

INTERNATIONAL MONETARY FUND



Staff Country Reports

**Uruguay: Report on the Observance of Standards and Codes on
Anti-Money Laundering and Combating the Financing of Terrorism**

This Report on the Observance of Standards and Codes on Anti-Money Laundering and Combating the Financing of Terrorism for Uruguay was prepared by Fund staff using the methodology endorsed by the Fund Executive Board in March 2004. The detailed assessment report was presented to GAFISUD (the South American FATF-style regional body) during its July 2006 Plenary in Brazil and was adopted for purposes of GAFISUD's mutual evaluation program. The views expressed in this document are those of the staff team and do not necessarily reflect the views of the Government of Uruguay or the Executive Board of the IMF.

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INTERNATIONAL MONETARY FUND

URUGUAY

**Report on the Observance of Standards and Codes (ROSC)
Anti-Money Laundering and Combating the Financing of Terrorism (AML/CFT)**

Prepared by the Legal Department

Approved by Sean Hagan

November 8, 2006

Report on Observance of Standards and Codes—FATF Recommendations for Anti-Money Laundering and Combating the Financing of Terrorism (AML/CFT)

I. INTRODUCTION

1. **This report on compliance with the Financial Action Task Force (FATF) 40 Recommendations 2003 for Anti-Money Laundering (AML) and 9 Special Recommendations on Combating the Financing of Terrorism (CFT) was prepared by a team composed of staff of the International Monetary Fund (IMF) and an expert under the supervision of Fund staff using the AML/CFT Methodology 2004.¹** It provides a summary of the level of observance with the FATF 40+9 Recommendations and provides recommendations to strengthen their observance. The views expressed in this document are those of the assessment team and do not necessarily reflect the views of the government of Uruguay or the Board of the IMF.

II. INFORMATION AND METHODOLOGY USED FOR THE ASSESSMENT

2. **The assessment is based on the information available at the time of the on-site visit by the team from November 3–21, 2005 and immediately thereafter.** In preparing the detailed assessment, Fund staff reviewed the institutional framework, the relevant AML/CFT laws, regulations, guidelines and other requirements, along with the regulatory and other systems in place to deter money laundering (ML) and the financing of terrorism (FT) through financial institutions (FIs) and designated non-financial businesses and professions (DNFBPs). It also examined the capacity, implementation, and effectiveness of all these systems.

3. **Under agreement with the Uruguayan authorities and GAFISUD (the Financial Action Task Force of South America), the detailed assessment report was used by GAFISUD for purposes of its mutual evaluation of Uruguay.** Consequently, GAFISUD discussed and approved the assessment report on July 20, 2006, during its XIII Plenary Meeting in Brasilia.

III. MAIN FINDINGS

4. **The current AML/CFT regime is largely underdeveloped.** Nonetheless, there is political commitment to introduce much needed reforms to meet the requirements of the FATF Recommendations. The new Government of Uruguay took office on March 1, 2005, and has placed AML efforts as one of its priorities. While Uruguay has put in place many of the basic legal elements for an AML/CFT regime, much remains to be done to fully implement and comply with most of the FATF Recommendations. Enhancing resources and

¹ The mission was composed of Mr. Manuel Vasquez (MFD-team leader), Mr. Ernesto Lopez (MFD), Mr. Antonio Hyman-Bouchereau (LEG), and Mr. Nelson Mena (LEG Consultant, former Head of the FIU of El Salvador). Mr. Esteban Fullin, Deputy Executive Secretary from the South American FATF Regional Style Body (GAFISUD) participated as an observer during the visit by prior agreement with the authorities.

increasing the level of awareness of ML and FT risk across all sectors will be key challenges to effective implementation.

5. **The Uruguayan authorities have taken important steps to address some of the weaknesses in the AML/CFT regime.** Two pieces of legislation were passed during 2004 and 2005 (Law 17,835/2004 and Decree 86/005) that, inter alia, introduced CFT measures, reinforced the role of the FIU, and imposed AML/CFT requirements for most DNFBPs². A multi-agency group has also been created to coordinate the AML/CFT activities at national level. The governmental bodies that will lead the AML/CFT efforts, both in terms of policy and operational issues, are: (1) the Ministry of Economy and Finance (MEF); (2) the Anti-Money Laundering Training Center (CeCPLA) and; (3) the Financial Information and Analysis Unit (UIAF-the financial intelligence unit). The Central Bank (BCU), Ministry of the Interior (MOI), and the Ministry of Defense also play important roles in AML/CFT activities.

6. **Uruguay has two agencies that are involved in counter-terrorism activities.** The Directorate for State Intelligence (in the Ministry of Defense) has been responsible for gathering intelligence on terrorism at national and international levels, while the Directorate of Information and Intelligence (in the MOI) is responsible for the prevention and fight against terrorism. These agencies are not solely dedicated to combating terrorism but are also involved in efforts against organized crime. A provision in the Budget Law 2006 will hand over the task of coordinating organized crime and terrorism issues to a National Intelligence Coordinator.³

7. **Like other countries, Uruguay is vulnerable to ML and FT risk.** While local criminality is considered to be relatively low, its role as an offshore financial center, offering a wide range of financial and corporate services to non-residents, makes it particularly vulnerable to transnational ML/FT. Deficiencies in the implementation of AML/CFT requirements in key sectors (e.g., securities, corporate services, and casinos) also add to these risks. Considering that the corporate law and the registration system do not provide for adequate transparency of ownership and control of legal persons, a key concern involves the potential use of bearer-share corporations (especially Uruguayan offshore companies known as SAFIs) for illicit purposes. The Government has presented to Congress a bill that would discontinue registration of new SAFIs and would gradually reduce their attractiveness by incorporating existing ones into the general corporate regime.

² The term DNBP includes: Casinos (which also includes internet casinos); real estate agents; dealers in precious metals; dealers in precious stones; lawyers, notaries, other independent legal professionals and accountants; and trust and company service providers.

³ Subsequent to the mission, Article 59 of Law 17,930 provided for the creation of the position of Coordinator of the State's Intelligence Services (enacted on December 19, 2005).

8. **During the mission, there was one ML prosecution underway but before then there had been no ML prosecutions in Uruguay.** Very few suspicious activity reports (STRs) were filed in the past four years. The authorities are concerned about the relatively low number of STRs, and have taken important steps to address the issue. The AML/CFT Law 17,835 of September 2004 introduced legal protection to reporting institutions for filing STRs, and this is believed to have contributed to an increase in the number of STRs filed from 11 in 2004 to 42 in 2005. Money laundering was criminalized in 1998, but the financial crises of 2002 contributed to reduced attention and resources to AML/CFT issues. There is now an urgent need to refocus resources to ML/FT risk, including enhancing awareness, compliance and enforcement in the private sector.

9. **No systemic review of ML/FT risks in the jurisdiction has been conducted to date.** Such review is necessary to underpin the development of a more risk-based approach to AML/CFT strategies, guidelines and controls, and to help raise awareness of the ML/FT vulnerabilities in the system.

Summary of key recommendations to strengthen the AML/CFT regime

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|-------|---|
| i) | develop, as planned, a coordinated national AML/CFT strategy scheduled for start of implementation in 2006; |
| ii) | improve CFT legislation, and the regulatory framework for all FIs; |
| iii) | cover missing elements of the DNFBP sectors in the AML/CFT legislation, and prioritize implementation in the company services and casino sectors; |
| iv) | strengthen and enforce customer due diligence (CDD) requirements in all sectors, and give priority to CDD for offshore/cross-border business and legal entities (e.g. beneficial ownership and control of companies); |
| v) | enhance and expand AML/CFT supervision in all sectors, particularly on-site inspections of non-bank and offshore institutions; |
| vi) | establish formal cooperation and information exchange mechanisms with other overseas supervisors that include AML/CFT elements (e.g., Argentina, Brazil and Paraguay); |
| vii) | raise ML/FT risk awareness in all areas particularly for higher risk sectors; |
| viii) | improve the registration system for legal entities, real estate, and other property; |
| ix) | strengthen control mechanisms in key sectors (e.g., public sector casinos); |
| x) | improve the efficiency and resources of the judiciary, prosecution, and law enforcement agencies; and |
| xi) | enhance capacity and resources in the financial intelligence unit (UAIF) and the BCU's supervisory units (e.g., for on-site inspections of securities, insurance, bureaux de change, and money remittance business). |

Legal Systems and Related Institutional Measures

Criminalization of ML and FT

10. **Uruguay criminalized ML in October 1998, but Law Decree 14,294 does not cover all the categories of serious (predicate) offenses that are required by the FATF recommendations.**⁴ While originally restricted to drug related offences, the legislation now covers a broader range of crimes. These include: several corruption-related offenses (as defined in Law 17,060); terrorism; fraud; smuggling; illegal trafficking in weapons, explosives and ammunition; trafficking in human organs, tissues, and medications; trafficking in human beings; extortion; kidnapping; bribery; trafficking in nuclear and toxic substances; and illegal trafficking in animals or antiques. ML is a separate offense from the underlying crimes and extends to predicate offenses committed in other countries, provided it meets the dual criminality test. There are no legal impediments for prosecuting an offender separately for laundering the proceeds of his/her own crime (self-laundering), and prior conviction for the predicate offense is not required for ML prosecution. One ML prosecution has been undertaken since ML was criminalized, which was in process during the mission.

11. **Uruguay criminalized FT in September 2004, but Law 17,835 only covers the financing of terrorist acts.** FT is defined as a separate autonomous offense that can be prosecuted independently from other terrorism-related crimes, and applies where the terrorist act is committed in another country. The law covers the financing of terrorists or terrorist organizations where specific terrorist acts have been committed or are being planned. The mere provision or collection of funds on behalf of known terrorists or terrorist organizations for purposes other than terrorist acts, are not specifically covered by the law, which is a significant limitation. Currently, there are no specific mechanisms for the implementation of UN Security Council Resolutions 1267, 1373, and successor resolutions, except for the administrative suspension of transactions ordered by the FIU for up to 72 hours. To date, there have been no FT cases in Uruguay.

Confiscation, freezing, and seizing of proceeds of crime

12. **The courts have broad powers to seize and confiscate property or financial instruments linked to ML and the predicate offenses.** In practice, however, inefficiencies in the national registers would complicate efficient access to information on the identity of the owners of companies, real estate, and other property available for seizure and confiscation. In the case of real estate, for example, the identification of owners is problematic because properties are not registered under the names of their owners. The authorities have taken some steps to address this problem (i.e., budget appropriations to fund

⁴ The designated categories of offenses not specifically included as predicates to ML are: participation in an organized criminal group and racketeering; illicit trafficking in stolen and other goods (besides works of art); counterfeiting currency; counterfeiting and piracy of products; environmental crime; murder, grievous bodily injury; robbery or theft; forgery; piracy; and insider trading and market manipulation.

the Government's project to establish a patronymic registry of real estate, under article 6 of Law 19,905 of 2005).

13. The confiscation system in Uruguay is conviction-based and applies to all serious crimes, including ML, at any time and without prior notice. Uruguay's judicial system allows for the seizure or confiscation of assets that were totally or partially processed, transformed, or mixed with other goods. It is also possible to confiscate the property of third parties and there is some capacity to order the permanent forfeiture to the State without a final conviction.

The financial intelligence unit and its functions

14. A financial intelligence unit (Financial Information and Analysis Unit or UIAF) has been established but is not yet fully operational, mainly due to the lack of adequate resources. The UIAF is a division within the BCU but is operationally independent from line management. It is responsible for the receipt and analysis of STRs received from reporting institutions and persons, and for disseminating information to the appropriate law enforcement and prosecution authorities. The decision to disseminate a case to the judicial authorities only requires consultation with the Steering Committee of the UIAF. Reporting entities include financial institutions supervised by the BCU, as well as casinos; money remitters; real estate agents; dealers in antiques, art, precious metals; and certain company services providers. Legal secrecy provisions do not impose restrictions on the UIAF, which is authorized to request any information from reporting institutions for purposes of its functions. There is an urgent need to strengthen the UIAF's funding, staff, and other resources. The UIAF is not a member of the Egmont Group of Financial Intelligence Units.

Law enforcement, prosecution, and other competent authorities

15. The lack of adequate law enforcement and prosecution resources contributes to a backlog of criminal cases, and judges or prosecutors have not been sufficiently trained to undertake ML/FT cases. There are no courts or prosecution units specifically trained to deal with ML/FT or economic crimes. Criminal court judges supervise investigations but a lack of adequate resources in the courts and in the Ministry of Public Prosecutions (MPF) have produced a significant backlog of criminal cases. Law 17,835 provides for the conversion of lower criminal courts in Montevideo and of the national prosecutor offices into specialized units for the investigation and prosecution of ML and predicate offenses. Funding for this process is included in the Budget Law (2006). Law enforcement agencies (LEAs) can participate in AML/CFT operations. They are empowered to use special investigation techniques such as controlled delivery, undercover operations, phone tapping, informants, and mail interception. The Budget Law also makes provision for the use of confiscated assets by LEAs.

Preventive Measures – Financial Institutions

16. CDD requirements should be more risk-based stressing clients and services that pose a greater degree of ML/FT risk. Uruguay is an offshore financial center and is at risk

of ML/FT particularly from non-resident and transnational operations. It has a diverse financial sector with a significant offshore component, catering mainly to Latin American markets, including from Argentina and Brazil. Its financial sector is characterized by a sizeable concentration of non-resident clients and a highly dollarized economy. Uruguayan financial institutions are quite active in cross-border transactions as depositories and/or intermediaries for accessing and investing in international markets, including through the banking, finance, securities broking, currency exchange, and money transfer services.

17. Uruguay has not implemented formal supervisory cooperation and information exchange arrangements with key counterparts in Latin America and elsewhere, even though a large proportion of financial institutions operating in Uruguay are foreign-owned. During the mission, the BCU signed a memorandum of understanding (MOU) with the Bank of Spain to facilitate supervisory cooperation. Other formal supervisory cooperation arrangements that include AML/CFT elements are necessary, particularly with countries such as Argentina and Brazil, two of Uruguay's principal markets for cross-border financial services. The BCU indicates, however, that it maintains regular informal contact with counterparts from these countries, and more formal arrangements are being considered especially with Argentina.

18. CDD requirements and practice can be enhanced in key areas especially with respect to legal entities. The absence of a clear and explicit requirement to conduct CDD on the principal beneficial owners and controllers of corporate customers in all cases is an important deficiency. This is particularly important given Uruguay's role as provider of offshore corporate services.

19. Secrecy restrictions in the financial institutions law (Article 25 of Law 15,322) limits, in practice, compliance with CDD and the FATF Recommendations. These restrictions are generally interpreted as prohibiting financial institutions from including full originator information in wire transfers, namely account numbers. Except for disclosures to the UIAF, such information can only be provided with the express or written consent of the customer or by judicial order under certain circumstances.

20. Increased ML/FT risk awareness across all financial sectors is necessary to support effective implementation of the AML/CFT requirements. While the level of domestic ML predicate crimes is considered relatively low, there is considerable ML/FT risk from international sources associated with Uruguay's cross-border operations. The perception that these transactions are largely associated with capital flight and/or tax matters constitutes a narrow view of ML/FT risks, and creates vulnerabilities by reducing vigilance. In addition, it is not usually possible for FIs to differentiate e.g., between tax avoidance/evasion and ML. Enhanced risk awareness efforts should be undertaken to increase vigilance and strengthen suspicious activity reporting practices.

21. AML/CFT supervision is more advanced for the banking sector and is underdeveloped for the others. Since the financial crises of 2002, supervisory attention to AML/CFT issues was reduced but in 2004–2005, the BCU started to pay more attention to

AML/CFT issues, including the development of enhanced on-site inspection procedures for banks. A key challenge for the BCU will be its ability to conduct ongoing on-site examinations given the relatively large number of institutions under its responsibility, especially in the bureaux de change and securities sectors. Focusing on those sectors and institutions considered to present higher degree of ML/FT risk should be given priority in supervisory programs.

22. Supervision of compliance with AML/CFT requirements in the securities and insurance sectors is negligible, especially on-site examinations. There are as yet no specific AML/CFT examination procedures for these sectors, and reports of examination do not include AML/CFT elements. Insurance and securities firms are required to submit to the BCU annual AML/CFT compliance reports prepared by external auditors, but there is little evidence of action taken based on these reports. The mission identified the need to intensify AML/CFT supervision of the securities sector, especially on-site inspections of securities brokers and agents that are active in cross-border activities, including banks that provide such services whether or not they maintain customer investment accounts.

23. The mission made specific recommendations for improving the AML/CFT regulatory and supervisory framework for FIs. These include: (i) introduce enhanced risk-based customer due diligence (CDD) requirements; (ii) explicitly require CDD/identification for ultimate beneficiaries of accounts/transactions in all cases, including for principal beneficial owners and controllers of legal entities and arrangements; (iii) introduce specific CDD guidelines/requirements for non-resident/cross-border business; (iv) remove/clarify secrecy restrictions (Article 25 of Law 15,322) to allow for the inclusion of account numbers in wire transfers; (v) issue specific CDD guidelines/requirements for introduced business particularly from overseas; (vi) implement consolidated AML/CFT supervision on a group-wide basis; and (vii) establish formal supervisory cooperation mechanisms with other overseas supervisors (e.g., Argentina and Brazil).

Preventive Measures – Designated Non-Financial Businesses and Professions

24. DNFBPs were very recently covered as reporting entities under Law 17,835 of September 2004, and by Decree 86 of February 2005. This law covers casinos, real estate agents, and professional company administrators, among others. It only covers lawyers, accountants, and other professionals if they habitually carry out financial transactions or manage commercial companies on behalf of third parties. These DNFBPs are required to identify customers when transactions exceed US\$15,000, report suspicious activities of any amount, and keep records of such identity and transactions. Casinos were effectively excluded from the CDD requirements by Decree 86. Implementation of the AML/CFT legal requirements by DNFBPs has not commenced, and the authorities will need an outreach strategy to raise awareness of their AML/CFT obligations and expedite compliance. The Government has established an inter-agency working group to propose the regulations and policies for implementing the AML/CFT requirements in these sectors.

25. **Supervision of DNFBPs is still in the planning stage.** The law assigns this responsibility primarily to the MEF, which in turn delegated much of that responsibility to one of its dependencies, the National Internal Audit Office (AIN). This seems reasonable given the AIN's oversight experience over a wide range of economic sectors, but AIN will need to be adequately resourced and trained for this new function. In addition, the authorities should issue regulations for enforcing the AML/CFT obligations, and develop sector-specific guidance to support compliance. Priority should be given to the company services and casino sectors.

Legal persons and arrangements

26. **Transparency of legal persons should be enhanced, especially of NPOs and bearer-share corporations, including offshore companies–SAFIs.** The corporate law and the registry of companies do not provide for adequate transparency of ownership and control of legal persons. In addition, not all company services providers are covered under the new AML/CFT law, and there is as yet no effective AML/CFT oversight over them. The mission welcomes the authorities' commitment in this respect and encourages them to explore additional mechanisms to facilitate efficient identification of controlling persons and beneficiary owners, including for criminal investigations and international cooperation purposes. The company registry (*Dirección Nacional de Registros*) has taken initial but important steps towards building a more efficient and transparent registration system for legal entities and arrangements, but its resources are very limited. Modernization of the registries is needed to facilitate access and searches of the databases. Recent legislation made it mandatory for companies to register any change of directors or domicile, but not of ownership. Overall, company data in the registry remains largely outdated.

27. **Detailed information related to trusts will be readily accessible.** There were no trusts in Uruguay prior to Law No. 17,703 of October 2003. This law requires that all the information contained in trust deeds (including grantors/settlors and beneficiaries) be registered and publicly available. In addition, professional trustees must be registered with the BCU.

National and International Co-operation

National Cooperation

28. **There are no formal arrangements for coordination between all of the competent law enforcement authorities in charge of combating ML/FT.** The Secretary General of the National Drug Council (NDC) is responsible for promoting and coordinating initiatives relating to ML, the predicate offenses, and international organized crime. The Director of CeCPLA serves as coordinator for all government entities involved in the formulation of general policy guidelines and the implementation of the Government's policies. In addition, there is active coordination between the Directorate of National Customs (DNA) and the police forces involved in AML/CFT. In the Budget Law for 2006, the authorities proposed to create a National Intelligence Coordinator for dealing with organized crime and terrorism

issues (see footnote 3 above). Supervisory coordination and cooperation across the domestic financial sectors are facilitated by the BCU, which is an integrated supervisor for all financial institutions.

International Cooperation

29. **Uruguay is a party to the Vienna Convention, the Palermo Convention, the Terrorist Financing Convention, and to 9 of the 11 UN instruments concerning terrorism-related crimes.** Uruguay is also a party to the Inter-American Convention Against Corruption and has signed the UN Convention Against Corruption. Mutual legal assistance (MLA) in criminal matters can be rendered either on the basis of treaties to which Uruguay is a party, or on the basis of reciprocity in the absence of a treaty. Judicial cooperation is carried out through the Central Advisory Authority for International Legal Cooperation (Central Authority) when there is a treaty or by means of diplomatic or consular channels in their absence. The Central Authority is also the competent body for international cooperation on investigations and prosecutions relating to corruption, ML or any of its predicate offenses. The Ministry of Foreign Affairs is the competent authority for processing requests from countries in the absence of MLA treaties. Foreign requests to lift financial secrecy can be granted by order of the competent criminal court.

30. **All offenses are extraditable under Uruguayan legislation, including for ML and FT related offenses.** Extradition provisions in the Criminal Code, Criminal Procedures Code, and the Anti-corruption law do not establish a different treatment for Uruguayan citizens, which make their extradition possible. Requests for extradition for the commission of terrorist acts are not refused on the grounds that they are political in nature.

Other Issues

Summary assessment against the Financial Action Task Force Recommendations

31. Overall, the current AML/CFT framework in Uruguay is developing, and there is a need to implement the requirements fully to achieve compliance with the FATF recommendations. Table 2 summarizes the main recommendations for achieving compliance with the FATF requirements.

Table 1. Summary of Recommended Action Plan to Improve the AML/CFT System⁵

FATF 40+9 Recommendations	Recommended Action (listed in order of priority)
1. General	
2. Legal System and Related Institutional Measures	
Criminalization of Money	<ul style="list-style-type: none"> • Include all serious predicate offences contained in the FATF list.

⁵ More detailed recommendations are included in the Detailed Assessment Report.

Laundering (R.1, 2, & 32)	<ul style="list-style-type: none"> Enhance AML/CFT training programs for judges. Compile and maintain relevant statistics to review effectiveness of AML/CFT system.
Criminalization of Terrorist Financing (SR.II & R.32)	<ul style="list-style-type: none"> Amend Articles 14 and 16 of Law 17,835 to sufficiently cover funds that are collected or provided with the intention and/or the knowledge that they will be used to carry out a terrorist act, regardless of whether the act is carried out or not, and to cover the provision or collection of funds to terrorist organizations or to individual terrorists.
Confiscation, freezing, and seizing of proceeds of crime (R.3 & 32)	<ul style="list-style-type: none"> Improve coordination between judges and prosecutors with respect to provisional measures in criminal proceedings. Improve the real estate registration system to facilitate tracing and identification.
Freezing of funds used for terrorist financing (SR.III & R.32)	<ul style="list-style-type: none"> Establish procedures for unfreezing of the assets of persons inadvertently affected by a freezing order.
The Financial Intelligence Unit and its functions (R.26, 30 & 32)	<ul style="list-style-type: none"> Strengthen the legal basis of the UIAF to enhance its autonomy and resources. The UIAF should: help enforce reporting requirements by all entities; develop internal operating rules; improve statistics on STRs and CTRs.
Law enforcement, prosecution and other competent authorities (R.27, 28, 30 & 32)	<ul style="list-style-type: none"> Train prosecutors, and staff at MPF in financial matters, and information technology. Provide more specialized training and resources for the judiciary and law enforcement bodies. Implement staff screening procedures to ensure competence and integrity of UIAF, MPF, customs and police.
3. Preventive Measures– Financial Institutions	
Risk of money laundering or terrorist financing	<ul style="list-style-type: none"> Enhance ML/FT risk awareness in all sectors, prioritizing higher risk sectors.
Customer due diligence, including enhanced or reduced measures (R.5–8)	<p>Rec. 5</p> <ul style="list-style-type: none"> Issue more comprehensive and sector-specific CDD regulations/guidelines for the full range of CDD requirements, including for identification of customers conducting occasional and one-off transactions above an established threshold. Require FIs to have comprehensive risk-based AML/CFT–CDD systems, and as appropriate issue specific guidelines to aid in compliance. Specifically require FIs to identify/verify identity of ultimate beneficiaries and source of funds for transactions/accounts involving legal entities and transactions originating abroad (e.g. from nonbank sources, bureaux de change and money remitters). Introduce specific CDD requirements in all cases for intermediary clients, especially for notaries, accountants, lawyers, stockbrokers and agents. Conduct a systemic review of ML/FT risks in Uruguay to support the development of a risk-based CDD framework, including for existing customers. <p>Rec. 6 & 7: Require enhanced due diligence for PEPs and correspondent banking services</p>
Third parties and introduced business (R.9)	<ul style="list-style-type: none"> Introduce rules or requirements for FIs that rely to some extent on the CDD procedures of others.
Financial institution secrecy or confidentiality (R.4)	<ul style="list-style-type: none"> Train judges, financial institutions and lawyers on the interpretation and limits of financial secrecy under Article 25 of Law 15,322; Revoke Article 15 of Decree 398/999. Clarify/lift any secrecy provisions under Art. 25 of Law 15,322 to enable customer account numbers to be included in wire transfers.

Record keeping and wire transfer rules (R.10 & SR.VII)	<p>Rec. 10</p> <ul style="list-style-type: none"> • Clarify the start and end of the retention period of records for both transactions and business relationships. • Include specific recordkeeping requirements for bureaux de change and money remitters for AML/CFT purposes. • Specifically require and enforce record-keeping requirements, regarding beneficiaries of transactions and accounts. <p>Spec. Rec. VII</p> <ul style="list-style-type: none"> • Issue regulations to require full originator information in wire transfers, and ensure that there are no legal impediments to the inclusion of customer account numbers. • Conduct a specific review of the wire transfer practices of bureaux de change and other nonbank FIs to ensure that they comply with the same standards as banks. • Introduce specific rules for domestic batch transfers that contain cross-border transfers, in accordance with the FATF Special Recommendation VII. • Impose a lower <i>de minimis</i> threshold (e.g., US\$1,000) for wire transfers. • Review existing inspection, audit reports and any supervisory related reports to ascertain ML/FT risks in wire transfer activities and related CDD, and the adequacy of any supervisory/enforcement action taken.
Monitoring of transactions and relationships (R.11 & 21)	<p>Rec. 11: Require FIs to examine the background and purpose of all unusual and complex transactions or unusual patterns of transactions, and to record the findings.</p> <p>Rec. 21: Require FIs to apply enhanced CDD and monitoring of transactions with counterparties in countries that do not apply or sufficiently apply the FATF Recs.</p>
Suspicious transaction reports and other reporting (R.13, 14, 19, 25, & SR.IV)	<p>Rec. 13</p> <ul style="list-style-type: none"> • Strengthen training, supervision and enforcement for suspicious activity reporting, and investigate the underlying reasons for the relatively low number of STRs filed. • Clarify in regulations and/or provide guidelines the obligation to report suspicious transactions, including that suspicious transactions should be reported regardless of whether they are believed to involve tax or capital flight matters. <p>Rec. 14: Extend the tipping-off prohibition to other persons who are not the subject of STRs and information requests.</p> <p>Rec. 25</p> <ul style="list-style-type: none"> • Disseminate more comprehensive and sector-specific guidelines on CDD, record-keeping, unusual/suspicious transactions and ML/FT typologies. • The BCU should obtain input from the UIAF when planning/conducting examinations of compliance including suspicious activity reporting requirements. <p>SR.IV</p> <ul style="list-style-type: none"> • Review drafting of Article 1 of Law 17,835 to clarify the requirement to report suspicions of links to terrorism when funds appear to have a lawful origin.
Cross Border Declaration or disclosure (SR IX)	<ul style="list-style-type: none"> • Issue regulations to implement the cross-border reporting requirement, and establish mechanisms within DNA to enforce compliance with this declaration. • Ensure in law that both non-declaration and false declaration are sanctionable. • Clarify in the proposed regulations that the obligation applies to physical transportation through containerized cargo, by mail or any other means. • Explicitly empower customs to stop or restrain in case of noncompliance, and where there are suspicions of terrorist financing or money laundering.
Internal controls, compliance, audit and foreign branches (R.15 & 22)	<p>Rec. 15</p> <ul style="list-style-type: none"> • Require FIs to implement risk-based AMLC/FT policies and procedures. • Require insurance companies to appoint ML/FT compliance officers, and securities and insurance companies to require intern audit of AML/CFT controls. • Require insurer companies to include their agents and brokers in their AML/CFT policies, procedures and controls, including training.

	<ul style="list-style-type: none"> Require external auditors to review for AML/CFT compliance by the larger bureaux de change, including those that conduct services such as transfers and safekeeping. <p>Rec. 22</p> <ul style="list-style-type: none"> Require FIs to inform the BCU of any impediments to the application of their group-wide policies and procedures in other countries where they operate. Issue guidelines to FIs with respect to the application of their AML/CFT controls in other countries, including where countries have weak AML/CFT systems. Enhance/introduce consolidated AML/CFT supervision of relevant FIs on a group-wide AML/CFT, including through onsite examinations overseas.
Shell banks (R.18)	<ul style="list-style-type: none"> Prohibit FIs from providing correspondent accounts to shell banks at any level. Review the operations of offshore banks (IFEs) to ascertain whether they sufficiently meet the mind and management physical presence requirements.
<p>The supervisory and oversight system—competent authorities and SROs</p> <p>Role, functions, duties and powers (including sanctions) (R.23, 30, 29, 17, 25, & 32)</p>	<p>(R 23.1, 23.2, 30.1–30.3) & (R 23.4, 23.6, 23.7 (supervision/oversight elements only), 32.2d)</p> <ul style="list-style-type: none"> Develop a specific on-site supervisory process for securities firms, insurance companies, bureaux de change, and money remittance firms. Enhance AML/CFT skills/training of BCU examiners on new risk-based supervision and assign sufficient staff to this task to supervise all FIs, especially bureaux de change, money remitters, securities brokers/agents, and life insurance companies. Implement AML/CFT supervision on a group-wide basis, consolidated basis. Make better use of AML/CFT external auditor reports to complement such supervision, especially in the insurance and securities sectors. <p>Rec. 23.3, 23.3.1, 23.5 & 23.7</p> <ul style="list-style-type: none"> Require the stock exchanges to consult with the BCU before authorizing brokers. Consider a registration requirement for insurance agents and brokers, including for local agents for foreign insurers that are not licensed or registered in Uruguay. Consider introducing a process of consultation between the BCU and free zone authorities prior to authorizing the establishment of FIs in free zones. Also consider a similar arrangement with the companies' registry prior to registration of entities that have banking terms in their titles and/or objects. <p>Rec. 29</p> <ul style="list-style-type: none"> Implement regulations for BCU to supervise money remitters, and ensure that there is explicit authorization in Law 15,322 and/or BCU's Charter to do so. Ensure that any change to the BCU's Charter does not limit its supervision of bureaux de change to those that only engage in (outward) remittances abroad. <p>Rec. 17</p> <ul style="list-style-type: none"> As AML/CFT supervision is extended to other institutions (e.g. remitters), review the process used for sanctioning for non-compliance to ensure consistency. <p>Rec. 25.1</p> <ul style="list-style-type: none"> Issue sector-specific guidelines focusing on risk-based approaches to CDD, record-keeping, and ongoing due diligence. Provide more sector specific examples of suspicious transactions e.g. offshore services, bureaux de change, funds transfers etc.
Money value transfer services (SR.VI)	<ul style="list-style-type: none"> Require registration of all money remitters. The BCU and the MEF need to solve the legal impediments for the implementation of preventive measures with respect to informal money remitters. If necessary, amend the financial institutions Law 15,322 to authorize the BCU to monitor compliance by non-supervised money remitters.

	<ul style="list-style-type: none"> • Issue implementing regulations for money remittance firms (see Rec. 29 above). • Commence an AML/CFT compliance review of the main money remittance firms.
4.Preventive Measures– Nonfinancial Businesses and Professions	
Customer due diligence and record-keeping (R.12)	<p>Casinos:</p> <ul style="list-style-type: none"> • Establish, by regulation of the MEF, the minimum AML/CFT requirements for all casinos. Among those, identification threshold should be reduced to US\$3,000, special guidelines should be issued regarding identification of nonresidents, enhanced monitoring of transactions with higher risk customers such as high-rollers, PEPs and “intermediaries.” • Issue explicit, written and enforceable AML/CFT policies and procedures for state and municipal casinos. • Enforce the minimum requirements for private casinos and do not allow enforcement to be circumscribed by the concession, contract or the auditing procedures agreed with the licensee. • Train the relevant staff of the AIN, the DCN, and the Municipality of Montevideo on ML/FT in casinos, and on how to oversee compliance in this sector. <p>CSP and TSP:</p> <ul style="list-style-type: none"> • Designate lawyers, notaries, and accountants as subject to the same obligations derived from Article 2 of Law 17,835 when they provide services, even on an occasional basis, consisting of the formation and administration of commercial companies, or any type of legal person and trusts, or when they perform financial transactions on behalf of third parties. Include also the creation and/or selling of legal persons (not only companies) on a regular basis as an activity covered by Article 2. • Designate professional trustees as subject to Law 17,835. • Define by law or regulation (as appropriate) objective parameters for determining who provides company services on a “habitual” manner and is therefore, subject to the AML/CFT obligations. <p>All DNFBPs:</p> <ul style="list-style-type: none"> • Issue the implementing regulations referred to in Decree 86/005 about record keeping standards applicable to DNFBPs and about procedures for the filing of STRs, to make these obligations enforceable. • The MEF and the UIAF should issue regulations and guidance on preventive mechanisms tailored for DNFBPs. • Include dealers in precious stones in the list of reporting institutions.
Suspicious transaction reporting (R.16)	<ul style="list-style-type: none"> • Issue (MEF) regulations and guidance tailored to each type of DNFBP covered by Law 17,835, and prioritize the regulation of corporate service providers and casinos. • Clarify in regulations or guidelines for DNFBPs that the reporting obligation applies even when suspicion arises in the context of what appears to be a tax matter.
Regulation, supervision, monitoring, and sanctions (R.17, 24, & 25)	<ul style="list-style-type: none"> • Establish a multi-agency working group to develop common guidelines and share best practices for all their casinos, and implement measures in the AIN to supervise DNFBPs, including reallocation of staff and resources as necessary. • Enhance fit and proper procedures of all proponents/applicants of gaming ventures. • Introduce provisions for sanctioning senior management of DNFBPs, which are legal persons.
Other designated non-financial businesses and professions (R.20)	<ul style="list-style-type: none"> • Encourage the development of secured automated transfer systems and other modern techniques for conducting financial transactions.

	<ul style="list-style-type: none"> • Assess the possible risks of ML/FT in the several businesses administered by the Directorate of National Lotteries and adopt AML/CFT controls as appropriate. • Establish a mechanism for cooperation between the UIAF and the Directorate of National Lotteries for the detection and reporting of suspicious transactions. • Review the extent to which unauthorized currency exchange businesses may be used to evade the preventive measures applied in the formal market.
5. Legal Persons and Arrangements & Nonprofit Organizations	
Legal Persons–Access to beneficial ownership and control information (R.33)	<ul style="list-style-type: none"> • Implement legal mechanisms to provide competent authorities with access to information on the ownership of bearer-share and any other companies. • Prioritize the modernization of the registry of companies. • Explore operational mechanisms to allow the registry to expeditiously respond to requests for information from abroad.
Legal Arrangements–Access to beneficial ownership and control information (R.34)	<ul style="list-style-type: none"> • Create a system for the registration of trust information, allowing efficient access by the competent authorities.
Nonprofit organizations (SR.VIII)	<ul style="list-style-type: none"> • Implement AML/CFT controls for the authorization, registration and supervision of NPOs, and review the adequacy of the existing NPO legal/regulatory framework. • Legally require NPOs to update their information in the registry, e.g. changes in control, and authorize the MEC or AIN, as appropriate, to enforce compliance.
6. National and International Cooperation	
National cooperation and coordination (R.31 & 32)	<ul style="list-style-type: none"> • Establish interdepartmental agreements and joint task forces to support AML/CFT law enforcement efforts.
The Conventions & UN Special Resolutions (R.35 & SR.I)	<ul style="list-style-type: none"> • Review legislation to determine need for amendments to fully implement the Palermo and Terrorist Financing Convention and UNSCRs 1267 and 1373 and successors.
Mutual Legal Assistance (R.36, 37, 38, SR.V & 32)	<ul style="list-style-type: none"> • Revoke Article 15 of Decree 398/999; • Adopt mechanisms to coordinate seizure/confiscation actions with other countries. • Maintain comprehensive statistics on MLA requests relating to ML and FT. • Adopt efficient procedures to respond to MLA requests in the absence of a treaty.
Extradition (R. 39, 37, SR.V & R.32)	<ul style="list-style-type: none"> • Establish administrative procedures to expedite extradition requests and allow for alternative simplified procedures for extradition on a case-by-case basis. • Maintain statistics regarding extradition requests indicating the number of extradition requests received, granted, or the average processing time for the requests.
Other Forms of Cooperation (R. 40, SR.V & R.32)	<ul style="list-style-type: none"> • Implement supervisory cooperation arrangements, that include AML/CFT elements, with key counterparts e.g., Argentina, Brazil and other Latin American countries.

Authorities' Response to the Assessment

The Government of Uruguay concurs with the assessors on most of the strengths and weaknesses pointed out in the Report on the Observance of Standards and Codes.

Apart from any remaining differences of opinion regarding the Report, the focus will now to be on those issues where there is agreement that are essential to the development and implementation of a diagnostic review of the regime, and the design of an AML/CFT National Action Plan.

Nevertheless, considering that this was the first assessment conducted by the IMF that was used by GAFISUD for its mutual evaluation of Uruguay, it is important to summarize some issues for improving our joint assessment efforts both in terms of the criteria and the methodology applied in the assessment. It would also be useful to identify the main objections to the report including with respect to some of the recommendations for strengthening the Uruguayan system for preventing, detecting, and sanctioning money laundering and the financing of terrorism. This response will address these issues in two sections:

1. General comments
2. Comments on the Summary

1. General comments

The Government of Uruguay, which took office in March 2005, has publicly stated its firm commitment to take the required measures to reduce the country's vulnerabilities to organized crime, especially those related to money laundering and the financing of terrorism. Such vulnerabilities are the result of a combination of two factors:

- a) the kind of activities developed, promoted or authorized in Uruguay, which present a certain degree of risk that the authorities must confront and counteract; and
- b) the assessment of such risks, and the measures taken to counter them, in accordance with the FATF Recommendations.

The report examines closely the second category for issues, but the assessment of the first category followed a strictly static approach, without incorporating key data derived from the current situation. In particular, it repeats the description of a country geared toward offshore financial operations, with a system designed to limit access to key information, with strong and inflexible secrecy regulations. This view should be tempered at least by the fact that a significant political change has taken place in Uruguay and, in this regard, it would be arbitrary to associate the present model with that of an "offshore financial center" which undoubtedly played an important role in past years and governments.

In the nine months preceding the mission since the new government took office, this shift had been adequately documented, and perhaps the best example, taking an inclusive approach, is represented by the Tax Reform project currently being debated. Among other things, the project includes a proposal to eliminate the SAFIs (offshore companies) as well as a reassessment and strengthening of the tax regime in which income tax will play a central

role. Implementing such a regime will undoubtedly require overcoming, inter alia, the existing constraints on the identification of real estate owners, shareholders, and deficiencies in recording systems—all factors identified as weaknesses in the report.

2. Comments on the Summary

Paragraph 10: Law 17,835 extended the list of predicate crimes for money laundering (Art.8), incorporated crimes of a terrorist nature (Art. 14), and criminalized, for the first time in the region, the financing of terrorism (Art.16) (as pointed out in paragraph 10, money laundering (ML) was criminalized in 1998).

The assessors point to a significant limitation in the law in that “the mere provision or collection of funds on behalf of known terrorists or terrorist organizations for purposes other than terrorist acts, are not specifically covered....” This view is not shared inasmuch as what defines the terrorist character of an organization or of an individual is nothing else than the aim or the intention to employ terrorist methods or to commit terrorist acts for the attainment of their objectives. Therefore, if the collection of funds “with the intention that they will be utilized” or “with the knowledge that they will be utilized” is penalized, it is unquestionable that it also includes the collection of funds for terrorist individuals or organizations.

A second issue raised by the assessors is that: “at the moment, no specific mechanisms exist to implement UN Security Council Resolutions 1267, 1373 and their successors” except for the possibility of “freezing [...] accounts up to 72 hours”. Article 17 of Law 17,835 establishes the obligation of financial institutions to communicate to the UIAF the existence of assets linked to persons identified in the UN lists as terrorists or belonging to terrorist organizations. Once the information is received, the UIAF can instruct financial institutions to block transactions with such individuals, in accordance with Art. 6 of said law, that is, ordering the freezing of accounts up to 72 hours and immediately forwarding the information to the competent judicial authority, **which would in turn decide, if appropriate, whether to freeze assets without prior notice**. The procedure for the freezing of accounts is set out in Arts. 311 et seq. of the CGP with exhaustive regulation, and there are also corresponding measures in the CPP. The law therefore provides a perfectly appropriate system and, consequently, we do not agree with the observation.

Regarding this same point, in the Action Plan, a recommendation was made to: Amend Articles 14 and 16 of Law 17, 835 to sufficiently cover funds that are collected or provided with the intention and/or the knowledge that they will be used to carry out a terrorist act, regardless of whether the act is carried out or not...” The authorities are of the view that Art. 16 of this law already make provision for this inasmuch as it criminalizes the financing of terrorism by anyone that provides or collects funds “with the **intention** that they will be utilized or with the **knowledge** that they will be utilized ...”

Paragraph 16 et seq.: We generally feel that the customer due diligence (CDD) requirements for financial institutions have been assessed harshly and too literally. As a

result, the final conclusions do not reflect the objective reality of the market nor are they fair when compared with the situation in other countries and the assessments these countries have received in mutual evaluations.

Our disagreements lie in the following areas in particular:

a) The scope of the regulations: The assessors refer to the absence of clear and specific regulations and requirements to conduct CDD. Regarding this point, the regulatory policy governing the Central Bank requires that CDD policies and procedures are implemented. These are reviewed periodically by both external auditors and sectoral supervisors. When an institution is found to have inadequate policies or procedures, in addition to considering the application of any relevant sanctions, recommendations are made to correct existing deficiencies and a subsequent review of compliance is conducted. In the authorities' opinion, this supervisory policy guarantees better results than merely drawing up a checklist, as the assessors' seems to suggest. For this reason, a list of information requirements has been prepared only in certain specific cases. In any event, there is always the possibility that new and explicit information requirements may be established in the future if they are considered useful.

b) The beneficial owner of the transaction: The report literally, and therefore incorrectly, interprets the standard set in Circular 1738, concluding that it applies only in limited circumstances and is therefore an "important deficiency" (Paragraph 18). The Central Bank of Uruguay understands that this requirement represents an obligation to identify the beneficial owner of an account or transaction in all cases. We agree that the point can be better expressed in order to more clearly articulate the obligation to identify the ultimate beneficiary, as we did with the new 2003 recommendations, but it does not entitle the assessors to interpret the current wording to mean that the identification requirement is limited.

Paragraph 19: There is agreement on the need to upgrade legislation to require the inclusion of all the required information in accordance with the FATF Recommendations. It is noted that all wire transfers include the full name and information on the identity of remitters, and that all information, including account numbers, must be provided by institutions to the UIAF on request, and that such information can be provided by the UIAF to other countries in accordance with Art. 7 of Law 17,835.

Paragraph 25: Supervision of DNFBPs is being implemented. After the onsite assessment visit, the AIN was strengthened and has started to train a team that will be responsible for the supervision of these sectors, giving priority to company services, casinos and real estate agents.

Paragraph 28: The authorities attach special importance to inter-institutional coordination, and have taken steps to strengthen the management/Board of the CeCPLA. The latter is composed of the principal AML/CFT stakeholders, namely: Presidency of the Republic, Ministry of Economy and Finance, UIAF, and the Office of International and Mercosur

Judicial Cooperation in the Ministry of Education and Culture. A number of international organizations (including the IMF Mission itself) have been approached to provide assistance to help implement a second phase of formal coordination involving all the relevant authorities, which will allow them to develop an AML/CFT National Action Plan by end-2006.