ, 230 in Khartoum and 400 in the Port of Sudan leaving the rest to cover the other customs offices and the largest border in Africa. They are currently dealing with increases in people and drug smuggling as well as duty evasion cases both of which suggest the groups involved are organized crime groups. The Customs service does not have any unit dealing with AML/CFT matters nor has it any specialist training in these areas. Those
interviewed by the assessment team saw their lack of awareness and skills particularly in cash border movements and other AML/CFT issues as a weakness that needed to be addressed.

Recommendations and Comments

139. All of the above LEA and other competent authorities are, at the most senior level, members of the Administrative Committee which as discussed previously is charged with setting out Sudan’s overall AML/CFT regime and through this committee they should:

- In coordination with the competent authorities initiate an awareness program for all the LEA / prosecution offices.
- In coordination with the competent authorities setup a framework that provides (a) basic training in AML/CFT to all relevant LEA and prosecutors, (b) specialist AML/CFT training - relevant to the skills / responsibilities of parent department/organization.
- Ensure clear lines of responsibility for each department in the combating of ML and TF and mechanisms for co-ordination of efforts at both policy and operational level and designate units to undertake these functions.
- In coordination with the competent authorities set-out a framework for the collection, holding and analysis of AML/CFT statistics and the production of typologies and other reports.

Compliance with Recommendation 27, 28, 30 & 32

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<th>Rating</th>
<th>Summary of factors relevant to s.2.6 underlying overall rating</th>
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| R.27 NC | 1. There is currently no police unit responsible for the investigation of either ML or TF.  
2. The MLCA has been in place nearly for 12 months there is no evidence of practical application of the law by the police. |
| R.28 PC | 1. There are legal provisions to gather the required information but no evidence was seen of practical application of the provisions. |
| R.30 NC | 1. LEA, prosecutors and other competent bodies do not have adequate structures to respond to particular AML/CFT needs nor has funding or other resources (technical or otherwise) been set-aside to deal with this.  
2. There are no particular professional standards etc in force or |
being considered in relation to AML/CFT.

3. None of the competent authorities have received any specialist training in ML or FT and, at present, none is planned.

| R.32 | NC     | Whilst the police and other agencies have mechanisms for collecting general crime statistics there are no such mechanisms in relation to ML or TF that assist in either judging the effectiveness of the system or details the day-to-day operations of AML/CFT. |

Preventive Measures–Financial Institutions

Customer Due Diligence & Record Keeping

Risk of money laundering or terrorist financing

140. Sudan has not made any explicit decisions to exclude any sectors from the scope of the Money Laundering Control Act (2003). No risk analysis has taken place.

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

Description and Analysis

141. **Relevant Legal Provisions:** MLCA, article 2 on “Interpretation” and article 6 on “Obligations of financial institutions,” Anti-Money Laundering Regulations (BOS Circular No.4, 2002) [Hereinafter, AML Regulations (2002)] under “Types and Rules for Opening Bank Accounts.” Draft Circular on “Combating Money Laundering Operations.” There are no relevant regulations in the insurance and securities sector.

142. **Anonymous accounts:** Article 6(a) of the MLCA 2003 prohibits financial institutions from opening any account or transacting any financial operation in “forged, incomplete or nonclear names.” The scope of application of this article is very broad. Financial institutions are defined in the Act very broadly to mean: “banks, companies, shops of exchange and financial, or monetary brokerages, travel and tourism companies and agencies, or any licensed financial corporate personality regardless of the proprietor thereof. This all-encompassing scope is unrealistic because it will be impossible to enforce and monitor and in many instances it will be unjustified. This was discussed with the authorities during the on-site visit and it became apparent that the implications of this broad definition have not yet been examined.

143. The prohibition on anonymity is adequately broad in that it applies not only to the opening of accounts but also to transacting and financial operations. While the scope of the provision clearly encompasses nonbank financial institutions, there are no CDD regulations in the insurance and the securities sector and no enforcement of this prohibition on
anonymity. In meetings with the relevant institutions in the insurance and the securities sector during the on-site visit, the assessors found total lack of awareness of the existence or scope of the Money Laundering (Combating) Act and its applicability to the sectors concerned.

144. **Events Requiring CDD:** AML Regulations 2002 only impose CDD requirements in the case of opening an account. They do not address CDD in the case of occasional transactions, wire transfers, suspicion of money laundering or terrorist financing, or later doubt regarding the veracity of the information provided. The scope of the Regulations is clearly narrower than the scope of the Act.

145. In discussions with the industry it was revealed that the banking sector now requires customer identification when carrying out a wire transfer. This is not however required or enforced by the BOS. It seems to have developed to meet the requirements of the recipient institution abroad. There are no CDD regulatory requirements in nonbank financial sectors.

146. **Required CDD for individuals:** Apart from the general prohibition on anonymity discussed above, there are no CDD regulatory requirements except in the banking sector. In the insurance and the securities sector, while there is an indication of an industry practice in this area, there are no regulatory requirements to conduct CDD.

147. AML Regulations 2002 distinguishes between 9 categories of accounts: personal accounts, joint accounts, partnership accounts, companies accounts, bank and financial institutions accounts, accounts of legal entities/charity organizations/social societies, accounts of will executor/guardian, and accounts of minors. The Regulations list a set of CDD requirements for each type of account. The requirements are generally concerned with verifying the identity of the account holder. Verifying the customer identity in all cases rely on official and legal documents obtained from the customer.

148. There is no general identification system in Sudan. Also, apart from the newly developed areas in the Capital “Khartoum,” there is no system for clearly numbering properties and naming street. Addressed are generally defined by known landmarks. These characteristics clearly limit the effectiveness of any customer identification system especially of individuals. The interviewed officers of various banks indicated that most of the client base consists of either corporate clients, where legal registration documents are available, and private accounts of individuals who are employed by public or private entities. In the case of individuals, banks tend to rely on identification documents provided by the employer.

149. **Required CDD for Legal Persons:** The AML Regulations (2002) require, in the case of opening a corporate account, submitting: Certificate of Incorporation from the Registrar of Companies; a copy of the company’s articles of association; and the decisions of the Board of Directors to open an account and their decisions to authorize certain persons to run the account.

150. Comparable documents are required in the case of opening accounts for other legal entities, charity organizations and social societies. In addition to requiring the certificate of
registration from the concerned authorities and presenting copies of the society’s constitution and articles of association, the Regulations require submission of the resolution of the executive committee and appointment of three officers duly signed by the registrar of societies. This is the only incident in the Regulations where verification of the individuals effectively controlling the society is required.

151. The Regulations do not require the Bank to establish the names of the directors of a company. The certificate of registration does not include listing of the directors. While this information is available at the registrar, it has to be specifically requested.

152. The MLCA confirms the same requirements and expands on them by adding the need to verify the proprietors of the company (Art. 6(b)). In the absence of implementing regulations, it is not clear how much this addition will mean. Even though the law is already in force, there is no evidence of implementation.

153. In the case of “banks and financial institutions,” the regulations require enhanced due diligence by requiring the head office of the bank opening the account to contact the head office of the bank or financial institution requesting the opening of the account to ensure the accuracy of the information submitted for the purpose of account opening. This seems to have a consumer protection rationale rather than an AML/CFT rationale.

154. Sudanese law does not provide for “trust” as a legal arrangement.

155. **Beneficial Ownership:** With the exception of the case of charity organizations and social societies discussed above, neither the Act nor the Regulations require verification of the beneficial owner. This applies equally to individual customers and corporate customers. The Act and the Regulations do not require verification of the individuals who control the corporate body.

156. It was also noted that the company registrar lacks necessary automation and advanced automated search technologies, which would make it very difficult to identify situations of fronting and nominee arrangements in cases involving corporate entities. The development of such system is a pre-requisite for the effective operation of an AML CDD system.

157. **Purpose and Intended Business:** Acquiring information on the purpose and intended business is not stipulated as part of the account opening procedures. Instead, there is some reference to it under section “Fourth: General Procedures and Directives” of the AML Regulations 2002 where it is stated: “In case of suspecting the authenticity of data and information presented by customers, the bank employee must ensure its authenticity using appropriate tools. In general, adequate information must be obtained on the nature of the business of the customer, in addition to knowing the origin and nature of transaction or service granted to any suspected customer.” [Emphasis added] There is no evidence that this requirement is adhered to by the industry or that it is enforced by the BOS.
158. **Ongoing Due Diligence:** There are no requirements to this effect under the Act or the Regulations.

159. **Risk-Based Approach:** Sudan has not conducted risk analysis and there is no enhanced or reduced CDD based on variations in the risk of money laundering.

160. **Timing of Verification:** This is not covered in any detail in the Act or the Regulations. The Requirements are set as conditions for opening an account, which suggests that identification should be completed prior to commencement of the relationship. There are no other details or exceptions.

161. **Failure to Satisfactorily Complete CDD:** Article 6(a) of the MLCA, prohibits opening “any account, or accounts, or transacting any financial operation, or operations in forged, incomplete or nonclear names[.]” There are no further details on this point. There was no evidence of enforcement of this requirement or adequate monitoring of the implementation of the AML Regulations (2002) on account opening procedures. No sanctions were imposed by the BOS for failure to meet these requirements.

162. **Existing Customers:** There are no CDD requirements in the AML Regulations and the Act relating to existing customers. The Draft Regulations refer briefly to the need to update the mandates on existing accounts on annual basis. This is understood to mean updating the customer information of existing accounts annually. The Farmers’ Bank indicated that the annual updating requirement was too demanding and suggested an update every two years. Consideration of the draft is still pending.

163. **Politically exposed persons:** Sudanese law does not deal with PEPs. Sudan has signed but not yet ratified the UN convention on Corruption. Ratification procedures are pending.

164. **Correspondent Banking:** There are currently no rules on correspondent relationships. There is a draft circular by the BOS updating the AML Regulations of 2002, which requires identifying new correspondent banks and the nature of their activities and ensuring that they have anti-money laundering policies. The draft does not provide adequate regulation of this issue. Generally, this draft falls short of introducing the necessary amendments to the existing regulatory framework and there is no set date for its introduction. While reference will be made to the draft where necessary, it will not be taken into consideration in assessing the level of compliance with the Recommendations. This is due to the fact that it is not likely to be introduced shortly.

165. **Misuse of Technological Developments:** There are currently no rules relating to the misuse of new technologies for money laundering and terrorist financing purposes.

166. **General Observations on the Banking Sector Practice:** Upon consulting the account opening documents of a selected number of banks, the assessors found that account opening forms of local banks did not include space for the ID number of the customer or the
nature of his/her business. Forms for opening corporate accounts did not include any space for information on the board of directors.

Recommendations and Comments:

167. It is established that the Sudanese banking system does not recognize anonymous banking relationships. While, the rules on the opening of accounts seem to set some framework for identification of customers, much remain to be addressed from the perspective of AML/CFT. It is therefore recommended that:

- The regulations should be revamped and a new set of clear and comprehensive regulations should be introduced.
- CDD requirements should extend to other nonbank financial institutions.
- An appropriate risk analysis needs to be conducted in order to identify the customers and transactions that are particularly vulnerable to abuse and those that are less vulnerable. CDD requirements should be adjusted accordingly.
- Requirements on verification of beneficial ownership should be introduced and detailed.
- Rules on CDD in non account-based transactions should be detailed and enforced through implementing regulations.
- The definition of “financial institutions” as defined under art. 2 of the MLCA should be duly clarified and narrowed down to a realistic scope consistent with international standards.
- Rules on the timing of CDD should be detailed taking into account business needs and practices.
- On-going due diligence requirements should be introduced.
- CDD rules should include identification of the nature and purpose of the customer’s business. This is essential for subsequent identification of unusual and suspicious transactions.
- Rules on Politically Exposed Persons should be detailed.
- Correspondent relationships should be regulated.
- Risk of new technological developments in the Sudanese financial sector should be assessed and adequate regulations should be introduced.
## Compliance with Recommendations 5 to 8

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| R.5 PC | 1. There are no CDD regulations in the nonbank financial sector.  
2. AML Regulations in the Banking sector only address account-based relationships and does not deal with occasional transactions including money transfers.  
3. The regulatory framework does not require adequate verification of beneficial ownership.  
4. The regulations do not require on-going due diligence.  
5. The regulations do not require identification of the nature and purpose of the business of the customers. |
| R.6 NC | There are no regulations on PEPs |
| R.7 NC | There are no regulations on correspondent relationships. |
| R.8 NC | The question of the risks of new technologies have not been addressed. |

### Third parties and introduced business (R.9)

#### Description and Analysis

168. This practice does not occur in Sudan.

#### Recommendations and Comments

169. None

### Compliance with Recommendation 9

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<tr>
<td>R.9 NA</td>
<td>There is no practice of third parties or introduced business.</td>
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</table>
Financial institution secrecy or confidentiality (R.4)

Description and Analysis

170. **Relevant Legal Provisions:** Law on the Regulation of Banking Activity (2003) [Hereinafter, Banking Regulations Act (2003)], article 55 on “Confidentiality.”

171. Article 55(1) imposes a duty of confidentiality on “any member of the board of directors, general manager, deputy general manager, officer, or employee [of any bank or financial institution], or any receiver, or any other person assigned to perform official tasks under this law” with regard to any customer’s accounts or transactions that was obtained in the discharge of the person’s official duties.

172. Section (2) or article 55 exempts from the scope of this duty information requested by the BOS in the discharge of its supervisory functions, and information requested by the Minister of Justice or competent court. Section (3) requires Governor’s consent for the supply of confidential information to any other entity apart from the competent court.

173. The exemptions are sufficiently broad and are implemented flexibly.

Recommendations and Comments

None.

Compliance with Recommendation 4

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

Description and Analysis


175. **Record Keeping:** Article 6(c) of the MLCA requires financial institutions to maintain a separate record for every operation containing all required data. Article 6(g) require that financial institutions should keep all the records showing “financial dealing, commercial and monetary transactions, whether local, outside or transit, and also the account
files and commercial correspondence.” The provision requires keeping these records for a period of minimum five years from the date of termination of the transaction or operation or closing the account.

176. Title Eight of the AML Regulations (2002) deals with transactions records. It requires banks to keep records of any transaction carried domestically or with another country for a period of not less than five years from the date of executing the transaction. The records should contain information sufficient to trace individual transactions including the values and currencies used. The Regulations do not deal with account records.

177. Article 48 of the Banking Regulation Act (2003) prohibits any Bank from destroying documents relating to its activities before the lapse of the period specified by the BOS. The article further require banks to keep electronic record of all destroyed documents prior to destroying them.

178. The MLCA act does not define in sufficient detail the content of the records to be kept by the institutions and the scope of the data required. Furthermore, while the Act is enforceable, the implementing regulations have not yet been issued and the act has not yet been enforced. Implementing regulations are highly needed to achieve the effectiveness of the Act.

179. The AML Regulations are not sufficient to meet the international standard in this regard as they do not cover account records and are only restricted to transaction records. They also do not give sufficient guidance in this regard.

180. Sharing Information: The MLCA requires financial institutions to produce all kept documents upon request from the competent authority. The AML Regulations (2002) require banks to set their systems in such a way as to facilitate representing them to the concerned authorities upon request.

181. While banks confirmed their commitment to the record-keeping requirements of the laws and regulations, the BOS does not yet perform its function of inspecting the records in terms of compliance with AML regulations. The police and prosecutorial authorities were however satisfied with access and availability of information from the banks.

182. Note that nonbank financial institutions are not subject to any regulatory requirements in this regard and remain unaware of their obligations under the Act.

183. Wire Transfers, With the exception of the rules regulating foreign exchange bureaux, there are no regulations relating to CDD or record-keeping of wire-transfer transactions. Article 16(6) and (7) of the Circular Regulating Foreign Exchange Businesses (2002) require foreign exchange companies to keep records of wire transfer transactions including: the name of the originator, his address, his ID, the name of the recipient, the number of the transfer, the date, the amount in the foreign currency and in Sudanese Dinars. There are not equivalent regulatory requirements for banks. There are no other rules.
regulating wire-transfers and no stipulation of CDD requirements for bank-executed transfers in any law or regulation.

184. Interviews conducted during the on-site visit revealed that wire transfer operations carried out by a third party on behalf of another are common place, especially with regard to money transfers. This practice does not raise any concern in the industry and no enhanced due diligence is carried out to verify the identity of the beneficial owner or the person acting on his behalf. This is particularly common in money transfer transactions involving recipients living in remote areas. In such cases, it is very common for one person to act on behalf of another without any special measures taken by the bank concerned. This practice is particularly vulnerable to abuse for terrorist financing purposes.

Recommendations and Comments

185. To address the deficiencies identified above, the assessors recommend the following:

- New regulations clarifying the rules on record keeping should be introduced.
- The regulations should provide clear guidance on the information and documents to be kept.
- Record-keeping requirements should be introduced for nonbank financial institutions.
- Comprehensive rules on wire transfers should be introduced including CDD, record keeping and the information to accompany the wire transfer.
- Rules or guidance on handling wire transfers that do not carry sufficient originator information should be introduced.
- The industry’s lax approach to wire transfer transactions carried out by third parties should be addressed through both awareness raising of the risks involved and enforcement action where necessary.

Compliance with Recommendation 10 and Special Recommendation VII

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<td>1. There are no AML/CFT recordkeeping requirements in nonbank financial institutions.</td>
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<td>2. The content of the records to be kept for AML/CFT purposes is not sufficiently defined in the law and regulations.</td>
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<td>3. The AML Regulations do not cover account records and the broader provisions in the Act has not been clarified through</td>
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implementing regulations.

4. The BOS does not yet inspect banks for compliance with the record-keeping requirements. No enforcement action has ever been taken in this regard.

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<th>SR.VII</th>
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<tbody>
<tr>
<td>There are no rules or regulations on bank-executed wire transfers. Foreign exchange companies are subject to some regulations in this regard but there was no evidence of enforcement by the BOS. No enforcement action has ever been taken for failure to comply.</td>
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</tr>
</tbody>
</table>

Unusual and Suspicious Transactions

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

Description and Analysis

186. **Relevant Legal Provisions:** AML Regulation (2002), Title Four on “General Procedures and Directives.”

187. **Unusual Transactions:** Section 1 of the Fourth Title requires banks “to pay special attention to those transactions that are not in line with the normal transactions of the account, such as cash deposits in large amounts or deposits in small amounts carried out at regular periods without having any obvious purpose or economic reason.”

188. The provision does not explain the meaning of “special attention” and does not give any guidance on the course of action to be taken. The provisions also does not require any documentation of the transaction in writing. Furthermore, the scope of the provision is too narrow as it is related to account-based transactions. There is no reference to occasional transactions that are unusual and do not have any apparent lawful economic purpose.

189. The BOS does not monitor the compliance with this directive and no enforcement action has been taken.

190. **Dealing with Jurisdictions with Lax AML/CFT Systems:** Section 1 of the Fourth Title of AML Regulations (2002) requires banks to pay special attention to “dealings with other partners in countries where there are no adequate measures are taken to combat money laundering operations.” Again the Regulations do not provide any guidance on what is meant by special attention in this regard. There are no measures in place to advise financial institutions of concerns regarding the effectiveness of AML/CFT systems of other jurisdictions. Sudan has not adopted any counter-measures regarding jurisdictions with persistently inadequate AML/CFT system.
Recommendations and Comments

191. To address the deficiencies identified above, the following is recommended:

- The Regulations should be amended to broaden the scope of unusual transactions to encompass those transactions that are not consistent with the pattern of an account and occasional transactions that are unusual by virtue of their size or other general criteria.

- The Regulations should give banks more guidance on the actions and measures to be taken upon identifying an unusual transaction. In particular, banks should be required to determine its background and purpose and to document that in writing.

- Rules on unusual transactions should be extended to nonbank financial institutions by law, regulations, or any other enforceable means.

- The Administrative Committee should design a comprehensive system for dealing with jurisdictions that do not have adequate AML/CFT systems, which identifies such jurisdictions, advises financial institutions accordingly, requires financial institutions to pay special attention to transactions or relationships involving such jurisdictions, provides clear guidance or directives on this matter, and adopt counter measures that could be applied to countries that persist in maintaining inadequate AML/CFT systems.

Compliance with Recommendations 11 & 21

<table>
<thead>
<tr>
<th>Rating</th>
<th>Summary of factors underlying rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>R.11</td>
<td>NC</td>
</tr>
<tr>
<td>1.</td>
<td>The directive relating to unusual transactions is too narrow and does not provide guidance on the measures that financial institutions should take.</td>
</tr>
<tr>
<td>2.</td>
<td>The requirement to pay special attention only applies to banks and there are no equivalent requirements applicable to other financial institutions.</td>
</tr>
<tr>
<td>3.</td>
<td>There is no evidence of implementation by the industry.</td>
</tr>
<tr>
<td>4.</td>
<td>The BOS does not enforce the requirement to pay special attention to unusual transactions. There has not been a single enforcement action taken against noncompliant banks.</td>
</tr>
<tr>
<td>R.21</td>
<td>NC</td>
</tr>
<tr>
<td>1.</td>
<td>There is not sufficient guidance regarding the measures to be taken when the transaction involves a noncompliant jurisdiction</td>
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<td></td>
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</tr>
<tr>
<td>2.</td>
<td>There is no evidence of implementation by banks.</td>
</tr>
<tr>
<td>3.</td>
<td>The BOS does not enforce the Regulation.</td>
</tr>
<tr>
<td>4.</td>
<td>The BOS does not advise banks on jurisdictions that pose concern.</td>
</tr>
<tr>
<td>5.</td>
<td>There is no framework for taking measures against persistently noncompliant jurisdictions.</td>
</tr>
</tbody>
</table>

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

**Description and Analysis**

192. **Relevant Legal Provisions:** AML Regulations (2002), Title Five on “Reporting Detected or Suspected Money Laundering Operations;” MLCA, article 7, and article 21.

193. **Requirement to Report:** Article 7 of the MLCA provides that “Notwithstanding any contrary provision, in any other law, financial institutions, upon transaction, or discovery of such financial operations, as may raise suspicions and doubts, about the nature, or the source of the money, or the purpose thereof, shall submit a detailed report thereon, containing all such available data and information, as may have been obtained.” This provision applies to all financial institutions as defined by the Act including travel agencies and any company. According to 9(1) of the Act, “the Administrative Committee” should receive the reports. There is however no penalty attached to failure to comply with this provision. This obligation has not been implemented and covered institutions, apart from banks, are not aware of any duty to report suspicion.

194. Title Five of the AML Regulations (2002) requires banks to report immediately any suspicion or detection of a money laundering transaction. The reporting according to this provision should be done to the BOS contrary to the MLC Act which succeeded and the provision has not been amended yet consistently with the Act. Even though the provision has been in place for two years, the number of STRs filed did not exceed 6 or 7 mostly relating to advanced fee fraud cases. The BOS has not taken any enforcement action against any bank for failure to report.

195. The obligation to report under AML Regulations (2002) is clearly restricted to suspicion of money laundering and does not extend to terrorist financing. The obligation to report under Art. 7 of the Act, on the other hand, is broader. Even though it does not refer to reporting suspicion of terrorist financing specifically, it is broad enough to encompass it considering that it requires reporting upon “suspicion and doubts, about nature, or the source of the money, or the purpose thereof.”
196. **Amount of the Transaction:** The law does not set a threshold for the reporting of suspicion.

197. **Tax Matters:** The law and regulations do not exclude any suspicious transactions from the scope of the reporting on basis of the likely source of the funds.

198. **Protection against Liability:** Article 21 of the MLCA provides that “There shall be exonerated, from responsibility, whoever discharges, in good faith, the duty of notification of any of such suspected operations as may be subject to the provisions of this Act, by presenting information, or particulars thereof, in contravention of the rules imposed for the security of the secrecy of the same; and there shall be exoneration, from civil liability, whenever the belief of such suspicion is based upon reasonable grounds.” It is the view of the assessors that requiring reasonableness instead of just good faith in order to be exonerated from civil liability arising from reporting is too strict and leaves the reporting individual or institution vulnerable to contractual and tortuous liability. Furthermore, the provision does not explicitly exonerate both the institution and the individual acting for it. Instead, it refers to “whoever discharges” which might, if applied strictly, leave the institutions vulnerable to liability.

199. The AML Regulations (2002) provide that “the bank employee shall not be held responsible for reporting a suspected money laundering operation as long as this reporting was done on a *bona fide* basis, whether the transaction was proved to be sound or a money laundering operation.” Exempting from liability regardless of the reality of the transaction is a better approach for protecting the reporting individual. The provision however is deficient in that it refers specifically to the employee and not to the institutions. It is also not clear which liability does it protect against. The remainder of the provision explicitly excludes any liability for breach of banking confidentiality, but it remains unclear on other types of liability arising from claims of breach of contract or tort.

200. **Tipping Off:** Article 6 of the MLCA imposes a duty of secrecy upon financial institutions preventing them from revealing to the client, the beneficiary or any other person, other than the competent authorities “about any of the legal proceedings, as may be taken, with respect of the financial transactions, or operations, suspected to involve money laundering.” The drafting is somewhat unclear but the gist of the provision is a prohibition on tipping off the person concerned regarding the fact of reporting and the ensuing investigation. Again, the provision is not enforced by any penalty. It has not yet been implemented.

201. **Cross Border Transportation of Currency:** The physical movement of currency across the borders of Sudan is free. Sudan has not considered introducing such measures.

202. **Reporting Cash Transactions above a Certain Threshold:** Sudan has not considered this option. In the view of the assessors, considering that Sudan is a cash-based society, such reporting system will be unworkable and will generate large amounts of useless data.
203. **Unusual International Shipments:** Sudan does not have a system for notifying the country of origin or destination regarding discovered unusual international shipments of currency or other assets for that matter. Sudan has not considered introducing such a system.

204. **Feedback:** The reporting system in Sudan is not yet enforced and complied with. There is no system of feedback yet.

**Recommendations and Comments**

- The discrepancy between the Act and the Regulations should be reconciled.
- The reporting obligation should be extended very clearly to the suspicion of funds or transactions to be related to terrorism, terrorist organizations or the financing of terrorism.
- The Act should specify clear penalties for failure to report or tipping off of the customer.
- The scope of the obligation in terms of the covered institutions under the Act should be narrowed down realistically.
- Measures should be taken to raise the awareness of the covered institutions regarding their new obligations and their significance.
- Sudan should consider the introduction of measures aimed at detecting or monitoring the physical cross-border transportation of currency.
- Sudan should consider introducing measures that aim at informing and cooperating with the country of origin and destination of unusual and suspicious shipments of currency and precious objects.

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

<table>
<thead>
<tr>
<th>Rating</th>
<th>Summary of factors underlying rating</th>
</tr>
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<tbody>
<tr>
<td>R.13</td>
<td>1. While the law and regulation contain an obligation to report suspicion, concerned institutions, apart from banks, are not yet aware of their obligation to Report.</td>
</tr>
<tr>
<td></td>
<td>2. Banks do not report suspicion and the BOS does not take enforcement action against failure to do so.</td>
</tr>
<tr>
<td></td>
<td>3. The scope of the obligations to report does not extend explicitly to suspicion of link to terrorism.</td>
</tr>
</tbody>
</table>
1. While there is an exemption from liability under the law and the regulations, the scope is not clear. It does not cover all forms of liability and it does not cover all the persons concerned.

2. The standard of reasonableness found in the Act is particularly high and exposes the reporting persons to civil liability.

Sudan has not considered the possibility of implementing such measures.

The reporting system as a whole is not in operation and there is no procedure for feedback.

The extension of the reporting requirements to terrorist financing, while it may be argued under the Act, is not clear. Explicit reference is needed.

Internal controls and other measures

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

Description and Analysis

205. **Relevant Legal Provisions:** AML Regulations (2002), Title Four on “General Procedures and Directives,” Title Seven on “Training of Bank Staff.” The MLCA does not address this question. Nonbank financial institutions are not covered by any requirements relating to AML internal mechanisms.

206. **Internal Procedures, Policies and Controls:** Section (3) of Title Four of the AML Regulations require the banks to “draw up internal policies and procedures to combat money laundering; and these must be constantly reviewed and updated.” The Regulations require that these policies should include at minimum appointing a compliance officer in each bank who is charged with the implementation of these policies.

207. **Audit Function:** The policies and procedures should also at minimum develop an adequate internal audit system to combat money laundering.

208. **Training:** Title Seven of the AML Regulations (2003) requires banks to train three categories of employees: employees working in cash deposits; employees working in accounts control and employees charged with reporting. The training should focus on aspects related to money laundering. The Regulations state the obligation of the BOS to direct banks on training methods and will also establish training sessions on methods of money laundering.
209. **Internal Controls:** The MLCA is silent on the question of internal controls.

210. The Regulations are not sufficiently detailed on the internal controls that the institutions should implement. Interviews with the industry showed that they have not yet adopted internal procedures or policies and they have not appointed internal compliance officer. Staff training remains in an early stage.

211. In October 2004, the BOS held a training session for managers introducing them to the concept and methods of money laundering and the general framework for preventing it in the financial sector, with specific emphasis on KYC regulations. The training was offered to bank managers. Three of the four banks interviewed confirmed that they have subsequently delivered the same training to their branch and department managers.

212. Overall, the system of internal controls remains ineffective and not enforced by the BOS.

213. **Bank Employees:** The laws and regulations do not impose particular requirements for hiring of Bank employees.

214. **Foreign Branches:** There are no AML/CFT requirements relating to the foreign branches of banks. The Draft Regulations do not address this matter.

**Recommendations and Comments**

215. The system of internal controls is significantly deficient. To address these deficiencies, the assessors recommend the following:

- The MLCA should include the development of internal policies and procedures as one of the functions that financial institutions should undertake.
- Regulations or guidance should be issued providing more guidance on the content of internal compliance policies.
- The compliance officer should be designated at management level.
- The independence of the audit function should be adequately safeguarded.
- Banks should be required to adequately resource their audit and compliance functions.
- Training should be provided to all employees on relevant aspects of AML/CFT.
- The regulations should refer explicitly to controlling the financing of terrorism in all reference to the obligations of financial institutions as part of the awareness raising of the risks involved and the scope of obligations.
- 54 -

- Appropriate standards on the hiring of employees of financial institutions should be clearly defined and enforced.
- The AML/CFT obligations of banks with regard to their foreign branches should be elaborated.

Compliance with Recommendations 15 & 22

<table>
<thead>
<tr>
<th>Rating</th>
<th>Summary of factors underlying rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>R.15 NC</td>
<td>The regulations are inadequate and they have not been implemented by the institutions or enforced by the BOS.</td>
</tr>
<tr>
<td>R.22 NC</td>
<td>There are no regulatory requirements on this matter.</td>
</tr>
</tbody>
</table>

Shell banks (R.18)

Description and Analysis

216. The question of shell banks is not addressed at all in Sudanese law. While there are no shell banks operating in the jurisdiction, there is no prohibition on establishing them, or entering into correspondence relationship with them

Recommendations and Comments

- Rules should be introduced clearly prohibiting the formation of shell banks and entering into correspondence relationships with foreign shell banks.
- Regulations should also impose due diligence obligations on banks operating within Sudan requiring them to ensure that their respondent financial institutions in foreign countries do not allow their accounts to be used by shell banks.

Compliance with Recommendation 18

<table>
<thead>
<tr>
<th>Rating</th>
<th>Summary of factors underlying rating</th>
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</thead>
<tbody>
<tr>
<td>R.18 NC</td>
<td>There are no rules applicable in Sudan on this matter.</td>
</tr>
</tbody>
</table>
Regulation, supervision, monitoring and sanctions

The supervisory and oversight system - competent authorities and SROs; Role, functions, duties and powers (including sanctions) (R.17, 23, 29 & 30)

Description and Analysis

217. **Sanctions:** Criminal sanctions available for the offences of money laundering and acts of terrorist financing were discussed in section 2.1. and 2.2. Sudanese law does not distinguish between natural and legal persons in terms of the principle of criminal liability. It attaches sufficiently dissuasive and differentiated sanctions to the acts of money laundering. Sudanese law permits concurrent criminal, civil and administrative liabilities.

218. Article 3(4) of the MLCA establishes as a money laundering offence: failure to inform the competent authorities of knowledge or suspicion of money laundering, impeding the reporting of such knowledge or suspicion, or reveals the information in such a way that prejudices the investigation. In this case, the failure to comply with the regulatory requirements to report will carry a criminal sanction to the extent that the conditions of criminal liability are met.

219. Apart from the provisions on criminal sanctions in the MLCA, the Act does not provide any sanctions for failure to comply with the AML/CFT regulatory requirements. The Act does not explicitly give the Administrative Committee sanctioning powers or determine the scope and nature of sanctions that could be applied for failure to comply with the regulatory requirements under the Act.

220. The Banking Regulation Act (2003) imposes sanctions of criminal, administrative and financial nature for violations of its provisions or of any regulations or directives issued under the authority of the Act. Article: 58(3) provides that “any person who violates the provisions of this law or regulations, decrees, or rules issued under it shall be punished by imprisonment of up to 10 years and/or a fine decided by the court.”

221. Article 58(4) provides that “the Governor may impose an administrative and/or a financial penalty on any bank or person that violates the provisions of this law or directives, instructions, regulations, and decrees issued pursuant to it.” Considering that the BOS has the powers under the Act to supervise and control banks and has the power to issue regulations for this purpose, the broad sanctioning powers provided for in the Act could be used to enforce the AML regulations. The AML Regulations (2002) do not contain any specific sanctions for compliance with their mandate and therefore they are to be enforced through the use of the general powers provided for in the Banking Regulations Act (2003). No enforcement action has ever been taken in implementation of the Regulations.

222. Foreign exchange companies are subject to the supervision and control of the BOS. Circular (3) Regulating Foreign Exchange Businesses (2002) gives the BOS the power to withdraw the license of any foreign exchange company that breaches the regulations of the
BOS. Foreign exchange companies are not currently regulated for money laundering and terrorist financing control purposes.

223. Insurance Supervision Act (2001) creates the Insurance Supervision Authority and gives it the power to supervise the insurance sector. Article 34 gives the Authority the power to withdraw the license to practice the relevant insurance activity if the licensed company breaches the Act or the regulations issued in accordance with its provisions. Apart from the criminal sanctions provided in the Act for carrying out any insurance activity without a license, the Act does give the Authority any other sanctioning powers. To date, there are no anti-money laundering and terrorist financing regulations of the insurance sector.

224. The Khartoum Stock Exchange is a self regulatory body. The Khartoum Stock Exchange Act provides the Exchange’s Executive Board with the power to issue the regulations, rules, and directives that are necessary to the implementation of the Act subject to the approval of the Finance Minister (Art.74). Article 56 gives the Executive Board through the Audit Committee the power to impose a number of sanctions for the members failure to comply with the Exchange’s law and regulations. The sanctions range from issuing a notice, issuing a warning, imposing financial penalties, suspension to termination of membership. The law however remains ineffective and the Executive Board has not yet been formed. There are no anti-money laundering and terrorist financing obligations applicable to the brokers.

225. **Designated Authorities:** While the MLCA defines “financial institutions” very broadly to encompass every company, the act does not designate authorities for the implementation of its requirements in the covered sectors. While the Act creates an Administrative Committee as the higher administrative authority for the combating of money laundering, the Authority is not explicitly charged with monitoring compliance with the Act and sanctioning any breaches. With the exception of the BOS, the other covered institutions are not subject to anti-money laundering supervision by any designated authority. The Khartoum Stock Exchange remains unsupervised and the Insurance Supervision Authority has not yet assumed any responsibilities in this regard.

226. **Sanctions for Legal and Natural Persons:** Article 3(5) of the MLCA provides that: “Where a corporate person commits the offence of money laundering, every natural person, who at the time of committing such offence, works at, or to the account thereof, in any capacity, shall have committed the same offence, where the element of voluntariness, or gross negligence is proved against him.”

227. **Adequate Regulation and Supervision:** Only the BOS has issued anti-money laundering regulations. These Regulations are not yet enforced by the BOS. The BOS does not supervise implementation of the Regulations and has not taken any enforcement action against noncompliant institutions. Even though the BOS has regulatory and supervisory powers over the foreign exchange companies, the BOS has not regulated these companies for money laundering and terrorist financing purposes.
228. The Khartoum Stock Exchange is not subject to independent supervisory mechanisms and its self-regulatory mechanism in the form of an Executive Board is not yet in place.

229. The Insurance Supervision Authority has not assumed any responsibility in the area of money laundering and terrorist financing prevention in the sector.

230. The Administrative Committee that was created by the MLCA does not have any explicit supervisory and sanctioning powers and has not yet issued any regulations implementing the Act and designating the necessary supervisory and enforcement authorities.

231. **Core Principles:** The relevant regulatory authorities do not apply the relevant Core Principles for the purposes of preventing money laundering and terrorist financing. So far in Sudan, the BOS supervisors use their supervisory power strictly to ensure prudential soundness and not for AML/CFT purposes.

232. **Money or Value Transfer System:** Article 5(A) of the Circular Regulating Foreign Exchange Businesses provides that foreign exchange activities including value or money transfer and money or currency changing services may not be practiced without prior license from the BOS. Article 36 establishes confiscation as a penalty for carrying foreign exchange business without license.

233. Even though foreign exchange companies are subject to regulation and supervision by the BOS, they are not yet subject to AML/CFT regulations.

234. **Inspection and Access to Records:** The MLCA and the AML Regulations (2002) do not contain specific powers to monitor and ensure compliance with the requirements to combat money laundering and terrorist financing. With respect to the BOS, there are general powers to inspect and to compel the production of documents for the purposes of carrying out the supervisory function (articles 37 and 55). Access to records for these purposes does not require prior court order. The Circular Regulating Foreign Exchange Business (2002) gives the BOS general inspection powers vis-à-vis foreign exchange companies. Foreign exchange companies are however not regulated for money laundering and terrorist financing purposes. To date, the BOS has not however used its powers to inspect banks for compliance with AML/Regulations.

235. The Insurance Supervision Authority has general powers to supervise the insurance sector. The law does not specifically state its power to inspect and to access records. The Authority relies on off-site supervision based on reports submitted by the insurance companies. It does not conduct on-site inspection.

236. The Sudanese Stock Exchange does not yet have a functioning supervisor.

237. **Powers and Enforcement Sanctions:** See detailed discussion above.
238. **Resources:** The resources directed to AML and CFT remain minimal. The Administrative Committee is due to have an independent budget, which has not yet been secured. The BOS has three members of staff working part-time on AML. The BOS so far is making the largest commitment of resources in this area. This is an indication of the inadequacy of the resources committed.

239. **Professionalism and Confidentiality:** All the authorities involved in the fight against money laundering are subject to the standards and rules of public office as public civil servants. The members of the Administrative Committee are supposed to take an oath of honesty, integrity and confidentiality as stipulated in Article 10 of the MLCA. The BOS is subject to obligations of confidentiality with regard to all the information that it obtains in the context of discharging its supervisory function.

240. **Training:** The training received by staff of the authorities involved in implementing the Act and the Regulations is minimal. The BOS has only trained the three part-time AML officers to some extent. With the exception of intelligence agencies and the BOS, no other law enforcement or supervisory authority has offered its staff training in AML/CFT. Courts and judges have not received any training in this field.

**Recommendations and Comments**

- The MLCA needs to be operational through the establishment of a Secretariat General for the Administrative Committee charged with conducting the day-to-day work of the committee and drafting implementing regulations for the Committee’s consideration.

- AML/CFT regulations should be introduced in the insurance and securities sectors.

- AML/CFT Regulations for banks need to be updated consistently with the international standards. The analysis of deficiencies in this report could provide some guidance in this regard.

- AML/CFT regulations should be introduced and implemented in foreign exchange companies.

- The sanctions for failure to comply with AML/CFT requirements should be clarified in the relevant instruments.

- Relevant AML/CFT instruments should clearly designate the authorities in charge of implementing AML/CFT regulations in the various covered sectors and vest them with the powers to impose sanctions for breach of the requirements.

- An effective supervisory framework should be introduced in the securities sector.

- The powers of the Insurance Supervision Authority to inspect and to gain access to records should be clearly defined in the law.
<table>
<thead>
<tr>
<th>Rating</th>
<th>Summary of factors relevant to s.3.10 underlying overall rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>R.17</td>
<td>NC</td>
</tr>
<tr>
<td></td>
<td>1. While the BOS has sufficient sanctioning powers, these powers have not been used to enforce AML/CFT requirements.</td>
</tr>
<tr>
<td></td>
<td>2. There is no effective securities market supervisor.</td>
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<td>3. The Insurance Supervision Authority has not assumed any role in AML/CFT regulation, supervision and enforcement.</td>
</tr>
<tr>
<td></td>
<td>4. The MLCA does not designate clearly the authorities in charge of supervising the institutions covered by the Act.</td>
</tr>
<tr>
<td>R.23</td>
<td>NC</td>
</tr>
<tr>
<td></td>
<td>1. The MLCA does not designate clearly the authorities in charge of supervising the institutions covered by the Act.</td>
</tr>
<tr>
<td></td>
<td>2. Supervisors do not take into consideration money laundering and terrorist financing prevention when enforcing relevant prudential regulations.</td>
</tr>
<tr>
<td></td>
<td>3. Foreign exchange companies are not subject to AML/CFT supervision.</td>
</tr>
<tr>
<td>R.29</td>
<td>NC</td>
</tr>
<tr>
<td></td>
<td>1. The BOS does not use its inspection powers to ensure compliance with AML/CFT requirements.</td>
</tr>
<tr>
<td></td>
<td>2. The securities sector lacks any form of effective supervision.</td>
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<tr>
<td></td>
<td>3. The Insurance Supervision Authority does not exercise on-site inspection of supervised entities and its powers to inspect to gain access to records is not clearly defined in the law.</td>
</tr>
<tr>
<td>R.30</td>
<td>NC</td>
</tr>
<tr>
<td></td>
<td>1. The resource commitment to AML/CFT implementation and enforcement remains dismal.</td>
</tr>
<tr>
<td></td>
<td>2. The staff of the competent authorities have not received any significant training in AML/CFT supervision, monitoring, detection and enforcement.</td>
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</table>
241. **Preventing Criminals from Controlling Financial Institutions:** The Regulation Governing Licensing for Conducting Banking Business (2004) [Hereinafter, Licensing Regulations (2004)] in article 5(a)(i) requires for the purposes of licensing that the applicant should submit “documents ascertaining the identities of the owners/founders submitting the application, the person who will subscribe to the paid-up capital and the person expected to occupy high administrative posts in the bank.” For the persons listed in this provision, the Regulations require submission of criminal record. (5(a)(iii).

242. Article 5(a)(v) of the Licensing Regulations require the applicant to submit a “document showing any direct or indirect link- if any- between the expected to be established bank and any enterprise or group or specific economic groups within or outside Sudan in which any of the shareholders has a considerable stake.” Article 5(a)(vi) requires the applicant to submit a document showing the contribution of the bank or the owners in similar entities.” Article 7(c) gives the BOS the power to reject any of the founders, or members of the Board of Directors, or occupants of top management posts.” Article 7(b) requires that executives and members of the board of directors should be qualified, experienced and of high integrity.

243. The provisions referred to above give the BOS sufficient powers to ensure that criminals do not assume direct or indirect control over financial institutions. It is also the practice of the BOS, as confirmed in interviews with relevant officers, to conduct background and security checks relying on the Economic Security Circuit of the State Security Service. The Economic Security Circuit seeks the assistance of foreign counterparts in this regard where the application involves a foreign entity or individual.

244. The Insurance Supervision Act (2001) and the Khartoum Stock Exchange Act (1994) do not have similar requirements for licensing the entities operating under their supervision. While the Insurance Supervision Authority confirmed that “fit and proper” requirements were in place, these requirements were not set in any legal document. Both the Stock Exchange and the Insurance Supervision Authority have the power to license entities operating within the sector. There is nothing to prevent enhancing the scope and exercise of their power to ensure that criminals do not acquire controlling interests in such institutions.

**Recommendations and Comments**

- Licensing procedures in the securities and insurance sectors should make explicit reference to integrity and fit and proper standards.
- Licensing procedures should be applied with conscious attention to preventing direct or indirect control of criminals over financial institutions.
The law and regulations should refer to and provide guidance on establishing beneficial ownership and ensuring that it is not held by criminals.

Compliance with Recommendation 23 (criteria 23.1, 23.3-23.5)

<table>
<thead>
<tr>
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</tr>
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<tbody>
<tr>
<td>R.23</td>
<td>PC</td>
</tr>
<tr>
<td></td>
<td>Integrity and fit and proper requirements are not required explicitly in the securities and insurance sectors.</td>
</tr>
</tbody>
</table>

AML/CFT Guidelines (R.25)

Description and Analysis

245. The AML Regulations of 2002 combine the two functions of providing guidelines to the industry on the typologies of money laundering and the vulnerabilities of the sector as well as regulating the banking sector against money laundering. The Regulations identify ways of using banks in money laundering. The guidelines highlight the risks inherent in cash transfers and cash-based transactions. The document considers cash-based activities as the most prevalent form of money laundering. The Regulations go on to identify possible signs of money laundering in the use of customers’ accounts, investment-related transactions, international banking and financial transactions, letters of credit and other methods of trade finance, and electronic banking services. The list provided is effectively a guidance on what would constitute suspicious activities. The guidelines however do not cover terrorist financing and are somewhat dated.

246. No guidelines were issued for the securities and insurance sectors or for other relevant businesses and professions.

247. The STR system is not yet in operation. It is not possible at this stage to discuss the feedback mechanisms between the FIU and the regulated institutions. It is important that the Administrative Committee should set the mechanisms for a feedback system from the outset.

Recommendations and Comments

- It is recommended that the Administrative Committee should without delay issue guidelines on the techniques and methods of money laundering and on the compliance with the Act.

- It is also recommended that the BOS should update its guidelines to reflect the current reality of money laundering risks in the banking sector, especially in view of the ongoing liberalization and the number of new foreign entrants that are in the process of setting up their operations.
• The BOS should issue clear guidelines to the foreign exchange companies on the risks of money laundering and terrorist financing in the sector and ways to prevent it.

• The Administrative Committee should carry out jointly with other competent authorities an assessment of the risks of terrorist financing in the various sectors with a view to issuing clear guidelines to the relevant institutions. During the on-site visit it was clear that the banks were unaware of the risks of terrorist financing in their operations.

• The securities and insurance sectors should receive adequate guidelines on the potential use of the sectors for money laundering and terrorist financing purposes and on the patterns of suspicious transactions.

Compliance with Recommendation 25 (criteria 25.1, financial institutions)

<table>
<thead>
<tr>
<th>Rating</th>
<th>Summary of factors underlying rating</th>
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</thead>
<tbody>
<tr>
<td>R.25</td>
<td>NC</td>
</tr>
<tr>
<td></td>
<td>1. The relevant authorities have not issued guidelines of any significance in this area.</td>
</tr>
<tr>
<td></td>
<td>2. The STR system is not yet in place.</td>
</tr>
</tbody>
</table>

Ongoing supervision and monitoring (R.23, 29 & 32)

Description and Analysis

248. **Sanctions:** Criminal sanctions available for the offences of money laundering and acts of terrorist financing were discussed in section 2.1 and 2.2. Sudanese law does not distinguish between natural and legal persons in terms of the principle of criminal liability. It attaches sufficiently dissuasive and differentiated sanctions to the acts of money laundering. Sudanese law permits concurrent criminal, civil and administrative liabilities.

249. Article 3(4) of the MLCA establishes as a money laundering offence: failure to inform the competent authorities of knowledge or suspicion of money laundering, impeding the reporting of such knowledge or suspicion, or reveals the information in such a way that prejudices the investigation. In this case, the failure to comply with the regulatory requirements to report will carry a criminal sanction to the extent that the conditions of criminal liability are met.

250. Apart from the provisions on criminal sanctions in the MLCA, the Act does not provide any sanctions for failure to comply with the AML/CFT regulatory requirements. The Act does not explicitly give the Administrative Committee sanctioning powers or determine the scope and nature of sanctions that could be applied for failure to comply with the regulatory requirements under the Act.
251. The Banking Regulation Act (2003) imposes sanctions of criminal, administrative and financial nature for violations of its provisions or of any regulations or directives issued under the authority of the Act. Article: 58(3) provides that “any person who violates the provisions of this law or regulations, decrees, or rules issued under it shall be punished by imprisonment of up to 10 years and/or a fine decided by the court.”

252. Article 58(4) provides that “the Governor may impose an administrative and/or a financial penalty on any bank or person that violates the provisions of this law or directives, instructions, regulations, and decrees issued pursuant to it.” Considering that the BOS has the powers under the Act to supervise and control banks and has the power to issue regulations for this purpose, the broad sanctioning powers provided for in the Act could be used to enforce the AML regulations. The AML Regulations (2002) do not contain any specific sanctions for compliance with their mandate and therefore they are to be enforced through the use of the general powers provided for in the Banking Regulations Act (2003). No enforcement action has ever been taken in implementation of the Regulations.

253. Foreign exchange companies are subject to the supervision and control of the BOS. Circular (3) Regulating Foreign Exchange Businesses (2002) gives the BOS the power to withdraw the license of any foreign exchange company that breaches the regulations of the BOS. Foreign exchange companies are not currently regulated for money laundering and terrorist financing control purposes.

254. Insurance Supervision Act (2001) creates the Insurance Supervision Authority and gives it the power to supervise the insurance sector. Article 34 gives the Authority the power to withdraw the license to practice the relevant insurance activity if the licensed company breaches the Act or the regulations issued in accordance with its provisions. Apart from the criminal sanctions provided in the Act for carrying out any insurance activity without a license, the Act does give the Authority any other sanctioning powers. To date, there are no anti-money laundering and terrorist financing regulations of the insurance sector.

255. The Khartoum Stock Exchange is a self regulatory body. The Khartoum Stock Exchange Act provides the Exchange’s Executive Board with the power to issue the regulations, rules, and directives that are necessary to the implementation of the Act subject to the approval of the Finance Minister (Art.74). Article 56 gives the Executive Board through the Audit Committee the power to impose a number of sanctions for the members failure to comply with the Exchange’s law and regulations. The sanctions range from issuing a notice, issuing a warning, imposing financial penalties, suspension to termination of membership. The law however remains ineffective and the Executive Board has not yet been formed. There are no anti-money laundering and terrorist financing obligations applicable to the brokers.

256. **Designated Authorities:** While the MLCA defines the financial institutions very broadly to encompass every company, the act does not designate authorities for the implementation of its requirements in the covered sectors. While the Act creates an Administrative Committee as the higher administrative authority for the combating of money
laundering, the Authority is not explicitly charged with monitoring compliance with the Act and sanctioning any breaches. With the exception of the BOS, the other covered institutions are not subject to anti-money laundering supervision by any designated authority. The Khartoum Stock Exchange remains unsupervised and the Insurance Supervision Authority has not yet assumed any responsibilities in this regard.

257. **Adequate Regulation and Supervision:** Only the BOS has issued anti-money laundering regulations. These Regulations are not yet enforced by the BOS. The BOS does not supervise implementation of the Regulations and has not taken any enforcement action against noncompliant institutions. Even though the BOS has regulatory and supervisory powers over the foreign exchange companies, the BOS has not regulated these companies for money laundering and terrorist financing purposes.

258. The Khartoum Stock Exchange is not subject to independent supervisory mechanisms and its self-regulatory mechanism in the form of an Executive Board is not yet in place.

259. The Insurance Supervision Authority has not assumed any responsibility in the area of money laundering and terrorist financing prevention in the sector.

260. The Administrative Committee that was created by the MLCA does not have any explicit supervisory and sanctioning powers and has not yet issued any regulations implementing the Act and designating the necessary supervisory and enforcement authorities.

261. **Money and Value Transfer Systems:** Even though foreign exchange companies are subject to regulation and supervision by the BOS, they are not yet subject to AML/CFT regulations.

262. **Inspection and Access to Records:** The MLCA and the AML Regulations (2002) do not contain specific powers to monitor and ensure compliance with the requirements to combat money laundering and terrorist financing. With respect to the BOS, there are general powers to inspect and to compel the production of documents for the purposes of carrying out the supervisory function (articles 37 and 55). Access to records for these purposes does not require prior court order. The Circular Regulating Foreign Exchange Business (2002) gives the BOS general inspection powers vis-à-vis foreign exchange companies. Foreign exchange companies are however not regulated for money laundering and terrorist financing purposes. To date, the BOS has not however used its powers to inspect banks for compliance with AML/Regulations.

263. The Insurance Supervision Authority has general powers to supervise the insurance sector. The law does not specifically state its power to inspect and to access records. The Authority relies on off-site supervision based on reports submitted by the insurance companies. It does not conduct on-site inspection.

264. The Sudan Stock Exchange does not yet have a functioning supervisor.
265. **Monitoring the Effectiveness:** The system is not yet in place, discussion of studies of its effectiveness is premature. Generally speaking, systems of data gathering and statistical study and analysis in government operations are inadequate. In setting up the AML/CFT system, special attention should be given to gathering data on the operation of the system from its inception.

**Recommendations and Comments**

- The MLCA needs to be operationalized through the establishment of a Secretariat General for the Administrative Committee charged with conducting the day-to-day work of the committee and drafting implementing regulations for the Committee’s consideration.

- AML/CFT regulations should be introduced in the insurance and securities sectors.

- AML/CFT Regulations for banks need to be updated consistently with the international standards. The analysis of deficiencies set out in this report could provide some guidance in this regard.

- AML/CFT regulations should be introduced and implemented in foreign exchange companies.

- The sanctions for failure to comply with AML/CFT requirements should be clarified in the relevant instruments.

- Relevant AML/CFT instruments should clearly designate the authorities in charge of implementing AML/CFT regulations in the various sectors and vest them with the powers to impose sanctions for breach of the requirements.

- An effective supervisory framework should be introduced in the securities sector.

- The powers of the Insurance Supervision Authority to inspect to gain access to records should be clearly defined in the law.

- The Administrative Committee should ensure adequate procedures for gathering data and information on the operation of the AML/CFT system are put in place from the beginning.
Compliance with Recommendations 23 (criteria 23.4, 23.6-23.7), 29 & 32 (rating & factors underlying rating)

<table>
<thead>
<tr>
<th>Rating</th>
<th>Summary of factors relevant to s.3.13 underlying overall rating</th>
</tr>
</thead>
</table>
| R.23   | NC 1. The MLCA does not designate clearly the authorities in charge of supervising the institutions covered by the Act.  
        | 2. Supervisors do not take into consideration money laundering and terrorist financing prevention when applying and enforcing relevant prudential regulations.  
        | 3. Foreign exchange companies are not subject to AML/CFT supervision. |
| R.29   | NC 1. The BOS does not use its inspection powers to ensure compliance with AML/CFT requirements.  
        | 2. The securities sector lacks any form of effective supervision.  
        | 3. The Insurance Supervision Authority does not exercise on-site inspection of supervised entities and its powers to inspect to gain access to records is not clearly defined in the law. |
| R.32   | NC There are no structures or procedures for gathering data about the operation of the system. |

Money or value transfer services (SR.VI)

Description and Analysis

266. Sudan prohibits any money transfer system outside the licensed banking and foreign exchange sectors. No measures are taken to regulate existing money or value transfer operators. The existence of such outlawed service providers is acknowledged by the authorities and monitored and documented by the Economic Security Circuit. It was observed that the liberalization of capital controls has contributed toward reducing the attractiveness of their services as a result of the availability of formal services at competitive cost. The illegal money transfer operators still exist. They are largely used because of their capacity to reach remote areas in a widely spread country like Sudan. The assessors could not obtain information on the actual size of the sector.

267. According to one independent study consulted by the assessors, Sudan was listed in 2001 among the five largest remittance-receiving countries in Africa. The study also notes that informal remittances continue to form the bulk of money transfers to Sudan. It is important however to note that the distinction between formal and informal money transfer
systems in Sudan is blurred. This is because money transfer activities often pass through both sectors before the funds reach the recipient.

268. The study also reported that information provided by both money remitters and the users of their services indicate that there was a shift toward informal money transfers following the events of September 11 and subsequent security measures. For example, one Bank in the UK provided money transfer services to Southern Sudanese for a flat fee regardless of whether they were account holders or not, following the implementation of stronger CDD measures, banks were prohibited from providing this service to non account holders. This led to more resort to the informal sector for these purposes.

269. The vulnerability of informal money transfer operators to terrorist financing is obvious especially in view of the existing unrest and conflict in various parts of Sudan. No measures are however in place to mitigate this risk.

Recommendations and Comments

270. Sudan should monitor existing money or value transfer operators and subject them to a system of registration or licensing. This system should include AML/CFT regulations based on risk assessment.

Compliance with Special Recommendation VI

<table>
<thead>
<tr>
<th>Rating</th>
<th>Summary of factors underlying rating</th>
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<tbody>
<tr>
<td>SR.VI</td>
<td>Sudan does not regulate informal money or value transfer operators.</td>
</tr>
</tbody>
</table>

Preventive Measures–Designated Nonfinancial Businesses and Professions

271. Art. 2 of the MLCA defines “financial institutions” for the purposes of the Act as “banks, companies, shops of exchange and financial or monetary brokerages, travel and tourism, companies and agencies, or any licensed financial corporate personality, regardless of the proprietor thereof.”

272. This definition is very broad in that it extends beyond financial institutions in the narrow sense to include all companies. Should this meaning be intended and implemented, it will mean that all companies regardless of their type of business are covered by the AML/CFT obligations required by the Act. The definition is however too narrow because it does not include partnerships, which constitute distinct legal arrangements under Sudanese Law. This is significant if we take into consideration that lawyers, accountants and gold dealers in Sudan take the form of partnerships rather than companies.
273. In addition to the all encompassing category of “companies” under the Act, the Act specifically “designates” “travel and tourism companies and agencies” as financial institutions for the purposes of the Act.

274. The Act has not however been implemented through regulations and other enforceable instruments and no agencies have yet been designated for the purpose of enforcing the obligations imposed by the Act. It should be stated categorically here that there is no AML/CFT system applicable to designated nonfinancial businesses and professions.

275. The broad definition of financial institutions is not realistic. Discussions with the authorities revealed that there is no general awareness of the actual breadth of this definition or of the implications of this breadth.

276. The Administrative Committee should use its regulatory powers to extend AML/CFT regulations to real estate agents, precious metal dealers, gold dealers, accountants and lawyers. The categories of casinos and company formation agents envisaged by Recommendation 16 do not exist in Sudan.

277. Discussions with lawyers and accountants revealed that they do engage in company formation activities on behalf of their clients, they do manage client’s assets and buy and sell on behalf of their clients. There is therefore a clear need for imposing AML/CFT requirements on accountants and lawyers with due respect for professional privileges.

278. The accounting and auditing profession is regulated by a Counsel of Legal Accountants created by Provisional Order No. 2 (1988) as amended by the Provisional Law by Decree on the Organization of the Accounting and Auditing Profession (2004). Under the amended article 4(2), the Counsel comprises of 17 members including seven government representatives from: the Ministry of Finance and Economy, the Ministry of Justice, the Ministry of Higher Education and Scientific Research, the Bureau of General Audit, the Bureaux of Zakat, the BOS. In addition the Counsel will include a representative of the General Union of Employers, the Khartoum Stock Exchange, a representative of the General Professional Union of Accountants and Auditors, four members representing registered scientific professional societies that is recognized by the Counsel, a representative of the Society of Chartered Legal Accountants and Auditors, and two members of relevant competence, experience and interest designated by the competent Minister. The competent Minister is to be designated by the President of the Republic.

279. The Counsel has the powers, subject to the approval of the Cabinet, to issue regulations, rules and instructions organizing the accounting professions and setting the professional codes of conduct (art. 33). It also has the power to de-register permanently or temporarily any accountant who loses any of the qualifications or requirements required for registration as a licensed accountant, who is convicted by a competent court of any crime under this law or any other law, or who breaches the codes of conduct of the profession. The assessors are not aware of any regulations or codes of conduct issued under these powers or by any other institution.
280. The amendments to the law organizing the accounting profession introduced more government control over the profession and liberalized the rules for licensing accountants by expanding the scope of qualifications that are admissible for registration as an accountant.

281. The legal profession in Sudan is regulated by The Legal Profession Act (1983), as amended in July 1993. The Act creates ‘Lawyers Approval Committee” that is charged with licensing lawyers and issuing regulations in execution of the Act. The Committee comprises of the Dean of Lawyers (president), High Court Judge appointed by the Head of the Judiciary, Appeal Court judge appointed by the Head of the Judiciary, Senior Legal Counsel appointed by the Prosecutor General, and a lawyer with not less than 10 years experience selected by the Counsel of the Lawyers’ Union.

282. Art. 6 of the Act sets the fit and proper test for lawyers. Art, 6(d) requires that in order to practice as a lawyer, the applicant should be of proper conduct, well-reputed and should not have been convicted of any offence of bearing on his honesty and honor. Art. 10 gives the “Lawyers’ approval Committee” the power to de-register lawyers who lose their fitness and propriety as defined in the Act. Lawyers may not combine with their practice any other type of employment and may not engage in trade. They also may not practice any business that is inconsistent with the honor of the profession and its traditions. Failure to observe these rules, gives the Committee the power to suspend the lawyer concerned.

283. The Act empowers the Committee to discipline lawyers through a disciplinary counsel formed by the Committee for any breach of duty or professional honor, or for any act that is demeaning of the profession or in any way breaching the integrity of lawyers, or for any breach of the Act.

284. Article 32 of the Legal Profession Act (1983) defines professional secrecy very broadly to include any secrets disclosed to him by his client or any facts or information delivered to him through his profession.” (see further discussion of this issue below.)

285. Discussions with the prosecutors of the Illicit and Suspicious Enrichment Revealed, that illicit and suspicious proceeds are most commonly invested in real estate. This confirms the local need for extending the scope of AML/CFT regime to real estate agents.

Customer due diligence and record-keeping (R.12) (applying R.5 to 10)

Description and Analysis

286. There is no AML/CFT system applicable to nonbank financial institutions or to nonfinancial businesses and professions.

Recommendations and Comments

- The Administrative Committee should use its regulatory powers to extend AML/CFT regulations to real estate agents, precious metal dealers, gold dealers, accountants and
lawyers. The categories of casinos and company formation agents envisaged by Recommendation 16 do not exist in Sudan.

- The Committee should impose upon these businesses and professions appropriate CDD requirements.

### Compliance with Recommendation 12

<table>
<thead>
<tr>
<th>Rating</th>
<th>Summary of factors relevant to s.4.1 underlying overall rating</th>
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</thead>
<tbody>
<tr>
<td>R.12</td>
<td>The MLCA does not designate nonfinancial businesses and professions that should be covered by AML/CFT regulations.</td>
</tr>
</tbody>
</table>

### Monitoring of transactions and relationships (R.12 & 16) (applying R.11 & 21)

#### Description and Analysis

287. There is no AML/CFT system applicable to nonbank financial institutions or to nonfinancial businesses and professions.

#### Recommendations and Comments

288. The Administrative Committee should use its regulatory powers to extend AML/CFT regulations to real estate agents, precious metal dealers, gold dealers, accountants and lawyers. The categories of casinos and company formation agents envisaged by Recommendation 16 do not exist in Sudan.

289. The Committee should impose obligations on designated nonfinancial businesses and professions

### Compliance with Recommendation 12 and 16

<table>
<thead>
<tr>
<th>Rating</th>
<th>Summary of factors relevant to s.4.2 underlying overall rating</th>
</tr>
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<tbody>
<tr>
<td>R.12</td>
<td>The MLCA does not designate nonfinancial businesses and professions that should be covered by AML/CFT regulations.</td>
</tr>
<tr>
<td>R.16</td>
<td>The MLCA does not designate nonfinancial businesses and professions that should be covered by AML/CFT regulations.</td>
</tr>
</tbody>
</table>
Suspicious transaction reporting (R.16) (applying R.13 & 14)

Description and Analysis

290. There is no AML/CFT system applicable to nonbank financial institutions or to nonfinancial businesses and professions.

Recommendations and Comments

• The Administrative Committee should conduct thorough risk analysis to identify vulnerable businesses and professions and subject them to AML/CFT STR requirements.

• The Administrative Committee should designate lawyers, accountants, dealers in precious metals as businesses and professions covered by AML/CFT regulations and require them to file suspicious transactions reports. The Committee should adopt all necessary safeguards to protect the professional privileges of the legal and accounting profession while preventing the abuse of these professions for money laundering and terrorist financing purposes.

• In imposing reporting requirements on lawyers, accountants, precious metal dealers and other designated nonfinancial businesses and professions, the Committee should insure that the legal entity and the officers involved will be protected against any criminal, civil or any other type of liability arising from this disclosure.

Compliance with Recommendation 16

<table>
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<tr>
<th>Rating</th>
<th>Summary of factors relevant to s.4.3 underlying overall rating</th>
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<tbody>
<tr>
<td>R.16</td>
<td>1. The MLCA does not effectively designate nonfinancial businesses and professions that should be covered by AML/CFT regulations.</td>
</tr>
<tr>
<td></td>
<td>2. The MLCA does not extend the regulatory requirements to lawyers, accountants and dealers in precious metals.</td>
</tr>
</tbody>
</table>

Internal controls, compliance & audit (R.16) (applying R.15)

Description and Analysis

291. There is no AML/CFT system applicable to nonbank financial institutions or to nonfinancial businesses and professions.
Recommendations and Comments

292. None.

Compliance with Recommendation 16

<table>
<thead>
<tr>
<th>Rating</th>
<th>Summary of factors relevant to s.4.4 underlying overall rating</th>
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</thead>
<tbody>
<tr>
<td>R.16</td>
<td>1. The MLCA does not effectively designate nonfinancial businesses and professions that should be covered by AML/CFT regulations.</td>
</tr>
<tr>
<td></td>
<td>2. The MLCA does not extend the regulatory requirements to lawyers, accountants and dealers in precious metals.</td>
</tr>
</tbody>
</table>

Regulation, supervision and monitoring (R.17, 24-25)

Description and Analysis

293. There is no AML/CFT system applicable to nonbank financial institutions or to nonfinancial businesses and professions.

Recommendations and Comments

- In designating nonfinancial businesses and professions, the Committee should also designate authorities with sufficient powers and capacity to monitor or supervise the designated the entities.

Compliance with Recommendations 17 (DNFBP), 24 & 25 (criteria 25.1, DNFBP)

<table>
<thead>
<tr>
<th>Rating</th>
<th>Summary of factors relevant to s.4.5 underlying overall rating</th>
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<tbody>
<tr>
<td>R.17</td>
<td>2. There is no AML/CFT system applicable to nonbank financial institutions or to nonfinancial businesses and professions.</td>
</tr>
<tr>
<td>R.24</td>
<td>3. There is no AML/CFT system applicable to nonbank financial institutions or to nonfinancial businesses and professions.</td>
</tr>
<tr>
<td>R.25</td>
<td>4. There is no AML/CFT system applicable to nonbank financial institutions or to nonfinancial businesses and professions.</td>
</tr>
</tbody>
</table>

Other nonfinancial businesses and professions; Modern secure transaction techniques (R.20)

Description and Analysis
294. **Other NFBP:** The MLCA includes in the definition of financial institutions travel agencies and companies. It is not clear what the rationale for this particular designation is, especially that the Act does not designate real estate agents despite evidence that real estate is the favored type of investment of illicit and suspicious funds. No steps have however been taken to regulate travel agencies and to impose the required preventive measures on them.

295. **Secure Transaction Techniques:** Sudan is not taking any systematic measures to reduce the reliance on cash.

**Recommendations and Comments**

- Measures should be taken to assess the vulnerability of businesses and professions to money laundering and terrorist financing and extend the AML/CFT requirements where necessary.
- Policies and measures should be designed to encourage less reliance on cash transactions.

**Compliance with Recommendation 20**

<table>
<thead>
<tr>
<th>Rating</th>
<th>Summary of factors underlying rating</th>
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<tbody>
<tr>
<td>R.20</td>
<td>NC</td>
</tr>
<tr>
<td></td>
<td>1. <strong>Sudan has not assessed the vulnerabilities of local businesses and professions to money laundering and terrorist financing.</strong> While, Sudan does not have to impose AML/CFT obligations on businesses and professions other than the ones designated in the Recommendation, it should conduct a serious assessment of vulnerability to AML/CFT and take that as the basis for its decision to extend or limit the scope of the requirements.</td>
</tr>
<tr>
<td></td>
<td>2. There are no measures underway to encourage less reliance on cash.</td>
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</tbody>
</table>

**Legal Persons and Arrangements & Nonprofit Organizations**

**Legal Persons – Access to beneficial ownership and control information (R.33)**

**Description and Analysis**

296. **Beneficial ownership and control of legal persons:** The Commercial Registrar registers all the companies in Sudan. The office applies the 1925 Company Act. As part of the application/registration process the companies are required to provide a list of shareholders, a list of the board of directors, financial statements (public companies), the
location and title of the company. A company must inform the registrar, in writing, of a change in location, ownership, or board of directors.

297. The Commercial Registrar serves as a point of reference for anyone, including BOS and other competent authorities that require background information about a company and shareholders. The information is also publicly available for a fee. Some of the records are computerized, however the database is rudimentary and cannot be cross-referenced.

298. Although the registrar collects, stores and disseminates background information on companies, the office has no means of eliciting information about who else holds a controlling or beneficial interest in a company besides the information received upon company registration; this is typically perceived by the registrar as not a function that the registrar should carry out.

299. The Sudanese Company law allows companies to issue bearer shares. There is nothing in the Sudanese law to ensure the registration or discovery of the ownership of bearer shares in companies.

Recommendations and Comments

- The registration of all companies in Sudan should be centralized using efficient information management methods such as databases that can be cross-referenced and updated in a timely fashion.
- Sudan should introduce legal obligations upon companies to disclose the beneficial ownership of the company and support such obligations with appropriate enforcement powers.

Compliance with Recommendations 33

<table>
<thead>
<tr>
<th>Rating</th>
<th>Summary of factors underlying rating</th>
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<tbody>
<tr>
<td>R.33</td>
<td>1. While the registrar of companies keeps record of the names of owners and managers of companies, it is not automated. This prevents the use of the registrar to detect cases of fronting.</td>
</tr>
<tr>
<td></td>
<td>2. There is no mechanism in place to compel the disclosure of beneficial ownership.</td>
</tr>
</tbody>
</table>

Legal Arrangements – Access to beneficial ownership and control information (R.34)

Description and Analysis

300. Not applicable. There are no legal arrangements such as trusts in Sudan.
Recommendations and Comments

301. None.

Compliance with Recommendations 34

<table>
<thead>
<tr>
<th>Rating</th>
<th>Summary of factors underlying rating</th>
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<tbody>
<tr>
<td>R.34</td>
<td>NA</td>
</tr>
</tbody>
</table>

Nonprofit organizations (SR.VIII)

Description and Analysis

302. **Registration of civil and social organizations including NPOs:** The ministry for Humanitarian Affairs, established in November 2002, is responsible for disaster management and the regulation of civil and social organizations, including nonprofit organizations (NPOs). The requirements for registering a local organization include: a minimum of 30 members, an annual meeting or assembly, a list of the board of directors, and evidence of adequate resources. International organizations are registered at the recommendation of their embassy. Once an organization is registered, it enjoys certain privileges such as exemptions from customs duties and taxes, and the ability to receive assistance from the government. There are 1,375 organizations registered in the national registry in Khartoum, 146 of these are international organizations. However, there is no information available on the overall number of such institutions in Sudan because some operate at the state level only.

303. **Legal and supervisory framework:** In addition to registering NGOs, the Ministry for Humanitarian Affairs formed a special department for monitoring and evaluating NGOs, which was created 6 months ago to enhance supervision. However, this department, which comprises 3 staff, does not have sufficient capacity to implement these laws. In the past the ministry did not investigate funding sources for institutions, however, the new law, currently being drafted, will include provisions for scrutinizing accounts and spending in order to foster accountability and transparency.

304. International organizations need to enter into agreement with the state and by law must operate in conformity with the agreement. The law also binds local organizations. Breaking the law or mismanagement of funds can result in the dissolution of the organization. The Ministry is working to establish a database that will link all provinces however it is challenging to monitor organizations in 26 states, especially those experiencing war and civil unrest. Currently, computer records exist in a very rudimentary form and cannot be cross-referenced.
There is a legal counsel to prosecute organizations involved in criminal activity. There have been cases of fraud against individuals, and checks without balances. In some cases, organizations have received government funding but did not use the funds for social or humanitarian causes. There have also been cases of customs fraud where organizations take advantage of customs privileges to bring items into the country for sale in the local market.

Recommendations and Comments

- Resources should be made available to the Ministry of Humanitarian Affairs to ensure that it has the capacity to identify and register all NPOs, civil and social institutions operating in Sudan.
- The Ministry of Humanitarian affairs should ensure that adequate, verifiable and timely information is available on all such institutions operating in Sudan.
- The information on NPOs, including beneficial owners, should be stored and managed electronically in a database that can be cross-referenced.
- The Ministry of Humanitarian Affairs should enhance the capacity of monitoring and evaluation department to monitor the sources and disposal of funds by NPOs to prevent the risk of abuse for terrorism purposes.

Compliance with Special Recommendation VIII

<table>
<thead>
<tr>
<th>Rating</th>
<th>Summary of factors underlying rating</th>
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<tbody>
<tr>
<td>SR. VIII NC</td>
<td>1. While there is a legal framework for registering NPOs and obtaining information on their ownership and management structure the system is under-resourced and does not serve the function effectively.</td>
</tr>
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<td></td>
<td>2. The law that empowers the Ministry to monitor the funding of NPOs is still in draft. There is no clear framework for its passing.</td>
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<td></td>
<td>3. The Ministry of Humanitarian Affairs does not have the capacity to monitor the sources and disposal of funds by NPOs.</td>
</tr>
<tr>
<td></td>
<td>4. The function of registering the NPOs and monitoring them is decentralized and there is no capacity in the states to carry out this function. This leaves the NPOs that operate at regional level largely unregulated.</td>
</tr>
</tbody>
</table>
National and International Cooperation

National cooperation and coordination (R.31)

Description and Analysis

306. Sudan does not yet have an operational AML/CFT system in place or a strategy for creating and implementing such a system. It is therefore premature to speak of national cooperation in this regard.

307. It should be noted at this stage that the two high level committees that have been created in the past 3 years to deal with money laundering and terrorism issues; namely, the Administrative Committee created by the MLCA and the 1373 Committee which was created in response to the Security Council Resolution 1373 both consist of representatives of several key agencies including: The BOS, State Security agencies, the Ministry of Justice, the Ministry of Foreign Affairs, the Ministry of Finance, the Ministry of Trade, the Customs Police, the Taxation Chambers, and Crimes General Administration (Investigations) department.

308. While the 1373 is working effectively as reflected in its regular meetings and the quality of its reports to the CTC, the Administrative Committee is hardly functional. During the on-site visit, the assessors managed to meet without difficulty with the 1373 Committee in full session. Arranging a meeting with the Administrative Committee was very difficult and resulted in meeting with three members only of the original 12 members.

309. The Insurance Supervision Authority and the Khartoum Stock Exchange as a self-regulatory body are not represented in the Administrative Committee.

310. There is no clear co-ordination of functions between the Administrative Committee and the 1373 Committee. While they are not necessarily incompatible, potential conflict and overlap exists and it needs to be resolved clearly.

311. There is conflict and overlap between existing laws that has not yet been resolved. For example, the overlap between the Illicit and Suspicious Enrichment framework and the AML framework. While the assessors were informed that the Ministry of Justice is working on resolving such overlaps and updating the laws to reflect the introduction of the AML/CFT system, there is no clear evidence on progress in this regard or projected timeframe for completion of the work.

Recommendations and Comments

- Achieving the coordination needed in the area of AML/CFT hinges upon the Administrative Committee. The first step in achieving this co-ordination would be to create a national strategy for fighting money laundering and terrorist financing.
The Insurance Supervision Authority and the Khartoum Stock Exchange should be represented in the Administrative Committee.

The Committee should create clear procedures for operational co-ordination amongst the various agencies. An effective FIU could play an important role in this regard.

Compliance with Recommendation 31

<table>
<thead>
<tr>
<th>Rating</th>
<th>Summary of factors underlying rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>R.31</td>
<td>NC</td>
</tr>
<tr>
<td></td>
<td>There is no national strategy for AML/CFT in Sudan. The Administrative Committee, as the main coordinating body, is hardly functional.</td>
</tr>
</tbody>
</table>

The Conventions and UN Special Resolutions (R.35 & SR.I)

Description and Analysis

312. Sudan has ratified all 12 anti-terrorism conventions. It has also ratified the Vienna and the Palermo Conventions, and has taken measures to implement the security council resolutions relating to terrorists and terrorist organizations including by ensuring that there are no assets belonging to or controlled by listed individuals and entities exist in Sudan. It has also formed a liaison committee (1373 Committee) which reported regularly to the CTC consistently with Security Council Resolution 1373.

313. Sudan has not enacted legislation implementing the Vienna Convention and the Palermo Convention. It has not amended existing legislation to achieve consistency with the Conventions. Its criminalization, law enforcement, international cooperation and AML/CFT preventive system still suffer from various deficiencies discussed in this report.

314. Sudan has not criminalized the financing of terrorism, as required by the Terrorist Financing Convention and the 1373 Resolution.

Recommendations and Comments

315. Sudan should take measures to update its legal system consistently with its various obligations under the Vienna Convention and the Palermo Convention, and Resolution 1373.

Compliance with Recommendation 35 and Special Recommendation I

<table>
<thead>
<tr>
<th>Rating</th>
<th>Summary of factors underlying rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>R.35</td>
<td>PC</td>
</tr>
<tr>
<td></td>
<td>1. Sudan has ratified the Vienna and Palermo Conventions but it has not taken measures to implement them through domestic law.</td>
</tr>
</tbody>
</table>
2. The provisions criminalizing money laundering, even though they exist in the law, they have not yet been applied in prosecutions. This suggests that money laundering activities have not yet been effectively pursued.

<table>
<thead>
<tr>
<th>SR.I</th>
<th>PC</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Sudan has taken measures to implement Security Council Resolutions but the measures required by the 1373 decisions, including the criminalization of terrorist financing, have not been implemented.</td>
<td></td>
</tr>
<tr>
<td>2. The general deficiencies in the various aspects of CFT system, which were identified in this report, also fall short of Resolution 1373 in many respects.</td>
<td></td>
</tr>
</tbody>
</table>

Mutual Legal Assistance (R.32, 36-38, SR.V)

Description and Analysis

316. **General:** With the exception of a single provision in the Extradition Act (1957), there is no statutory framework for mutual legal assistance in Sudan. Art. 17 of the Extradition Act (1957) provides that: “Where, upon an application for this purpose, it is made to appear to any Magistrate of the first class that any Court or tribunal of competent jurisdiction in a foreign country, before which any criminal matter is pending, is desirous of obtaining the testimony in relation to such matter of any witness within the jurisdiction of such Magistrate, it shall be lawful for such Magistrate to order the attendance of such witness for the purpose of being examined upon oath, upon interrogatories or otherwise, or for the production of any writings or other documents to be mentioned in such order.” This order could be enforced in the same manner of enforcing any order issued in the context of domestic criminal proceedings. (Art. 17(2))

317. In general, Sudan renders mutual legal assistance upon request relying on principles of reciprocity, comity and the general powers of the competent authorities. In the absence of any statutory framework specifying the range of mutual legal assistance available, the procedures for requesting and rendering assistance, the rules governing the use of evidence and gathered information, and the rules governing the process of gathering evidence, it is difficult to assess the efficiency and effectiveness of assistance and the consistency of the practice of rendering assistance. These are some of the issues that need to be addressed on statutory basis in order to ensure consistency in rendering legal assistance and adequate safeguards that would ensure the admissibility of evidence in foreign courts and hence the effectiveness of assistance.

318. **Statistics:** The authorities were not able to provide statistics on the number of requests for mutual legal assistance or the nature of these request. The information that was
shared was anecdotal about specific cases of requesting assistance by certain counterparts specially the US and the UAE.

319. **Range of Mutual Assistance:** The scope of mutual legal assistance is not generally defined in written laws or procedures. Discussions with the Prosecutor General revealed that Sudan relies on a flexible application of the principle of reciprocity. In general, the competent authorities can use whatever powers available to them in order to provide assistance to other countries.

320. **Secrecy and Confidentiality:** There is a general exception to the rules of confidentiality under the Banking Regulation Act (2003) where the disclosure concerns a request for information from the Ministry of Justice. This should apply equally for requests for disclosures stemming from a mutual legal assistance request. The assessors are not aware of any situation where assistance was denied on those grounds.

321. The legal professional secrecy is defined in article 32 of the Legal Profession Act (1983) very broadly to include any secrets disclosed to him by his client or any facts or information delivered to him through his profession.” This definition is very broad and it specifies the client-lawyer relationship and the professional context as the criteria determining the scope of secrecy regardless of the nature of the legal service to which the disclosure relates. It is very likely that this secrecy provision will prevent obtaining information from lawyers in any matter relating to their professional activities.

322. **Efficiency of Processes:** There are no written procedures for the execution of a mutual assistance request and there was no statistics on the speed of the execution of mutual legal assistance request. The Prosecutor General confirmed that such requests typically come to the Ministry of Justice, the Office of the Prosecutor General who directs it to the competent authority. Absent any statistical data, it is not possible to assess the efficiency of this process.

323. **Direct Cooperation between Competent Authorities:** There is no clear prohibition in the law of direct cooperation but the practice is that police cooperation occurs through the Interpol and judicial cooperation occurs through the channels of the Ministry of Foreign Relations and the ministry of Justice.

324. **Dual Criminality:** There is no definition in the law of what is meant by the principle of dual criminality for the purposes of mutual legal assistance. Article 6(1)(b) of the Criminal Act (1991), in defining the scope of application of the Act to offences committed outside Sudan, requires that the joint act “is an offence in Sudan, and is also an offence under the law of the state where the act is committed.” Article 3 of the Extradition Law (1957) defines dual criminality for the purposes of extradition as “an act which if committed in Sudan, would, under the law existing at the time of the alleged act, constitute an offence punishable with imprisonment for a term not less than one year.” It is clear from these two definitions that Sudanese law has a flexible understanding of dual criminality, it does not require that the two offences should be categorized in the same way as long as the act is
criminal in one form or another in the two jurisdictions. The Prosecutor General confirmed that the approach to dual criminality is even more relaxed in the context of mutual legal assistance as opposed to extradition.

325. **Confiscation Procedures:** There is no statutory framework on this matter or anecdotal evidence of carrying out such procedures in response to a request for mutual assistance. The framework as discussed above (R3), is generally deficient. There is insufficient data to evaluate how well the system of confiscation functions in Sudan and how it is enforced. The lack of clear powers and procedures is likely to undermine the capacity to respond to requests for assistance in this regard.

326. According to the Prosecutor General, Sudan does not enforce foreign confiscation orders. Instead it initiates confiscation procedures domestically. There are no arrangements to coordinate seizure and confiscation actions with other countries.

327. **Terrorist Financing:** The Terrorism (Combating) Act (2001) does not provide a framework for mutual legal assistance for terrorism-related offences. Mutual legal assistance in terrorism-related offences is carried out within the same framework described above. As terrorist financing is not an offence under Sudanese law, this might become an obstacle to rendering mutual legal assistance even within a framework of a broadly defined dual criminality principle. An act of financing of terrorism may not constitute an offence at all under Sudanese law if it does not amount to facilitation or assistance.

**Recommendations and Comments**

- Sudan should introduce a statutory framework for mutual legal assistance that guarantees consistency and efficiency of cooperation.
- The statutory framework for mutual legal assistance should adopt a nonrestrictive principle of dual criminality.
- MLA in freezing, seizing and confiscation matters should be clarified and established on statutory basis.

**Compliance with Recommendations 32, 36 to 38, and Special Recommendation V**

<table>
<thead>
<tr>
<th>Rating</th>
<th>Summary of factors relevant to s.6.3 underlying overall rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>R.32</td>
<td>NC All information on MLA was anecdotal. Statistical and detailed information was not available.</td>
</tr>
<tr>
<td>R.36</td>
<td>PC There are no legal prohibitions or conditioning on rendering mutual legal assistance upon request. There is however now statutory or procedural framework that guarantees the consistency, efficiency and effectiveness of the assistance.</td>
</tr>
</tbody>
</table>
1. There is no statutory framework for MLA, which makes an assessment of the content of the approach of Sudan to MLA and question of dual criminality difficult.
2. Generally, Sudan has a flexible approach to dual criminality requirements, which justifies an assessment of largely compliant in the absence of a clear regulatory framework.

1. There is no clear statutory framework for confiscation in general or for mutual legal assistance in confiscation matters.
2. The Sudanese legal framework on confiscation is vague and leaves many questions with regard to the scope of confiscated property and value confiscation without answers.
3. There are no arrangements for coordinating confiscation measures with other countries.

1. There is no statutory framework for mutual legal assistance in general or in relation to terrorist financing.
2. Terrorist financing is not an offence under Sudanese law, which is bound to undermine mutual legal assistance in this regard.

**Extradition (R.32, 37 & 39, & SR.V)**

**Description and Analysis**

328. **Statistics:** No statistics are available on the extradition requests and the disposal thereof.

329. **Dual Criminality:** Article 3 of the Extradition Law (1957) defines dual criminality for the purposes of extradition as “an act which if committed in Sudan, would, under the law existing at the time of the alleged act, constitute an offence punishable with imprisonment for a term not less than one year.” The approach of the Extradition Law to “dual criminality” is not restrictive and does not require equivalence of categories or technical designations.

330. **Extraditable Offence:** MLCA does not address the issue of extradition for money laundering offences. According to the Extradition Act (1957), every offence is in principle extraditable provided that the act is criminal in Sudan and punishable by a minimum term of one year imprisonment. Article 4 however makes extradition conditional on the existence of an arrangement with the state concerned and order by the President of the Republic published...
in the Gazette extending the application of the Extradition Act to cases involving the foreign state concerned. This requirement may limit the extraditability of the money laundering offences. While Sudan has ratified both the Vienna Convention and the Palermo Convention, in which it is stipulated that the conventions should provide the basis for extradition in the absence of mutual arrangement, there is no presidential decree extending the application of the Extradition Act to foreign states that are party to the multilateral instruments. It is not clear how this will affect the extraditability for money laundering offences between Sudan and another state with whom it does not have an extradition arrangement. This needs to be clarified.

331. **Extradition of Nationals:** There is no prohibition under Sudanese law of the extradition of Sudanese nationals.

332. **Terrorist Financing:** The lack of terrorist financing offence under Sudanese law might undermine extradition for acts of financing of terrorism for the same reasons that were raised with regard to MLA in the previous section. Also, even in terrorism-related activities, extradition remains subject to the existence of an extradition arrangement with country concerned and a presidential decree extending the scope of the Extradition Act to the state concerned. This raises the same difficulties discussed above with regard to money laundering offences. Sudan does not prohibit the extradition of its own nationals for terrorism-related offences.

**Recommendations and Comments**

- An offence of terrorist financing needs to be introduced as soon as possible to prevent potential obstacles to extradition.

- Sudan should amend article 4 of the Extradition Law to remove the requirement for a presidential decree to extend the application of the Extradition Law to states with which Sudan has an extradition arrangement. This requirement might inhibit the use of a multilateral agreement such as the Palermo Convention as basis for extradition in the absence of a bilateral arrangement.

- Thorough data and statistics on extradition requests and disposal thereof need to be maintained.

**Compliance with Recommendations 32, 37 & 39, and Special Recommendation V**

<table>
<thead>
<tr>
<th>Rating</th>
<th>Summary of factors relevant to s.6.4 underlying overall rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>R.32</td>
<td>N/NC Statistical data is not available.</td>
</tr>
<tr>
<td>R.37</td>
<td>C The standard of dual criminality is sufficiently flexible.</td>
</tr>
<tr>
<td>R.39</td>
<td>PC Money laundering is in principle an extraditable offence under the Act. The application of the extradition Act is contingent on the</td>
</tr>
</tbody>
</table>
existence of bilateral arrangements confirmed by a presidential decree. This may render money laundering offences unextraditable in the absence of an extensive web of bilateral arrangements confirmed by decrees. Sudan has not taken action yet to implement the extradition provisions of the Vienna and Palermo Conventions. There is no case law to suggest alternative practice on this matter.

**SR. V**

1. There is no offence of terrorist financing which is likely to undermine extradition.

2. The same deficiency concerning extraditability explained above under 39 obtains in the context of terrorism-related offences.

**Other Forms of International Cooperation (R.32 & 40, & SR.V)**

**Description and Analysis**

333. Apart from intelligence to intelligence cooperation, and police cooperation through the Interpol, the channels and mechanisms for exchange of information between counterparts in Sudan are limited. This holds true also for the BOS where there are no MOUs for information sharing signed with foreign counterparts. The FIU is not yet operational and its framework is not yet in place. Its powers to share information are not yet available to assess. The 1373 Committee, formed to coordinate the implementation of the Security Council Resolution on terrorism acts as a central point for information sharing on anti-terrorism matters. Its operation enhances the exchange of information in this area.

**Recommendations and Comments**

- Sudan should pay more attention to creating channels and mechanisms for information sharing with foreign counterparts.

- The BOS should enter into MOUs for the purpose of information sharing.

- In creating the framework for the FIU, the Administrative Committee should give it the power to share information upon request or spontaneously.

- In creating the framework for the FIU, the “Administrative Committee” should give it the power to search its own database and other databases to which it might have access on behalf of a foreign counterpart.

**Compliance with Recommendations 32 & 40, and Special Recommendation V**

<table>
<thead>
<tr>
<th>Rating</th>
<th>Summary of factors relevant to s.6.5 underlying overall rating</th>
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<tr>
<td><strong>R.32</strong></td>
<td><strong>NC</strong></td>
</tr>
<tr>
<td><strong>R.40</strong></td>
<td><strong>PC</strong></td>
</tr>
<tr>
<td><strong>SR.V</strong></td>
<td><strong>PC</strong></td>
</tr>
</tbody>
</table>
Table 1. Ratings of Compliance with FATF Recommendations

The rating of compliance vis-à-vis the FATF Recommendations are made according to the four levels of compliance mentioned in the 2004 Methodology (Compliant (C), Largely Compliant (LC), Partially Compliant (PC), Non-Compliant (NC)), and, in exceptional cases, are marked as not applicable (na).

<table>
<thead>
<tr>
<th>Forty Recommendations</th>
<th>Rating</th>
<th>Summary of factors underlying rating</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Legal systems</strong></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
| 1. ML offence         | PC     | 1. The list of offences does not include offences in the category of market manipulation and insider dealing.  
                      |        | 2. The list of offences does not include terrorist financing. 
                      |        | 3. The list does not include offences in the category of murder and grievous bodily harm. 
                      |        | 4. The list does not include offences in the category of product piracy. 
                      |        | 5. No prosecutions have been initiated for money laundering which brings into question the effectiveness of the law. |
| 2. ML offence – mental element and corporate liability | LC | • No prosecutions have been initiated for money laundering which brings into question the effectiveness of the law. |
| 3. Confiscation and provisional measures | PC | The law gives some powers of seizing, freezing and confiscation. It falls however short of the international standard in many significant ways:  
                      |        | 1. The scope of property subject to confiscation is inadequate. 
                      |        | 2. There is no criminalization of terrorist financing, which limits the scope of the effectiveness of confiscation measures in this regard. 
                      |        | 3. Tracing and identification measures are unclear. 
                      |        | 4. There is no sufficient protection in the law of bona fide third parties. 
                      |        | 5. No confiscation action has been taken under the law which brings into question its level of effectiveness. |
| **Preventive measures** |        |                                      |
| 4. Secrecy laws consistent with the Recommendations | C |                                           |
| 5. Customer due diligence | PC | 1. There are no CDD regulations in the nonbank financial sector. 
                      |        | 2. AML Regulations in the Banking sector only address account-based relationships and does not deal with occasional transactions including money transfers. 
<pre><code>                  |        | 3. The regulatory framework does not require adequate verification of beneficial ownership. |
</code></pre>
<table>
<thead>
<tr>
<th>Forty Recommendations</th>
<th>Rating</th>
<th>Summary of factors underlying rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>4. The regulations do not require on-going due diligence.</td>
<td></td>
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</tr>
<tr>
<td>5. The regulations do not require identification of the nature and purpose of the business of the customers.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>6. Politically exposed persons</td>
<td>NC</td>
<td>There is no reference to any special due diligence with regard to PEPs or awareness of the issues involved generally.</td>
</tr>
<tr>
<td>7. Correspondent banking</td>
<td>NC</td>
<td>There are no special regulations in place dealing with correspondent banking relationships.</td>
</tr>
<tr>
<td>8. New technologies &amp; non face-to-face business</td>
<td>NC</td>
<td>There is no risk assessment or regulations in this area.</td>
</tr>
<tr>
<td>9. Third parties and introducers</td>
<td>NA</td>
<td>While there is a practice of requiring recommendations for the commencement of a business relationship, there is no reliance on third party introduction as understood in the recommendations.</td>
</tr>
</tbody>
</table>
| 10. Record keeping                     | LC     | 1. The law does not stipulate in sufficient detail the content of the recordkeeping requirement, e.g., the nature of the documents to be kept.  
2. The BOS does not yet check that records are kept properly for money laundering purposes in accordance with the 2002 Regulations.                                                                                                                                                                                                 |
| 11. Unusual transactions               | NC     | 1. The regulations do not require financial institutions to examine the background and purpose of the transactions nor to put their findings in writing.  
2. The BOS does not monitor compliance with the less stringent version of "pay special attention" and does not ensure that the financial institutions are identifying unusual transactions.                                                                                                                                 |
| 12. DNFBP – R.5, 6, 8-11              | NC     | There are no laws or regulations designating NFBP for the purpose of AML/CFT and imposing AML/CFT requirements on them.                                                                                                                                                                                                                                                                                   |
| 13. Suspicious transaction reporting   | NC     | 1. While the law and regulation contain an obligation to report suspicion, concerned institutions, apart from banks, are not yet aware of their obligation to Report.  
2. Banks do not report suspicion and the BOS does not take enforcement action against failure to do so.  
3. The scope of the obligations to report does not extend explicitly to suspicion of link to terrorism.                                                                                                                                                                                                                           |
| 14. Protection & no tipping-off        | PC     | 1. While there is an exemption from liability under the law and the regulations, the scope is not clear. It does not cover all forms of liability and it does not cover all the persons concerned.  
2. The standard of reasonableness found in the Act is particularly high and exposes the reporting persons to civil liability.                                                                                                                                                                                                          |
| 15. Internal controls, compliance & audit | NC     | 1. The regulations are inadequate and they have not been implemented by the institutions or enforced by the BOS.                                                                                                                                                                                                                                                                                   |
| 16. DNFBP – R.13-15 & 21              | NC     | 1. The MLCA does not effectively designate nonfinancial businesses and professions that should be
<table>
<thead>
<tr>
<th>Forty Recommendations</th>
<th>Rating</th>
<th>Summary of factors underlying rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>covered by AML/CFT regulations.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2. The MLCA does not extend the regulatory requirements to lawyers, accountants and dealers in precious metals.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>17. Sanctions</td>
<td>NC</td>
<td>1. While the BOS has sufficient sanctioning powers, these powers have not been used to enforce AML/CFT requirements.</td>
</tr>
<tr>
<td>2. There is no effective securities market supervisor.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3. The Insurance Supervision Authority has not assumed any role in AML/CFT regulation, supervision and enforcement.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4. The MLCA does not designate clearly the authorities in charge of supervising the institutions covered by the Act.</td>
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</tr>
<tr>
<td>18. Shell banks</td>
<td>NC</td>
<td>There are no rules applicable in Sudan on this matter.</td>
</tr>
<tr>
<td>19. Other forms of reporting</td>
<td>NC</td>
<td>• Sudan has not considered the possibility of implementing such measures.</td>
</tr>
<tr>
<td>20. Other NFBP &amp; secure transaction techniques</td>
<td>NA</td>
<td>1. Sudan has not assessed the vulnerabilities of local businesses and professions to money laundering and terrorist financing.</td>
</tr>
<tr>
<td>2. There are no measures underway to encourage less reliance on cash.</td>
<td></td>
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</tr>
<tr>
<td>21. Special attention for higher risk countries</td>
<td>NC</td>
<td>1. There is not sufficient guidance regarding the measures to be taken when the transaction involves a noncompliant Jurisdiction</td>
</tr>
<tr>
<td>2. There is no evidence of implementation by banks.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3. The BOS does not enforce the Regulation.</td>
<td></td>
<td></td>
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<tr>
<td>4. The BOS does not advise banks on jurisdiction that pose concern.</td>
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</tr>
<tr>
<td>5. There is no framework for taking measures against persistently noncompliant jurisdictions.</td>
<td></td>
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</tr>
<tr>
<td>22. Foreign branches &amp; subsidiaries</td>
<td>NC</td>
<td>There are no regulatory requirements on this matter.</td>
</tr>
<tr>
<td>23. Regulation, supervision and monitoring</td>
<td>NC</td>
<td>1. The MLCA does not designate clearly the authorities in charge of supervising the institutions covered by the Act.</td>
</tr>
<tr>
<td>2. Supervision within the BOS showed lack of coordination between on and off site teams.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3. “Fit and Proper” requirements are not clearly stipulated in the insurance sector and the securities sector.</td>
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</tr>
<tr>
<td>4. Supervisors do not take into consideration money laundering and terrorist financing prevention when applying enforcing relevant prudential regulations.</td>
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<td></td>
</tr>
<tr>
<td>5. Foreign exchange companies are not subject to AML/CFT supervision.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>24. DNFBP - regulation, supervision and monitoring</td>
<td>NC</td>
<td>• 1. There is no AML/CFT system applicable to nonbank financial institutions or to nonfinancial businesses and professions.</td>
</tr>
</tbody>
</table>
| 25. Guidelines & Feedback | NC | 1. The reporting system as a whole is not in operation and there is no procedure for feedback; the STR
<table>
<thead>
<tr>
<th>Forty Recommendations</th>
<th>Rating</th>
<th>Summary of factors underlying rating</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>system is not yet in place.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>2. The relevant authorities have not issued guidelines of any significance in this area.</td>
</tr>
<tr>
<td>Institutional and other measures</td>
<td></td>
<td></td>
</tr>
<tr>
<td>26. The FIU</td>
<td>NC</td>
<td>1. There is no established / operational national center for the receipt etc of STR</td>
</tr>
<tr>
<td></td>
<td></td>
<td>2. No guidance is issued regarding reporting procedures</td>
</tr>
<tr>
<td></td>
<td></td>
<td>3. The Administrative Committee is a high level committee not best placed to undertake operational analysis and, other than through high level counterparts (in the Committee), does not have access to appropriate information to undertake such work.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>4. Whilst there is no effective FIU at present its future operational independence is unclear as it is subject of supervision by the Minister of Finance.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>5. To date the ‘old’ FIU or the new Administrative Committee have not held proper statistics, issued reports or be in a position whether typologies work could be undertaken.</td>
</tr>
<tr>
<td>27. Law enforcement authorities</td>
<td>NC</td>
<td>1. There are currently no law enforcement units responsible for the investigation of either ML or TF.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>2. The MLCA has been in place nearly for 12 month there is no evidence of practical application of the law by law enforcement agencies</td>
</tr>
<tr>
<td>28. Powers of competent authorities</td>
<td>PC</td>
<td>There are legal provisions to gather the required information but no evidence was seen of practical application of the provisions.</td>
</tr>
<tr>
<td>29. Supervisors</td>
<td>NC</td>
<td>1. The BOS does not use its inspection powers to ensure compliance with AML/CFT requirements.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>2. The securities sector lacks any form of effective supervision.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>3. The Insurance Supervision Authority does not exercise on-site inspection of supervised entities and its powers to inspect to gain access to records is not clearly defined in the law.</td>
</tr>
<tr>
<td>30. Resources, integrity and training</td>
<td>NC</td>
<td>1. There is no national or departmental strategic or other framework that sets out AML/CFT structure, staffing, funding regarding the FIU, LEA, prosecution, supervisors and other competent authorities.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>2. LEA, prosecutors and other competent bodies are not adequately structured to respond to particular AML/CFT needs nor has funding or other resources (technical or otherwise) been set-aside to deal with this.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>3. No specific professional standards / integrity requirements are being considered (in relation to AML/CFT) by the competent authorities.</td>
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<td>4. None of the competent authorities have received any specialist training in ML or FT and, at present, none is planned.</td>
</tr>
<tr>
<td>Forty Recommendations</td>
<td>Rating</td>
<td>Summary of factors underlying rating</td>
</tr>
<tr>
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</tr>
<tr>
<td>31. National cooperation</td>
<td>NC</td>
<td>1. There is no national strategy for AML/CFT in Sudan. The Administrative Committee, as the main coordinating body, is hardly functional.</td>
</tr>
<tr>
<td>32. Statistics</td>
<td>NC</td>
<td>1. No systems are in place to review the overall effectiveness of the AML/CFT regime. 2. There are currently no systems are in place to undertake statistical analysis of any part of the AML/CFT regime. 3. Whilst the police and other agencies have mechanisms for collecting general crime statistics there are no such mechanisms in relation to ML or TF that assist in either judging the effectiveness of the system or details the day-to-day operations of AML/CFT.</td>
</tr>
<tr>
<td>33. Legal persons – beneficial owners</td>
<td>PC</td>
<td>1. While the registrar of companies keeps record of the names of owners and managers of companies, it is not automated. This prevents the use of the registrar to detect cases of fronting. 2. There is no mechanism in place to compel the disclosure of beneficial ownership.</td>
</tr>
<tr>
<td>34. Legal arrangements – beneficial owners</td>
<td>NA</td>
<td></td>
</tr>
<tr>
<td><strong>International Cooperation</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>35. Conventions</td>
<td>PC</td>
<td>1. Sudan has ratified the Vienna and Palermo Conventions but it has not taken measures to implement them through domestic law. 2. The offence of money laundering, even though it exists in the law, it has not yet been implemented. There has been no prosecutions for money laundering.</td>
</tr>
<tr>
<td>36. Mutual legal assistance (MLA)</td>
<td>PC</td>
<td>There are no legal prohibitions or conditioning on rendering mutual legal assistance upon request. There is however now statutory or procedural framework that guarantees the consistency, efficiency and effectiveness of the assistance.</td>
</tr>
<tr>
<td>37. Dual criminality</td>
<td>LC</td>
<td>1. <strong>There is no statutory framework for MLA, which makes an assessment of the content of the approach of Sudan to MLA and question of dual criminality difficult.</strong> 2. Generally, Sudan has a flexible approach to dual criminality requirements, which justifies an assessment of largely compliant in the absence of a clear regulatory framework.</td>
</tr>
<tr>
<td>38. MLA on confiscation and freezing</td>
<td>PC</td>
<td>1. There is no clear statutory framework for confiscation in general or for mutual legal assistance in confiscation matters. 2. The Sudanese legal framework on confiscation is vague and leaves many questions with regard to the scope of confiscated property and value confiscation without answers. 3. There are no arrangements for coordinating confiscation measures with other countries.</td>
</tr>
<tr>
<td>39. Extradition</td>
<td>PC</td>
<td>Money laundering is in principle an extraditable offence under the Act. The application of the extradition Act is</td>
</tr>
</tbody>
</table>
Forty Recommendations | Rating | Summary of factors underlying rating
--- | --- | ---
contingent on the existence of bilateral arrangements confirmed by a presidential decree. This may render money laundering offences un-extraditable in the absence of an extensive web of bilateral arrangements confirmed by decrees. Sudan has not taken action yet to implement the extradition provisions of the Vienna and Palermo Conventions. There is no case law to suggest alternative practice on this matter.

40. Other forms of cooperation | PC | The channels and mechanisms for exchange of information between counterparts is deficient. Some cooperation takes place relying on the flexibility of the procedural system, but it is not sufficiently clear so as to guarantee consistency

Eight Special Recommendations | Rating | Summary of factors underlying rating
--- | --- | ---
SR.I Implement UN instruments | PC | 1. Sudan has taken measures to implement Security Council Resolutions but the measures required by the 1373 decisions, including the criminalization of terrorist financing, has not been implemented.
2. The general deficiencies in the various aspects of CFT system, which were identified in this report, also fall short of Resolution 1373 in many respects.

SR.II Criminalize terrorist financing | NC | Sudanese law does not include an offence of money laundering. While the overall framework of liability for assisting and facilitation could have somewhat medicated this shortcoming, there is no evidence that the current legal framework has been used to prosecute financiers of terrorism. There is therefore no evidence of effectiveness to be taken into consideration in determining the rating of compliance.

SR.III Freeze and confiscate terrorist assets | PC | 1. There is no criminalization of terrorist financing, which limits the scope of the effectiveness of confiscation measures in this regard.
2. The definition of funds subject to confiscation does not address adequately funds indirectly held and controlled.
3. There are no safeguards for bona fide third parties.
4. There is not a clear process publicly known for delisting or reviewing the decisions to defreeze mistakenly frozen funds.
5. The process of informing the banks and other relevant persons of their obligations and how to implement them is not adequate.
6. No clear procedures have been set up to ensure access to the frozen funds where necessary consistently with Resolution 1452 (2002).

SR.IV Suspicious transaction reporting | NC | 1. The extension of the reporting requirements to terrorist financing, while it may be argued under the Act, is not clear. Explicit reference is needed.

SR.V International cooperation | NC | 1. There is no statutory framework for mutual legal assistance in general or in relation to terrorist
<table>
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<tr>
<th>Forty Recommendations</th>
<th>Rating</th>
<th>Summary of factors underlying rating</th>
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Table 2. Recommended Actions to Improve the AML/CFT System

<table>
<thead>
<tr>
<th>AML/CFT System</th>
<th>Recommended Action (listed in order of priority)</th>
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</thead>
<tbody>
<tr>
<td>1. General</td>
<td></td>
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<tr>
<td>2. Legal System and Related Institutional Measures</td>
<td></td>
</tr>
</tbody>
</table>
| Criminalization of Money Laundering (R.1 & 2)      | • The offence of money laundering remains ineffective. No prosecutions for money laundering has yet been initiated. It is important that the police and the prosecution become aware of the offence, its scope and the possibilities for its application.  
• The scope of the predicate offence falls short of international standard. As indicated above, it is recommended that Sudan should adopt an “all offences” or “all serious offences” approach as opposed to the list approach. This is bound to facilitate prosecutions by removing unnecessary obstacles of proof. The recommended approach will also facilitate international cooperation and simplify the application of dual criminality requirements.  
• Section 3(3) on “ancillary offences” should be amended to refer to the offence provided for in sub-section (1) instead of (2) as it now reads. The current drafting of the section is confusing and the amendment will ensure liability for offences that are ancillary to money laundering. It will re-enforce the general provisions of the Criminal Justice Act (1991). |
| Criminalization of Terrorist Financing (SR.II)     | • an independent offence of terrorist financing should be introduced.  
• detailed provisions dealing with various aspects of liability for the financing of terrorism should be introduced consistent with international standards. |
| Confiscation, freezing and seizing of proceeds of crime (R.3) | • that the Confiscation provisions in the MLCA 2003 should be expanded to cover the proceeds of laundering and the instrumentalities both used and intended for use. They should also be amended to allow for the confiscation of property of corresponding value to cater for situations where the actual objects or proceeds of crime could not be specifically identified.  
• Sudan should introduce an offence of financing terrorism to ensure that the confiscation provisions of the Terrorism Act (2001) cover funds used to finance terrorism as defined by the various international instruments.  
• The confiscation measure provided in article 18(2) is too broad and does not sufficient safeguards to the accused. It should be restricted to the funds that has some link to the terrorist acts. This amendment will remain consistent with the international instruments.  
• The Law should clarify the powers relating to identification and tracing of property. |
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<tr>
<th>AML/CFT System</th>
<th>Recommended Action (listed in order of priority)</th>
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<tr>
<td></td>
<td>• The law should provide adequate protection for bona fide third parties.</td>
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</table>
| Freezing of funds used for terrorist financing (SR.III) | • A distinct offence of financing terrorism needs to be introduced. The current confiscation provisions do not cover assets relating to these activities to the extent that they do not come within the present scope criminal liability.  
• Funds subject to confiscation should extend to funds that are not directly held or controlled by the person subject to the measures.  
• A detailed framework for identification and tracing needs to be introduced.  
• The rights of bona fide third parties need to be more clearly protected.  
• More detailed publicly known procedures for delisting and reviewing the decisions to freeze need to be introduced to protect the rights of the individual.  
• Appropriate procedures should be set up to provide access to frozen assets in certain circumstances consistently with S/RES/1452. (2002).  
• Rules and guidance should be issued to clarify the obligations of the persons and entities that implement the confiscation, freezing and seizing measures.  
• The authorities should monitor compliance with the decisions to freeze or confiscate. This should be supported by clear sanctions for failure to implement the freezing, seizing and confiscation measures should be introduced. |
| The Financial Intelligence Unit and its functions (R.26, 30 & 32) | As a matter of priority the Administrative Committee must set-out a strategic framework (Implementing Plan) to establish an overall AML/CFT regime for Sudan that:  
• Seek to establish and separate the functions of the ‘executive’ Administrative Committee and the day-to-day / operational function of the Committee.  
• Prioritize the establishment of an operational FIU and its cooperation and co-ordination with other bodies. (Ensuring the FIU is free from undue influence and interference).  
• Harmonizes the AML and CFT reporting requirements into one body (the FIU).  
• Sets out clear reporting requirements and guidance in relating to those requirements for all FI and DNFBP.  
• In co-ordination with the competent authorities setup a framework that meets AML/CFT training needs and requirements.  
• In co-ordination with the competent authorities set out a framework for the collection, holding and analysis of AML/CFT statistics and the production of typologies and other reports. |
<p>| Law enforcement, prosecution and other competent authorities (R.27, 28, 30 &amp; 32) | • All of the above LEA and other competent authorities are, at the most senior level, members the Administrative Committee which as discussed previously is charged with setting out Sudan’s overall AML/CFT regime and through |</p>
<table>
<thead>
<tr>
<th>AML/CFT System</th>
<th>Recommended Action (listed in order of priority)</th>
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<tbody>
<tr>
<td>this committee they should:</td>
<td>• In co-ordination with the competent authorities initiate an awareness program for all the LEA / prosecution offices.</td>
</tr>
<tr>
<td>• In co-ordination with the competent</td>
<td>• In co-ordination with the competent authorities setup a framework that provides (a) basic training in AML/CFT to all relevant LEA and prosecutors, (b) specialist AML/CFT training - relevant to the skills / responsibilities of parent department/organization.</td>
</tr>
<tr>
<td>authorities initiate an awareness</td>
<td>• Ensure clear lines of responsibility for each department in the combating of ML and TF and mechanisms for co-ordination of efforts at both policy and operational level and designate units to undertake these functions.</td>
</tr>
<tr>
<td>program for all the LEA / prosecution</td>
<td>• In co-ordination with the competent authorities set-out a framework for the collection, holding and analysis of AML/CFT statistics and the production of typologies and other reports.</td>
</tr>
<tr>
<td>offices.</td>
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<tr>
<td>• In coordination with the competent</td>
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<tr>
<td>authorities initiate an awareness</td>
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<td>program for all the LEA / prosecution</td>
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<td>offices.</td>
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3. Preventive Measures – Financial Institutions

Risk of money laundering or terrorist financing

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

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<tbody>
<tr>
<td>• The regulations should be revamped and a new set of clear and</td>
<td>• CDD requirements should extend to other nonbank financial institutions.</td>
</tr>
<tr>
<td>comprehensive regulations should be introduced.</td>
<td>• An appropriate risk analysis needs to be conducted in order to identify the customers and transactions that are particularly vulnerable to abuse and those that are less vulnerable. CDD requirements should be adjusted accordingly. This will rationalize the enforcement process and reduce the costs to the industry.</td>
</tr>
<tr>
<td>• Requirements on verification of beneficial ownership should</td>
<td>• Rules on CDD in non account-based transactions should be detailed and enforced through implementing regulations.</td>
</tr>
<tr>
<td>be introduced and detailed.</td>
<td>• The definition of “financial institutions” as defined under art. 2 of the MLCA should be duly clarified and narrowed down to a realistic scope consistent with international standards.</td>
</tr>
<tr>
<td>• Rules on the timing of CDD should be detailed taking into</td>
<td>• Rules on the timing of CDD should be detailed taking into account business needs and practices.</td>
</tr>
<tr>
<td>account business needs and practices.</td>
<td>• On-going due diligence requirements should be introduced.</td>
</tr>
<tr>
<td>• CDD rules should include identification of the nature and</td>
<td>• CDD rules should include identification of the nature and purpose of the customer’s business. This is essential for subsequent identification of unusual and suspicious transactions.</td>
</tr>
<tr>
<td>purpose of the customer’s business.</td>
<td>• Rules on Politically Exposed Persons should be introduced.</td>
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<tr>
<td>• Rules on Politically Exposed Persons should be introduced.</td>
<td>• Correspondent relationships should be regulated.</td>
</tr>
<tr>
<td>• Risk of new technological developments in the Sudanese</td>
<td>• Risk of new technological developments in the Sudanese financial sector should be assessed and adequate regulations should be introduced.</td>
</tr>
<tr>
<td>financial sector should be assessed and adequate regulations</td>
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<tr>
<td>should be introduced.</td>
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<tr>
<td>Third parties and introduced business</td>
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<tr>
<td>AML/CFT System</td>
<td>Recommended Action (listed in order of priority)</td>
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<td>-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
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<tr>
<td>Financial institution secrecy or confidentiality (R.4)</td>
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</tbody>
</table>
| Record keeping and wire transfer rules (R.10 & SR.VII)  | * New regulations clarifying the rules on record keeping should be introduced.  
* The regulations should provide clear guidance on the information and documents to be kept.  
* Record-keeping requirements should be introduced for nonbank financial institutions.  
* Comprehensive rules on wire transfers should be introduced including CDD, record keeping and the information to accompany the wire transfer.  
* Rules or guidance on handling wire transfers that do not carry sufficient originator information should be introduced.  
* The industry’s lax approach to wire transfer transactions carried out by third parties should be addressed through both awareness raising of the risks involved and enforcement action where necessary. |
| Monitoring of transactions and relationships (R.11 & 21) | * The Regulations should be amended to broaden the scope of unusual transactions to encompass those transactions that are not consistent with the pattern of an account and occasional transactions that are unusual by virtue of their size or other general criteria.  
* The Regulations should give banks more guidance on the actions and measures to be taken upon identifying an unusual transaction. In particular, banks should be required to determine its background and purpose and to document that in writing.  
* Rules on unusual transactions should be extended to nonbank financial institutions by law, regulations, or any other enforceable means.  
* The Administrative Committee should design a comprehensive system for dealing with jurisdictions that do not have adequate AML/CFT systems, which identifies such jurisdictions, advises financial institutions accordingly, requires financial institutions to pay special attention to transactions or relationships involving such jurisdictions, provides clear guidance or directives on this matter, and adopt counter measures that could be applied to countries that persist in maintaining inadequate AML/CFT systems. |
| Suspicious transaction reports and other reporting (R.13-14, 19, 25 & SR.IV) | * The discrepancy between the Act and the Regulations should be reconciled.  
* The reporting obligation should be extended very clearly to the suspicion of funds or transactions to be related to terrorism, terrorist organizations or the financing of terrorism.  
* The Act should specify clear penalties for failure to report or tipping off of the customer.  
* The scope of the obligation in terms of the covered institutions under the Act should be narrowed down realistically. |
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<tr>
<th>AML/CFT System</th>
<th>Recommended Action (listed in order of priority)</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Measures should be taken to raise the awareness of the covered institutions regarding their new obligations and their significance.</td>
<td>• The MLCA should include the development of internal policies and procedures as one of the functions that financial institutions should undertake.</td>
</tr>
<tr>
<td>• Sudan should consider the introduction of measures aimed at detecting or monitoring the physical cross-border transportation of currency.</td>
<td>• Regulations or guidance should be issued providing more guidance on the content of internal compliance policies.</td>
</tr>
<tr>
<td>• Sudan should consider introducing measures that aim at informing and cooperating with the country of origin and destination of unusual and suspicious shipments of currency and precious objects.</td>
<td>• The compliance officer should be designated at management level.</td>
</tr>
<tr>
<td>• Internal controls, compliance, audit and foreign branches (R.15 &amp; 22)</td>
<td>• The independence of the audit function should be adequately safeguarded.</td>
</tr>
<tr>
<td>• The MLCA should include the development of internal policies and procedures as one of the functions that financial institutions should undertake.</td>
<td>• Banks should be required to adequately resource their audit and compliance functions.</td>
</tr>
<tr>
<td>• Regulations or guidance should be issued providing more guidance on the content of internal compliance policies.</td>
<td>• Training should be provided to all employees on relevant aspects of AML/CFT.</td>
</tr>
<tr>
<td>• The compliance officer should be designated at management level.</td>
<td>• The regulations should refer explicitly to controlling the financing of terrorism in all reference to the obligations of financial institutions as part of the awareness raising of the risks involved and the scope of obligations.</td>
</tr>
<tr>
<td>• The independence of the audit function should be adequately safeguarded.</td>
<td>• Appropriate standards on the hiring of employees of financial institutions should be clearly defined and enforced.</td>
</tr>
<tr>
<td>• Banks should be required to adequately resource their audit and compliance functions.</td>
<td>• The AML/CFT obligations of banks with regard to their foreign branches should be elaborated.</td>
</tr>
<tr>
<td>• Training should be provided to all employees on relevant aspects of AML/CFT.</td>
<td>• Shell banks (R.18)</td>
</tr>
<tr>
<td>• The regulations should refer explicitly to controlling the financing of terrorism in all reference to the obligations of financial institutions as part of the awareness raising of the risks involved and the scope of obligations.</td>
<td>• Rules should be introduced clearly prohibiting the formation of shell banks and entering into correspondence relationships with foreign shell banks.</td>
</tr>
<tr>
<td>• Appropriate standards on the hiring of employees of financial institutions should be clearly defined and enforced.</td>
<td>• Regulations should also impose due diligence obligations on banks operating within Sudan requiring them to ensure that their respondent financial institutions in foreign countries do not allow their accounts to be used by shell banks.</td>
</tr>
<tr>
<td>• The AML/CFT obligations of banks with regard to their foreign branches should be elaborated.</td>
<td>• The supervisory and oversight system - competent authorities and SROs (R. 17, 23, 29 &amp; 30).</td>
</tr>
<tr>
<td>• The MLCA needs to be operational through the establishment of a Secretariat General for the Administrative Committee charged with conducting the day-to-day work of the committee and drafting implementing regulations for the Committee’s consideration.</td>
<td>• AML/CFT regulations should be introduced in the insurance and securities sectors.</td>
</tr>
<tr>
<td>• AML/CFT regulations should be introduced consistently with the international standards. The analysis of deficiencies in this report could provide some guidance in this regard.</td>
<td>• AML/CFT Regulations for banks need to be updated consistently with the international standards.</td>
</tr>
<tr>
<td>• AML/CFT regulations should be introduced and</td>
<td>• The supervisory and oversight system - competent authorities and SROs (R. 17, 23, 29 &amp; 30).</td>
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### AML/CFT System

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<tr>
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<tr>
<td>• The sanctions for failure to comply with AML/CFT requirements should be clarified in the relevant instruments.</td>
</tr>
<tr>
<td>• Relevant AML/CFT instruments should clearly designate the authorities in charge of implementing AML/CFT regulations in the various sectors and vest them with the powers to impose sanctions for breach of the requirements.</td>
</tr>
<tr>
<td>• An effective supervisory framework should be introduced in the securities sector.</td>
</tr>
<tr>
<td>• The powers of the Insurance Supervision Authority to inspect to gain access to records should be clearly defined in the law.</td>
</tr>
<tr>
<td>• Fit and proper standards should be introduced in the insurance and the securities sectors.</td>
</tr>
</tbody>
</table>

### Financial institutions - market entry and ownership/control (R.23)

| Licensing procedures in the securities and insurance sectors should make explicit reference to integrity and fit and proper standards. |
| Licensing procedures should be applied with conscious attention to preventing direct or indirect control of criminals over financial institutions. |
| The law and regulations should refer to and provide guidance on establishing beneficial ownership and ensuring that it is not held by criminals. |

### AML/CFT Guidelines (R.25)

| It is recommended that the Administrative Committee should without delay issue guidelines on the techniques and methods of money laundering and on the compliance with the Act. |
| It is also recommended that the BOS should update its guidelines to reflect the current reality of money laundering risks in the banking sector, especially in view of the ongoing liberalization and the number of new foreign entrants that are in the process of setting up their operations. |
| The BOS should issue clear guidelines to the foreign exchange companies on the risks of money laundering and terrorist financing in the sector and ways to prevent it. |
| The Administrative Committee should carry out jointly with other competent authorities an assessment of the risks of terrorist financing in the various sectors with a view to issuing clear guidelines to the relevant institutions. During the on-site visit it was clear that the banks were unaware of the risks of terrorist financing in their operations. |

### Ongoing supervision and monitoring (R.23, 29 & 32)

<p>| The MLCA needs to be operationalized through the establishment of a Secretariat General for the Administrative Committee charged with conducting the day-to-day work of the committee and drafting implementing regulations for the Committee’s consideration. |
| AML/CFT regulations should be introduced in the insurance and securities sectors. |
| AML/CFT Regulations for banks need to be updated consistently with the international standards. The analysis of |</p>
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<td>deficiences in this report could provide some guidance in this regard.</td>
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<tr>
<td></td>
<td>• AML/CFT regulations should be introduced and implemented in foreign exchange companies.</td>
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<tr>
<td></td>
<td>• The sanctions for failure to comply with AML/CFT requirements should be clarified in the relevant instruments.</td>
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<td>• Relevant AML/CFT instruments should clearly designate the authorities in charge of implementing AML/CFT regulations in the various sectors and vest them with the powers to impose sanctions for breach of the requirements.</td>
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<td></td>
<td>• An effective supervisory framework should be introduced in the securities sector.</td>
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<td></td>
<td>• The powers of the Insurance Supervision Authority to inspect to gain access to records should be clearly defined in the law.</td>
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<td></td>
<td>• The Administrative Committee should ensure adequate procedures for gathering data and information on the operation of the AML/CFT system are put in place from the beginning.</td>
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<tr>
<th>Money value transfer services (SR.VI)</th>
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<tr>
<td></td>
<td>• It is recommended that Sudan should legitimize the existence of money or value transfer operators and subject them to a system of registration or licensing.</td>
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<td></td>
<td>• It is recommended that Sudan should subject those operators to AML/CFT regulations consistent with Recommendations and their vulnerability to money laundering and terrorist financing.</td>
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<thead>
<tr>
<th>4. Preventive Measures –Non-Financial Businesses and Professions</th>
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<tbody>
<tr>
<td>Customer due diligence and record-keeping (R.12)</td>
<td>• The Administrative Committee should use its regulatory powers to extend AML/CFT regulations to real estate agents, precious metal dealers, gold dealers, accountants and lawyers. The categories of casinos and company formation agents envisaged by Recommendation 16 do not exist in Sudan.</td>
</tr>
<tr>
<td></td>
<td>• The Committee should impose upon these businesses and professions appropriate CDD requirements.</td>
</tr>
<tr>
<td>Monitoring of transactions and relationships (R.12 &amp; 16)</td>
<td>• The Administrative Committee should use its regulatory powers to extend AML/CFT regulations to real estate agents, precious metal dealers, gold dealers, accountants and lawyers. The categories of casinos and company formation agents envisaged by Recommendation 16 do not exist in Sudan.</td>
</tr>
<tr>
<td></td>
<td>• The Committee should impose obligations on designated nonfinancial businesses and professions.</td>
</tr>
<tr>
<td>Suspicious transaction reporting (R.16)</td>
<td>• The Administrative Committee should conduct thorough risk analysis to identify vulnerable businesses and professions and subject them to AML/CFT STR requirements.</td>
</tr>
<tr>
<td></td>
<td>• The Administrative Committee should designate lawyers, accountants, dealers in precious metals as businesses and</td>
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</tbody>
</table>
### AML/CFT System

**Recommended Action (listed in order of priority)**

- Professions covered by AML/CFT regulations and require them to file suspicious transactions reports. The Committee should adopt all necessary safeguards to protect the professional privileges of the legal and accounting profession while preventing the abuse of these professions for money laundering and terrorist financing purposes.
  - In imposing reporting requirements on lawyers, accountants, precious metal dealers and other designated non-financial businesses and professions, the Committee should ensure that the legal entity and the officers involved will be protected against any criminal, civil or any other type of liability arising from this disclosure.

<table>
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<tr>
<th>Internal controls, compliance &amp; audit (R.16)</th>
<th>AML Preventive measures need to be extended to designated nonfinancial businesses and professions.</th>
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| Regulation, supervision and monitoring (R.17, 24-25) | Sudan should extend the scope of the Act to the nonfinancial businesses and professions designated in the Recommendations and designate the authorities that will be in charge of regulating, supervising and/or monitoring their compliance with the requirements. Absent the designation of authorities that are adequately staffed and resources for these purposes, the requirements will remain ineffective.
  - Adequate sanctions should be applied to the designated businesses and professions according to the same principles discussed with regard to financial institutions generally: dissuasive, proportional and adequate applicable to both legal and natural persons.
  - Competent authorities should provide the designated nonfinancial businesses and professions with adequate guidelines on the performance of their obligations and adequate feedback on their filed STRs. |

| Other designated nonfinancial businesses and professions (R.20) | Measures should be taken to assess the vulnerability of businesses and professions to money laundering and terrorist financing and extend the AML/CFT requirements where necessary.
  - Policies and measures should be designed to encourage less reliance on cash transactions. |

### 5. Legal Persons and Arrangements & Non-Profit Organizations

| Legal Persons – Access to beneficial ownership and control information (R.33) | The Administrative Committee should ensure that the registration of all companies in Sudan be centralized, using efficient information management methods such as databases that can be cross-referenced and updated in a timely fashion.
  - Sudan should consider introducing legal obligations upon companies to disclose the beneficial ownership of the company and support such obligations with appropriate enforcement powers. |

| Legal Arrangements – Access to beneficial ownership and control information (R.34) | NA |

<p>| Nonprofit organisations (SR.VIII) | Resources should be made available to the Ministry of |</p>
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<thead>
<tr>
<th>AML/CFT System</th>
<th>Recommended Action (listed in order of priority)</th>
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</table>
| Humanitarian Affairs to ensure that it has the capacity to identify and register all NPOs, civil and social institutions operating in Sudan. | • The Ministry of Humanitarian affairs should ensure that adequate, verifiable and timely information is available on all such institutions operating in Sudan.  
• The information on NPOs, including beneficiary owners, should be stored and managed electronically in a database that can be cross-referenced.  
• The Ministry of Humanitarian Affairs should enhance the capacity of monitoring and evaluation department to monitor the sources and disposal of funds by NPOs to prevent the risk of abuse for terrorism purposes. |

6. National and International Cooperation

| National cooperation and coordination (R.31)                                                                 | Achieving the coordination needed in the area of AML/CFT hinges upon the Administrative Committee. The first step in achieving this co-ordination is creating a national strategy for fighting money laundering and terrorist financing.  
| The Insurance Supervision Authority and the Khartoum Stock Exchange should be represented in the Administrative Committee.  
| The Committee should create clear procedures for operational co-ordination amongst the various agencies. An effective FIU could play an important role in this regard. |

The Conventions and UN Special Resolutions (R.35 & SR.I)  
Sudan should take measures to update its legal system consistently with its various obligations under the Vienna Convention and the Palermo Convention, and Resolution 1373.

| Mutual Legal Assistance (R.32, 36-38, SR.V)                                                                 | Sudan should introduce a statutory framework for mutual legal assistance that guarantees consistency and efficiency of cooperation.  
| The statutory framework for mutual legal assistance should adopt a nonrestrictive principle of dual criminality.  
| MLA in freezing, Seizing and confiscation matters should be clarified and established on statutory basis. |

| Extradition (R.32, 37 & 39, & SR.V)                                                                 | An offence of terrorist financing needs to be introduced as soon as possible to prevent potential obstacles to extradition.  
| Sudan should amend article 4 of the Extradition Law to remove the requirement for a presidential decree to extend the application of the Extradition Law to states with which Sudan has an extradition arrangement. This requirement might inhibit the use of a multilateral agreement such as the Palermo Convention as basis for extradition in the absence of a bilateral arrangement.  
| Thorough data and statistics on extradition requests and disposal thereof need to be maintained. |

| Other Forms of Cooperation (R.32 & 40, & SR.V)                                                                 | Sudan should pay more attention to creating channels and mechanisms for information sharing with foreign counterparts.  
<p>| The BOS should enter into MOUs for the purpose of |</p>
<table>
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<tr>
<th>AML/CFT System</th>
<th>Recommended Action (listed in order of priority)</th>
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<tr>
<td></td>
<td>Information sharing.</td>
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<tr>
<td></td>
<td>• In creating the framework for the FIU, the Administrative Committee should give it the power to share information upon request or spontaneously.</td>
</tr>
<tr>
<td></td>
<td>• In creating the framework for the FIU, the Administrative Committee should give it the power to search its own database and other databases to which it might have access on behalf of a foreign counterpart.</td>
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</table>

7. Other Issues

Other relevant AML/CFT measures or issues

General framework – structural issues

E. Authorities’ response to the assessment

General

334. The authorities agree that there is a general increase in acquisitive crime in Sudan, which is attributable to the repercussions of economic liberalization policies which were adopted from the early nineties.

335. It is a fact that the Administrative Committee and the 1373 Committee are high-level and are not in a position to execute executive duties without an executive body, which was already being considered. Now practical steps have been taken to appoint a full time secretary general for AML who will shoulder the responsibilities of daily work of the Administrative Committee and constitutes the executive body for AML.

Legal and related institutional measures

336. The authorities admit that the money laundering provisions are not yet enforced. These provisions will be more effective after the appointment of the secretary general. The authorities intend to make use of experience of Illicit Enrichment Act, 1989.

337. The Administrative Committee has formed a committee to revise and amend the MLCA to meet the international standards. The terms of references for this committee are the FSAP report, and the suggestions of the Administrative Committee regarding the amendments of the Act. The drawbacks mentioned in the report regarding the legal system will be considered, especially provisions regarding criminalizing terrorist finance, confiscation, freezing and seizing of assets, and DNFBP. It is worth mentioning that this committee is chaired by the general manager of the Legal Department of the BOS; the manager of Interpol, a representative of the Attorney General, and a representative for international relation from the Ministry of Foreign Affairs are members. This committee is expected to submit its report in early 2005.
338. The AML unit at the BOS is attached to the Supervision Department. A plan has been set to train the staff of this unit. Also, a new circular will be issued to organize AML measures among the banks.

**Legal persons and nonprofit organizations**

339. New methods and techniques will be adopted by the companies registrar to facilitate the follow-up and detect the abuse of corporate vehicles for money laundering. This is also considered by the Administrative Committee.

340. It is true that there are not enough measures taken to control the risk in NPOs, but it is recommended by the 1373 Committee to ratify the law and to enhance the capacity of the Ministry of Humanitarian Cooperation.

**National and international cooperation**

341. This issue will be handled by the above mentioned committee that will make the necessary amendments to the MLCA.

342. Sudan’s membership of Middle East and North Africa FATF-style group is in process.
### GLOSSARY

<table>
<thead>
<tr>
<th>Acronym</th>
<th>Description</th>
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<tbody>
<tr>
<td>AAOIFI</td>
<td>Accounting and Auditing Organization for Islamic Financial Institutions</td>
</tr>
<tr>
<td>AML/CFT</td>
<td>Anti-Money Laundering/Combating the Financing of Terrorism</td>
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<tr>
<td>BOS</td>
<td>BOS</td>
</tr>
<tr>
<td>CAR</td>
<td>Capital adequacy ratio</td>
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<td>CDD</td>
<td>Customer due diligence</td>
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<tr>
<td>CPA</td>
<td>Comprehensive Peace Agreement</td>
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<tr>
<td>DNFBF</td>
<td>Designated Nonfinancial Businesses and Professions</td>
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<tr>
<td>DIF</td>
<td>Deposit Insurance Fund</td>
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<tr>
<td>FATF</td>
<td>Financial Action Task Force</td>
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<tr>
<td>FIU</td>
<td>Financial Intelligence Unit</td>
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<tr>
<td>FSAP</td>
<td>Financial Sector Assessment Program</td>
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<tr>
<td>FSSA</td>
<td>Financial Sector Stability Assessment</td>
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<tr>
<td>GIC</td>
<td>Government Investment Certificate</td>
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<tr>
<td>GMC</td>
<td>Government Musharaka Certificate</td>
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<tr>
<td>ISA</td>
<td>Insurance Supervisory Authority</td>
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<tr>
<td>KSE</td>
<td>Khartoum Stock Exchange</td>
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<tr>
<td>LEA</td>
<td>Law enforcement agency</td>
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<tr>
<td>MFE</td>
<td>Ministry of Finance and National Economy</td>
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<tr>
<td>MFI</td>
<td>Micro-Finance Institution</td>
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<tr>
<td>MLCA</td>
<td>Money Laundering (Combating) Act</td>
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<tr>
<td>NPL</td>
<td>Nonperforming Loans/Investments</td>
</tr>
<tr>
<td>NPO</td>
<td>Nonprofit Organization</td>
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<tr>
<td>ROA</td>
<td>Return on assets</td>
</tr>
<tr>
<td>ROE</td>
<td>Return on equity</td>
</tr>
<tr>
<td>ROSC</td>
<td>Report on Observance of Standards and Codes</td>
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<td>RTGS</td>
<td>Real Time Gross Settlement System</td>
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<tr>
<td>SD</td>
<td>Sudanese Dinar</td>
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<tr>
<td>SME</td>
<td>Small and Medium-sized Enterprises</td>
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<tr>
<td>STR</td>
<td>Suspicious Transaction Report</td>
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<tr>
<td>TPL</td>
<td>Third Party Liability</td>
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### Islamic Financial Terms

<table>
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<tr>
<th>Term</th>
<th>Description</th>
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<tbody>
<tr>
<td>Al-Wadiah</td>
<td>Safekeeping arrangement of funds with no interest payment</td>
</tr>
<tr>
<td>Sukuk</td>
<td>Government security (Government Musharaka Certificate or Government Investment Certificate)</td>
</tr>
<tr>
<td>Ijara</td>
<td>Leasing contract</td>
</tr>
<tr>
<td>Istisna’a</td>
<td>Instrument, whereby one party finances work in progress and receives goods once manufactured</td>
</tr>
<tr>
<td>Mudaraba</td>
<td>Instrument, in which one party contributes capital, the other labor/expertise</td>
</tr>
<tr>
<td>Mudarib</td>
<td>Entrepreneur, initiator and manager of a project</td>
</tr>
<tr>
<td>Murabaha</td>
<td>Instrument, in which financer purchases good with agreement on resale at a price based on initial cost plus a mark-up</td>
</tr>
<tr>
<td>Musharaka</td>
<td>Instrument, in which parties contribute equity and share profits and losses</td>
</tr>
<tr>
<td>Qard Al-Hasana</td>
<td>Return-free charity instrument</td>
</tr>
<tr>
<td>Rabbul-mal</td>
<td>Owner of capital</td>
</tr>
<tr>
<td>Riba</td>
<td>Interest</td>
</tr>
<tr>
<td>Salam</td>
<td>Instrument, in which buyer pays price before receiving goods</td>
</tr>
<tr>
<td>Takaful</td>
<td>Islamic insurance; operates similar to a mutual benefit company</td>
</tr>
</tbody>
</table>
INSTITUTIONS MET DURING THE ON-SITE MISSION

- The BOS
  - General Manager Banking Supervision Department
  - Head Financial Information Unit
  - Banking Supervision Department and Financial Information Unit Staff
  - Legal Department
  - Foreign Exchange Policy Department
- Omdurman National Bank
  - Head of Legal Unit
  - Internal Audit and Risk Manager
- Byblos Bank of Africa
  - Head of Finance and Administration
- Economic Sector Security Circuit
  - Intelligence official
- Tadamon Islamic Bank
  - Head Legal Department
- Interpol
  - Director of Interpol
- Ministry of Justice
  - Head of the Executive Office, Ministry of Justice
- Criminal Investigation Administration
  - Director, Criminal Investigation Administration
- Insurance Supervisory Authority
  - General Manager, and Insurance Supervisory Authority.
- Farmer’s Commercial Bank
  - Deputy general manager
  - Head of Legal Department
  - Deputy Head of Legal Department
  - Legal Counsel
- Registrar of Companies
  - Commercial Registrar General, Ministry of Justice.
- Illicit Enrichment Court
  - Four public prosecutors assigned to the court
- 1373 Committee
  - Seven member high-level committee to combat terrorism
- Ministry of Humanitarian Cooperation
- The Minister of Humanitarian Cooperation
- Mubarak Accounting Firm
  - This is an Ernst and Young M.E. Correspondent, Independent Office, largest
  accounting firm in Sudan. The mission met with an Accountant and partner
- Office of the Prosecutor General
  - Prosecutor General of Sudan
- Agricultural BOS
  - General Manager
• Sudan Financial Services Co. Limited
  o Deputy General Manager
• Khartoum Stock Exchange
  o General Manager
• Sudan Customs
  o General Manager
• Advocate and Commissioner for Oaths
• Private Attorney
LAWS, REGULATIONS AND OTHER MATERIAL RECEIVED

Laws and regulations
Terrorism (Combating) Act (2001)
Illicit and Suspicious Enrichment Act (1989)
The Criminal Act 1991
The Criminal Procedure Act 1991
The Law of Evidence (1994)
BOS Law (2002)
Legal Profession Act (1983).
BOS Anti-Money Laundering (AML) Regulations (2002)
Draft Circular on “Combating Money Laundering Operations”
Hashish and Opium Ordinance (1924)
The Extradition Act (1957)
BOS Banking Supervision Circulars
Islamic Code of Conduct
Regulation governing financial investment institutions, 2004
Regulation Governing Licensing for Conducting Banking Business, 2004
Regulations Governing Banking Supervision
Foreign Exchange Circulars (2004-2005)
Foreign Exchange Regulations (2002).
Additional material received
Alshamal Islamic Bank documents
Byblos Bank of Africa documents
Commercial Registrar company registration documents
Insurance and Reinsurance Sector data
Mubarak Accounting Firm documents
Sudan financial Services Co. L.T.D. documents
Sudanese Securities Market documents
Registrar of Companies Forms.