Anti-money laundering and counter-terrorist financing measures

Myanmar

Mutual Evaluation Report

September 2018

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EXECUTIVE SUMMARY

1. This report summarises the anti-money laundering and countering the financing of terrorism (AML/CFT) measures in place in Myanmar as at the date of the on-site visit (20 November to 1 December 2017). It analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of Myanmar's AML/CFT system, and recommends how the system could be strengthened.

A. Key Findings

- Myanmar is exposed to a large number of very significant ML threats. Higher risk predicate offences include drug production and trafficking, environmental crimes (including illegal resource extraction (jade), wildlife smuggling and illegal logging), human trafficking, corruption and bribery. There are complex contextual issues that increase Myanmar's risk profile, including significant areas of the country controlled by non-state actors and characterised by very serious threats from transnational profit driven crime trends and related ML.
- Most relevant authorities demonstrate a reasonable understanding of TF risks, but do not demonstrate a credible understanding of Myanmar's much more serious ML risks. The preparation of the first NRA is a positive step; however, the NRA did not adequately identify and assess techniques of ML and TF. Policies and strategies to combat ML do not yet reflect the findings of assessments of risk.
- Myanmar's AML/CFT system is, overall, characterised by inter-agency cooperation at policy and operational levels between LEAs. There are weaknesses with cooperation between supervisors.
- Myanmar's FIU (MFIU) is located within the police AFCD, but there are limitations on the scope and quality of financial intelligence it develops due to weak analytical systems, poor STR reporting and overall resource constraints. DED and BSI make use of financial intelligence for a small range of predicate offences. A limited range of MFIU disseminations have been used to support ML investigations. MFIU disseminations are not regularly used to initiate predicate or ML investigations in keeping with the risk profile.
- ML investigations are not prioritised, do not occur in parallel with investigation of predicate offences and are not in keeping with the risk profile. ML investigations almost exclusively focus on self-laundering and generally occur after successful prosecution of the predicate offence in order to trace and confiscate assets.
- Myanmar lacks a policy or operational focus on pursuing and confiscating proceeds/instrumentalities of crime. Myanmar's confiscation results are minimal and do not

reflect ML/TF risks. Significant proceeds of crime are not pursued beyond Myanmar's borders.

- Myanmar has recently given some priority to investigating TF matters, largely in keeping with the risk profile, however no prosecutions have commenced.
- Myanmar has sought to use TFS to combat domestic terrorism and TF, however overall implementation of TFS is slow and not well supported. Implementation of controls on NPOs is, to a reasonable extent, in keeping with the risks.
- Myanmar has not yet instituted a regulatory and institutional framework to implement TFS against proliferation of WMD.
- FIs and DNFBPs lack understanding of high-risk issues, and few banks have moved to a risk-based approach. Most DNFBPs do not have a basic understanding of AML/CFT obligations and have not begun to implement any AML/CFT controls. Only banks are reporting STRs, and the STRs that are filed are generally of low quality.
- The scope and implementation of fit and proper checks on FIs require further improvement. For DNFBPs, measures to prevent criminals from controlling or owning the institutions require fundamental improvements, taking into account the risk and context.
- Despite the very significant risks, there has been no supervision of DNFBPs. There are serious capability concerns for the bodies designated to be AML/CFT supervisors for most DNFBPs.
- CBM has demonstrated significant progress towards risk-based supervision and has increased its capacity and the scope of supervision of banks. The current enforcement approach by CBM on banking institutions is ineffective, due to repetitive compliance issues and the absence of a structured enforcement framework.
- While there appear to be relatively low risks from misuse of legal persons and arrangements in the Myanmar context, there are weaknesses with available basic information. The avenue of obtaining beneficial ownership information from FI's CDD holdings is not well supported or understood and CDD measures are missing or poorly implemented overall.
- Myanmar does not pursue international cooperation as a priority or in a way that that is in keeping with its risk profile. There is no clear commitment or practice to pursue MLA. Myanmar makes some use of informal cooperation, especially with China and Thailand along shared borders, but this is fundamentally lacking when considering Myanmar's overall risk profile.

B. Risks and General Situation

2. Myanmar is a significant regional economy, and is one of the fastest growing economies in East Asia. The economy is largely cash based and, despite efforts of the government, remains highly dollarized.

3. Myanmar faces extremely high levels of proceeds generating crimes. Myanmar has historically been and remains a global centre for drug production and drug trafficking (opiates and amphetamine type substances (ATS)) in the 'golden triangle' region. Myanmar is also a significant regional economy for crime generated significant proceeds, including arms trafficking, human trafficking, illicit resource extraction (jade), environmental crimes and a range of other offences. The activities of large-scale transnational crime groups are closely related to the long-standing involvement of non-state ethnic armed groups, which control significant territory and economic

resources in Myanmar and have been in decades long conflict with the Myanmar state - the so-called 'ceasefire groups'[1]. Myanmar has a high exposure to illegal cross-border illicit flows, due to its long coastal border and numerous land borders.

4. Despite a long history of political violence by insurgent and separatist groups over many decades, Myanmar has not, in general, faced significant transnational terrorism or TF risks from either local groups, groups operating in neighbouring countries or transnational terror groups from other regions. Myanmar authorities have closely assessed risks from foreign terrorist fighters moving from the territories formerly controlled by ISIL to SE Asian countries. No cases or active networks have been found. There are limited transnational TF links associated with the emergence of the Arakan Rohingya Salvation Army (ARSA). There is also some domestic funding of ARSA on a small scale.

5. Myanmar's trade links to the economy of the DPRK increases the possibility of evasion of PF sanctions. Myanmar and the DPRK have had a long standing, close relationship at a political level. Myanmar authorities explained that at present, there is no relationship between the two countries, except diplomatic ties.

C. Overall Level of Effectiveness and Technical Compliance

6. Following the last APG evaluation in 2008, and Myanmar's inclusion in the FATF ICRG process, Myanmar's AML/CFT regime has undergone considerable reforms. The introduction of a revised money laundering offence and other measures in 2014 and a revised terrorist financing offence in 2015, together with organisational changes to a number of authorities, has led to changes and some improvements in Myanmar's AML/CFT system and an increase in technical compliance. However, improvements are still needed in key areas of preventive measures and criminal justice responses to the very significant ML risks facing Myanmar, as well as cooperation with international partners.

7. Changes to the legal and institutional framework have only begun to be implemented in limited areas, and few of the expected results have been achieved to support effectiveness. Coordination is well supported and work to assess and respond to risks has commenced, although major improvements are needed. Myanmar requires fundamental improvements in the area of international cooperation and the investigation and prosecution of both money laundering and terrorist financing as well as in confiscation of the proceeds of crime, and in the application of measures to counter the financing of proliferation of weapons of mass destruction. Myanmar needs to make fundamental improvements in utilising a risk-based approach in regulating, supervising and enforcing compliance, as well as the application of targeted financial sanctions for TF, and measures to prevent the misuse of legal persons and arrangements.

C.1. Assessment of Risks, Coordination and Policy Setting (Chapter 2 - IO.1; R.1, R.2, R.33)

8. Myanmar authorities did not demonstrate a comprehensive understanding of the country's significant ML risks, but were able to demonstrate a better understanding of the relatively low scale TF risks. Myanmar's NRA process was not finalised at the time of the onsite and Myanmar has not completed any other written risk assessments. Authorities were able to demonstrate that they

[1] 'Ceasefire groups' are a sub set of non-state armed groups that have been in conflict conflict with the Myanmar state for over half a century. They include the Wa State Army, the Hmong, the Karen, etc.

reasonably identify and assess TF risks. Although the draft NRA was shared with many parties to the process, most are not aware of the details of the findings.

9. Broadly, the assessment team agrees with the areas of risk outlined in the draft NRA. However, the draft NRA appears to under-rate the significance of drug production and trafficking, as well as the role of corruption in predicate crimes and ML. There is no analysis of how proceeds of crime are laundered within Myanmar.

10. The findings of the NRA have not yet been used to adjust policies and priorities, or to adopt a risk-based approach (RBA).

11. Myanmar's operational and policy level cooperation and coordination mechanisms between LEAs operate well, albeit with weaknesses with cooperation to prioritise ML. Cooperation between supervisors needs greater improvement.

C.2. Financial Intelligence, Money Laundering and Confiscation (Chapter 3 - IOs 6-8; R.3, R.4, R.29-32)

12. There is high-level political support for Myanmar FIU (MFIU). MFIU has access to a wide range of transaction information. However, STRs are only filed by banks, and the quality of the STRs is low. The operational and analysis areas of MFIU suffer from a shortage of staffing, and a reliance on manual processes. MFIU disseminations are not regularly used to initiate predicate offence investigations, however AMLCB and joint-agency investigation teams (scrutiny boards) use MFIU's financial intelligence to support ML investigations, and MFIU's financial intelligence is often used to develop evidence and trace proceeds of crime. Competent authorities regularly exchange information with MFIU, and MFIU information is used by CBM, MOPF and other regulators to support their work.

13. ML investigations and asset-tracing investigations are not prioritised and do not occur in parallel with predicate investigations. ML and asset-tracing investigations begin after a conviction for the predicate has been obtained and proceeds of crime have been identified, with a focus on self-laundering. The ML offence is used to support confiscation of proceeds of crime. There is a focus on assets acquired with the proceeds, rather than an investigation into the laundering of proceeds.

14. Both prosecutors and LEAs lack an awareness of the ML offence, and investigations do not focus on following the money trail. The focus is on predicate offences, particularly when funds are moved offshore.

15. Myanmar does not prioritise asset restraint and confiscation and lacks powers to confiscate property of corresponding value. Restraint and confiscation actions have focused on proceeds of drug offences, but the scope of asset tracing investigations and confiscation is not in keeping with the risk profile, even for drug matters.

C.3. Terrorist Financing and Financing Proliferation (Chapter 4 - IOs 9-11; R.5-8)

16. Myanmar has high-level support and commitment to combating terrorism, with a number of CT cases currently under investigation. However, TF cases are not sufficiently prioritised and are not conducted in parallel with the CT investigation, only commencing after the conclusion of the CT investigation. No TF prosecutions or convictions have been initiated under the CT Law. One investigation of financial aspects of terrorism was successfully prosecuted under the AML Law before

the CT Law came into force. There are some minor gaps in Myanmar's TF offence and in the framework for implementing TFS related to TF and terrorism.

17. Myanmar has given effect to UNSCR 1267 and 1373, although no assets have been frozen, this is in keeping with Myanmar's risk profile. Myanmar authorities have recently demonstrated commitment to combating terrorism through TFS by the designation of ARSA under UNSCR 1373 and the issue of a freeze order, although freezing orders were not well implemented in that case.

18. FIs have a reasonable understanding of TFS and most banks screen accounts and transactions against TF and PF sanctions lists. Smaller banks do not have automated monitoring systems for transactions and accounts, with resulting delays in transaction monitoring. DNFBPs' understanding of TFS is very weak, and DNFBPs do not appear to implement TFS requirements. CBM is responsible for supervising TFS implementation, which is undermined by poor CDD within banks.

19. Myanmar's draft NRA assesses NPOs as a low risk for TF. Some awareness-raising has been conducted, but NPOs working in high risk zones require practical guidance on their TF risks. There is no registration requirement for small NPOs, but a good range of controls on at-risk domestic NPOs. International NGOs face strong controls and their compliance with registration and filing obligations is good. NPOs are regulated and supervised by GAD.

20. Myanmar lacks a clear legal basis to implement TFS in relation to proliferation of WMD by the DPRK and Iran. Myanmar has sound coordination mechanisms in place for combating proliferation financing (PF) and has recently issued a limited regulatory framework for TFS against the DPRK. MFIU has conducted awareness-raising with ROs on the UNSCR related to WMD proliferation.

C.4. Preventive Measures (Chapter 5 – IO.4; R.9-23)

21. Banks, with support from CBM, are implementing enterprise risk assessments. Myanmar's draft NRA has not yet been fully disseminated to FIs to enable them to improve their internal risk assessments.

22. CBM and MFIU have conducted outreach to FIs, but there is a lack of specific, detailed and practical guidance on high-risk issues based on Myanmar's context.

23. Myanmar's AML/CFT regulatory framework adequately covers CDD, but implementation is primarily rules-based and weak. FIs do not sufficiently differentiate between CDD and EDD, and controls for PEPs, correspondent banking and wire transfers are not implemented effectively. The number of STRs filed is not in keeping with Myanmar's risk profile and size.

24. DNFBPs lack understanding of their risks, and have not yet implemented AML/CFT controls.

C.5. Supervision (Chapter 6 – IO.3; R.26-28, R. 34-35)

25. CBM implements measures to prevent criminals owning or controlling banks, but does not comprehensively check beneficial ownership. CBM supervision of banks is guided by detailed guidance for onsite and offsite monitoring and, increasingly, risk inputs from the MFIU and offsite supervision. CBM supervisors demonstrated increasing skills and experience. However, CBM has not imposed serious enforcement actions on banks or FIs for AML/CFT failings, and other sectors identified as higher risk, do not face the same level of scrutiny by CBM as the banking sector.

26. Weak understanding of ML/TF risks and weak regulatory measures, impact on MOPF's supervision of microfinance, insurance and securities businesses. DNFBPs face very significant ML/TF risks, but are not properly regulated or supervised by either government authorities or by the designated supervisory bodies (private sector).

C.6. Transparency of Legal Persons and Arrangements (Chapter 7 – IO.5; R. 24-25)

27. Information on the creation and types of Myanmar legal persons is publicly available. There is a public register listing basic company information on companies registered in Myanmar, but this information is not adequately verified or sufficiently updated. Myanmar's draft NRA considers elements of ML/TF risks involving legal persons and arrangements, but Myanmar's specific context is not considered. Competent authorities and domestic FIs do not appear to have a sound understanding of risks associated with legal persons.

28. There is no statutory requirement for companies to maintain beneficial ownership information. Myanmar relies on beneficial ownership information obtained by FIs and DNFBPs through the CDD process, but CDD is not well implemented and the information is unlikely to be available to the authorities.

C.7. International Cooperation (Chapter 8 – IO.2; R. 36-40)

29. Myanmar does not pursue international cooperation in keeping with its risk profile, whether through formal or informal channels. Informal cooperation is favoured, and is used to a degree with Myanmar authorities sharing and receiving some intelligence from neighbouring countries, especially Thailand and China. However, the range and intensity of international cooperation is not in keeping with the cross border risks.

30. Myanmar's legal framework and mechanisms for international cooperation including extradition are basic. Myanmar has not fully used its legal framework in relation to MLA. The focus is largely on domestic predicate crimes rather than investigations with transnational elements. There are no SOP or guidelines in relation to MLA requests. There is no case management system for MLA matters, and Myanmar is unable to provide MLA without delay.

31. Myanmar authorities do not generally pursue suspects who have fled overseas to escape criminal charges.

D. Priority Actions

32. Based on these findings, the following are priority actions for Myanmar:

I. Complete the NRA and conduct a range of activities to support improved understanding of the assessed risks amongst government and private sector stakeholders.

II. Adopt risk-based AML/CFT strategies (policy and agency level) including on risk areas identified in this report.

III. Set policies and agency-level plans which prioritise LEAs, ACC and Customs using financial intelligence for investigations of predicates, ML and TF.

IV. Prioritise and pursue formal international cooperation to support domestic ML, TF and predicate investigations and prosecutions, and to pursue asset recovery.

V. Urgently reconsider the supervisory arrangements for DNFBP sectors and ensure that in future supervisory bodies have sufficient capability and AML/CFT risk mitigation focus.

VI. Urgently develop procedures and mechanisms to coordinate and implement MLA requests, and prepare manuals and guidelines for LEAs on MLA and extradition processes.

VII. Adopt a robust legal framework for implementing TFS related to PF and its other proliferation-related obligations under the various UNSCRs.

VIII. Issue binding instructions and increase awareness for all LEAs to prioritise and conduct parallel ML investigations with predicate offences, in particular for high-risk crime types and to target third party launderers.

IX. All agencies should prioritise targeting and asset-tracing investigations, restraining and seizing assets and should coordinate with the MFIU.

X. Enhance the capacity of the MFIU to conduct analysis (systems, staffing) and ensure greater focus is given to intelligence development to proactively target priority risk areas.

XI. Implement 1373 designations and freeze orders concurrently to ensure freezing obligations are not delayed. Consider amending the CT law to provide for a single instrument of designation / freeze order.

XII. Issue updated fit and proper regulations, including requiring checks on those who beneficially own or control the license, for all sectors and take a targeted approach to implementation.

XIII. Issue comprehensive obligations (directives, etc.) covering risk-based preventive measures for DNFBPs.

XIV. Issue detailed and sector specific guidance on practical steps for risk-based implementation of CDD and other preventive measures.

XV. Further enhance risk-based supervision of the financial sector and the highest risk DNFBPs and implement robust strategies to improve the scope and depth of risk-based implementation by the private sector, including comprehensive remedial actions and/or dissuasive sanctions for failures in AML/CFT compliance.

XVI. Consider pursuing legislation to require companies to hold up-to-date and accurate beneficial ownership information and report such information in a timely manner to DICA.

E. *Effectiveness & Technical Compliance Ratings*

Effectiveness Ratings

IO.1 - Risk, policy and coordination	**IO.2** - International cooperation	**IO.3** - Supervision	**IO.4** - Preventive measures	**IO.5** - Legal persons and arrangements	**IO.6** - Financial intelligence
Low	**Low**	**Low**	**Low**	**Low**	**Moderate**
IO.7 - ML investigation & prosecution	**IO.8** - Confiscation	**IO.9** - TF investigation & prosecution	**IO.10** - TF preventive measures & financial sanctions	**IO.11** - PF financial sanctions	
Low	**Low**	**Low**	**Low**	**Low**	

Technical Compliance Ratings (C – compliant, LC – largely compliant, PC – partially compliant, NC – non compliant)

R.1 - Assessing risk & applying risk-based approach	**R.2** - National cooperation and coordination	**R.3** - Money laundering offence	**R.4** - Confiscation & provisional measures	**R.5** - Terrorist financing offence	**R.6** - Targeted financial sanctions – terrorism & terrorist financing
PC	**LC**	**C**	**LC**	**LC**	**LC**
R.7 - Targeted financial sanctions – proliferation	**R.8** - Non-profit organisations	**R.9** - Financial institution secrecy laws	**R.10** - Customer due diligence	**R.11** - Record keeping	**R.12** - Politically exposed persons
NC	**PC**	**C**	**PC**	**C**	**PC**
R.13 - Correspondent banking	**R.14** - Money or value transfer services	**R.15** - New technologies	**R.16** - Wire transfers	**R.17** - Reliance on third parties	**R.18** - Internal controls and foreign branches and subsidiaries
PC	**NC**	**LC**	**LC**	**C**	**C**
R.19 - Higher-risk countries	**R.20** - Reporting of suspicious transactions	**R.21** - Tipping-off and confidentiality	**R.22** - DNFBPs: Customer due diligence	**R.23** - DNFBPs: Other measures	**R.24** - Transparency & BO of legal persons
NC	**C**	**LC**	**PC**	**PC**	**NC**
R.25 - Transparency & BO of legal arrangements	**R.26** - Regulation and supervision of financial institutions	**R.27** - Powers of supervision of financial institutions	**R.28** - Regulation and supervision of DNFBPs	**R.29** - Financial intelligence units	**R.30** - Responsibilities of law enforcement and investigative authorities
NC	**PC**	**C**	**NC**	**PC**	**LC**
R.31 - Powers of law enforcement and investigative authorities	**R.32** - Cash couriers	**R.33** - Statistics	**R.34** - Guidance and feedback	**R.35** - Sanctions	**R.36** - International instruments
LC	**PC**	**PC**	**PC**	**PC**	**PC**
R.37 - Mutual legal assistance	**R.38** - Mutual legal assistance: freezing and confiscation	**R.39** - Extradition	**R.40** - Other forms of international cooperation		
PC	**PC**	**PC**	**LC**		

MUTUAL EVALUATION REPORT OF MYANMAR

Preface

This report summarises the AML/CFT measures in place in Myanmar as at the end of the on-site visit (1 December 2017). It analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of Myanmar's AML/CFT system, and recommends how the system could be strengthened.

This evaluation was based on the 2012 FATF Recommendations, and was prepared using the 2013 Methodology. The evaluation was based on information provided by Myanmar, and information obtained by the evaluation team during its on-site visit to Myanmar from 20 November to 1 December 2017.

The evaluation was conducted by an assessment team consisting of:

- Mr Allan Prochazka, Canada (legal expert)
- Mr Raphael Luman, Office of the Public Prosecutor, Papua New Guinea (legal expert)
- Mr Asraf Hafizi Mohd, Bank Negara Malaysia, Malaysia (financial expert)
- Mr Young Lee, U.S. Department of the Treasury, United States (financial expert)
- Mr Leigh Hunter, Australian Federal Police, Australia (law enforcement expert)
- Ms Sirirut Wiwek, Anti-Money Laundering Office, Thailand (FIU expert)

The assessment process was supported by Mr David Shannon and Ms Marnie Campbell of the APG secretariat.

The report was reviewed by the FATF Secretariat; Mr Nadeem Akhtar Sherazi, State Bank of Pakistan (SBP); and Ms Laila Ulfah Kusdinah, Pusat Pelaporan dan Analisis Transaksi Keuangan (PPATK), Indonesia.

Myanmar previously underwent an APG Mutual Evaluation in 2008, conducted according to the 2004 FATF Methodology. The 2008 MER has been published and is available at www.apgml.org.

The 2008 MER found Myanmar was compliant with two Recommendations; largely compliant with two; partially compliant with 28; and non-compliant with 15. Two Recommendations were rated not applicable. Myanmar was rated non-compliant or partially compliant with all 16 of the Core and Key Recommendations.

Myanmar was included by the FATF in its ICRG process in February 2010. Following a series of reforms, in June 2016 the FATF removed Myanmar from the ICRG process.

Myanmar entered the APG's 2nd round ME follow-up process in 2010 under enhanced follow-up and exited ME follow up in July 2016 as the process to conduct its 2018 evaluation was commencing. While Myanmar had made some progress against most core and key recommendations, the ME follow up process did not confirm progress equivalent to largely compliant on 10 of the 16 core and (former) key Recommendations: R.3 (confiscation), R.5 (CDD), R.23 (supervision), R.26 (FIU), R.35/SR.I (UN Conventions), R.40 (international cooperation), SR.II (TF offence), SR.III (TFS); and SR.IV (STRs).

Throughout this report Myanmar kyats (MMK) are shown with approximate USD conversions using the exchange rate prevailing at the time of the onsite visit: USD = 1350 MMK (kyats).

CHAPTER 1. ML/TF RISKS AND CONTEXT

1. The Republic of the Union of Myanmar ("Myanmar") is strategically located between South Asia and South East Asia, sharing borders with China (2204 km), Thailand (2107 km), India (1338 km), Bangladesh (271 km) and Lao PDR (238 km). To the south, Myanmar's coastline with the Andaman Sea and the Bay of Bengal stretches over 6000 km. Myanmar covers an area of 653,080 km[2], with a population of approximately 53 million people[2], and has one of the lowest population densities in the region[3].

2. Myanmar is classified as a lower middle income country with a GDP of USD67.43 billion and a GNI per capita[4] of USD1,190 (2016). Myanmar is a resource-rich country with a strong agricultural base. Over 60% of the population live in rural areas, with agriculture representing 30% of GDP and employing 54% of the population.[5] Myanmar also has vast timber, natural gas, and fishery reserves and is a leading source of gems and jade. Teak, hardwood and precious gemstone products contribute significantly to the country's GDP. The country continues to rely heavily on this resource base.

3. The 2008 Constitution of the Union of Myanmar is the supreme law of Myanmar and came into operation in 2011. Under the constitution there are seven states, seven regions, one Union Territory (Nay Pyi Taw), five self-administered zones and one self-administered division. The constitution also stipulates that 25% of the seats in the Parliament of Myanmar be reserved for serving military officers.

4. Legislative power is conferred to the Pyidaungsu Hluttaw (Parliament) which comprises two houses or Hluttaw - the House of Representatives and the House of Nationalities (Pyithu Hluttaw and Amyotha Hluttaw).

5. The executive body of Myanmar is the Cabinet, which is headed by the President and comprised of the President, Vice Presidents, Union Ministers and the Attorney General of the Union. The State Counsellor of Myanmar (equivalent to a prime minister) is the de facto head of government.

6. The highest organ of the State judiciary is the Supreme Court of the Union. Other courts established under the 2008 Constitution are High Courts of the Region, High Courts of the State, Courts of the Self-Administered Division, Courts of the Self-Administered Zone, District Courts, Township Courts and the other Courts constituted by law; Courts-Martial; and the Constitutional Tribunal of the Union.

7. Myanmar's population of approximately 53 million is made up of 135 officially recognised ethnic minorities, with the eight biggest groups estimated to make up 80-90% of the population.[6] Burmese is the official and most widely spoken language in Myanmar, spoken by about 70% of the population.

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[2] World Bank Data 2016, http://api.worldbank.org/v2/en/indicator/AG.LND.TOTL.K2?downloadformat=excel

[3] The World Bank In Myanmar Overview, http://www.worldbank.org/en/country/myanmar/overview

[4] Atlas method for calculating GNI per capita

[5] IMF Country Report No. 17/31, February 2017. Available at https://www.google.com.au/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0ahUKEwj8lqa-2JfXAhWHNpQKHRobDSkQFggmMAA&url=https%3A%2F%2Fwww.imf.org%2F~%2Fmedia%2FFiles%2FPublications%2FCR%2F2017%2Fcr1731.ashx&usg=AOvVaw0OAczu8AKmXkpgg9H4T7B1

[6] OECD Development Pathways Multi-Dimensional Review of Myanmar, 2013.

8. There are a large number of ongoing insurgencies within Myanmar between the central government and ethnic armed groups which have been ongoing since Myanmar gained independence from the United Kingdom in 1948. Major ethnic conflicts have occurred in a majority of states with Kachin, Kayah, Kayin, Rakhine and Shan States particularly affected. Despite a number of ceasefires and peace agreements being signed by various groups, violence between government forces and insurgent groups continues. Sub-national conflicts remain a pervasive influence on the governance, economy and security of Myanmar.

9. In a number of strategically important regions along Myanmar's borders with China and Thailand, larger ethnic armed groups exercise administrative and military power and control territory that is not held by the central government. These operate like quasi-states that raise revenue, maintain infrastructure and services and administer local justice. These so called 'ceasefire zones' are controlled by ethnic armed groups that may or may not be in ceasefire agreement with the central government.[7]

10. A number of the 'ceasefire zones' controlled by ethnic armed groups are areas which have very significant levels of economic activity and concentrations of illicit activities including drug production, illicit resource extraction (especially jade) and other organised crime activities. The movement of persons and goods is allowed in and out of these zones, although CBM does not permit banks to operate branches in those areas.[8]

11. Research by the Asia Foundation identified conflicts related to ethnic armed groups in at least 11 of Myanmar's fourteen states and regions, with up to one-quarter of Myanmar's population living in or near areas affected by these conflicts. Conflict-affected areas in Rakhine, Shan, Kayin, Kayah, and Kachin States represent some of the poorest regions in Myanmar. The presence of ethnic armed groups are concentrated in border areas, but are spread across the country.[9]

12. There are over twenty border guard forces and fifteen People's Militia Forces operating in Myanmar. These are paramilitary groups integrated with the military and which have a degree of independence. Small government militia exist across Myanmar, particularly close to ceasefire zones. One report records 396 different militia in northern Shan State alone.[10]

Figure 1

Myanmar's Civil War and Ceasefire Agreements with Ethnic Armed Groups

Since 2011, the Myanmar government has prioritised peace processes with ethnic armed groups and initially finalised a Nationwide Ceasefire Agreement (NCA) in 2015.[11] Fifteen ethnic armed groups were initially identified to participate in negotiations and talks began in 2011.

By October 2015, eight of the 15 groups formally joined the NCA, with the stipulation that the government leave the door open for political dialogue and inclusion of other ethnic groups at a later point. These included the Karen National Union (KNU) and the "Restoration Council of

[7] Asia Foundation (2016) - The Contested Areas of Myanmar: Subnational Conflict, Aid, and Development - https://asiafoundation.org/wp-content/uploads/2017/10/ContestedAreasMyanmarReport.pdf

[8] Confirmed through interviews with government and NGO sources

[9] Asia Foundation (2016) - The Contested Areas of Myanmar: Subnational Conflict, Aid, and Development - https://asiafoundation.org/wp-content/uploads/2017/10/ContestedAreasMyanmarReport.pdf

[10] ibid

[11] https://peacemaker.un.org/sites/peacemaker.un.org/files/MM_151510_NCAAgreement.pdf

Shan State", a faction of the Shan State Army. The New Mon State Party (NMSP) and Lahu Democratic Union (LDU) signed an agreement to the NCA on 13 February 2018.[12]

A number of the ethnic armed groups have remained in active conflict with the Myanmar military. Two of Myanmar's largest and best-equipped armed groups, the United Wa State Army and the Kachin Independence Army, are not party to the NCA.[13]

13. The 2016 UN Humanitarian Response Plan notes that Myanmar is vulnerable to armed conflicts, inter-communal tensions, natural disasters, statelessness, trafficking and migration, with over 240,000 internally displaced people.

14. The International Organisation for Migration finds that Myanmar is the largest migration source country in the Greater Mekong Sub-region. Myanmar estimates 4.25 million Myanmar nationals are living abroad with 70% of such migrants based in Thailand.[14] A majority of the Thailand-based migrants are undocumented.[15] Other destination countries for Myanmar migration are Malaysia (15%), China (4.6%), Singapore (3.9%) and the USA (1.9%). The highest numbers of migrants, according to the latest census, came from Mon State (427,000), Kayin State (323,000) and Shan State (236,000).[16]

15. In 2014 the UN Population Division estimated that Myanmar was the 8th highest source country for refugees.[17] Over 120,000 Myanmar nationals live in refugee camps in Thailand displaced by conflict between the government and ethnic armed groups in border provinces of Shan, Wa and Kachin states. In late 2017 the UNHCR estimated that over 600,000 'Rohingya / Rakhine Muslim'[18] refugees had moved to Bangladesh fleeing violence in Myanmar.[19]

Figure 2

'Rohingya / Muslims in Rakhine State' – Recent Situation

Rakhine State has been beset by insurgency and separatist conflicts and communal violence over a long period. This has added to significant security issues.

The security situation in Rakhine State deteriorated sharply after 9 October 2016, when armed attacks on the Border Guard Police in Maungdaw Township resulted in the loss of life of members of the security forces. Myanmar indicates that the attacks were carried out by a

[12] https://www.reuters.com/article/us-myanmar-military/myanmar-signs-ceasefire-with-two-rebel-groups-amid-decades-of-conflict-idUSKBN1FX19M

[13] https://thediplomat.com/2015/10/the-truth-about-myanmars-new-ceasefire-agreement/

[14] IOM Country Overview –Myanmar. Via https://www.iom.int/countries/myanmar [accessed 22 Sept 2017]

[15] http://www.rfa.org/english/news/myanmar/thai-authorities-arrest-and-deport-10000-myanmar-workers-08012016150922.html

[16] IOM Country Overview –Myanmar Via https://www.iom.int/countries/myanmar [accessed 22 Sept 2017]

[17] World Bank Group. 2016. *Migration and Remittances Factbook 2016, Third Edition*. https://openknowledge.worldbank.org/handle/10986/23743 (page 9)

[18] This report recognises that the Myanmar government prefers the term 'Bengali people', however the assessment team will follow the nomenclature used by the UN Security Council and by Myanmar's Advisory Commission on Rakhine State ('Annan Commission') – see http://www.rakhinecommission.org/app/uploads/2017/08/FinalReport_Eng.pdf

[19] UN High Commissioner for Refugees (UNHCR), *As new arrivals top half a million in Bangladesh, UNHCR getting ever more refugees into shelter* , 29 September 2017, available at: http://www.refworld.org/docid/59d22b584.html [accessed 4 October 2017]

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Muslim armed group called Harakat al-Yaqin (later renamed Arakan Rohingya Salvation Army (ARSA)), which, sources indicate has ties to members of the diaspora of 'Rohingya[20] / Muslim in Rakhine State' residing in Saudi Arabia.[21] The group overran a security post north of Maungdaw Town, seizing weapons and ammunition.

Violence seemed to peak in mid-November 2016, when clashes allegedly left 69 insurgents and 17 security forces dead. The security forces have been accused of serious human rights violations during the operations.[22]

The security situation worsened dramatically in late August 2017 when the ARSA staged coordinated attacks on 30 police posts and an army base in Rakhine state, and at least 59 of the insurgents and 12 members of the security forces were killed.

Security force operations, inter-communal violence and the above-mentioned ARSA attacks led to very significant number of 'Rohingya / Muslims in Rakhine State' and other national ethnic groups fleeing across the border to Bangladesh and to a further increase in internally displaced persons.

16. Myanmar authorities have taken a strategic approach to combating human trafficking, including legislative reforms, national plans of action, international cooperation and engagement with NGOs to combat various elements of human trafficking. This has included close assessments of many of the dynamics and drivers of human trafficking.

17. Myanmar is considered one of the countries at highest risk of natural disasters in South East Asia. In 2016 it was ranked 9th out of 191 countries on the Index for Risk Management (INFORM) and in 2017 rated 2nd on the Global Climate Risk Index of countries most affected by extreme events from 1996-2015, and the 6th most affected country in 2015 alone.

ML/TF Risks

Overview of ML/TF Risks

18. Myanmar faces extremely high levels of proceeds-generating crimes. Myanmar has historically been and remains a global centre for drug production and drug trafficking (opiates and ATS) in the 'golden triangle' region. Myanmar is also a significant regional economy for crime-generated significant proceeds, including arms trafficking, human trafficking, illicit resource extraction (jade), environmental crimes and a range of other offences. The activities of large-scale transnational crime groups are closely related to the long-standing involvement of non-state armed groups - the so-called 'ceasefire groups'[23] - which control significant territory and economic resources in Myanmar and have been in conflict with the Myanmar state of many decades.

[20] Nomenclature- the assessment team will follow the nomenclature used by the UN Security Council and by Myanmar's Advisory Commission on Rakhine State ('Annan Commission')
[21] Myanmar: A New Muslim Insurgency in Rakhine State, International Crisis Group (ICG), December 2016.
[22] Final Report of The Advisory Commission on Rakhine State, August 2017 - http://www.rakhinecommission.org/app/uploads/2017/08/FinalReport_Eng.pdf
[23] 'Ceasefire groups' are a sub set of non-state armed groups that have been in conflict conflict with the Myanmar state for over half a century. They include the Wa State Army, the Hmong, the Karen, etc.

Figure 3

Armed Ethnic Groups in Myanmar – So-Called 'Ceasefire Groups'

As mentioned above, a large number of ethnic armed groups have been in armed conflict with the Myanmar state over many decades, and a significant portion of the country has not been under central government control. Many of the ethnic armed groups control territory along Myanmar's Eastern and Southern border areas.

Many of the areas controlled by these ceasefire and non-ceasefire ethnic armed groups are areas that are under cultivation or involved in drug production and trafficking and/or are rich in natural resources including jade, gold, copper, etc.

Two of Myanmar's largest and best-equipped armed groups, the United Wa State Army and the Kachin Independence Army are particularly noted as involved in extractive industries, smuggling, arms trafficking and the drug trade. Ethnic groups in these ceasefire areas also operate large-scale illegal casinos close to Myanmar's borders with Thailand and China.

UNODC and other bodies have highlighted the concentration of drug production and trafficking in areas controlled by ethnic armed groups and their role in the drug trade, arms trafficking and other predicate offences. The proceeds of these criminal activities have been a key part of the political economy of these separatist regions. The draft NRA highlights that these groups raise funds from extortion and ransom; drug trafficking; and illicit arms sales.

19. The UNODC's 2016 World Drug Report estimated that in 2015 Myanmar's total area under opium poppy cultivation accounted for 20% (55,500 ha) of the global total. The UNODC indicates that Myanmar is the second largest opium/heroin production economy globally, estimating opium production at 650 tonnes in 2015, which amounts to approximately 14% of global production.[24] Studies by the UN and a wide range of other credible sources highlight the role of ethnic armed groups, transnational organised crime groups, and the role of corruption in facilitating Myanmar's drug trade. It is notable that Myanmar and certain Myanmar businesses and citizens were the subject of bilateral sanctions regimes designating major drug production countries.

20. Over the period 1960-2013 Global Financial Integrity places illicit outflows at an average of USD1.9 billion per annum (6.5% of GDP).[25] Myanmar authorities perceive Singapore, USA and Europe along with Myanmar's neighbours to be the main destination for outflows through the banking system. China, Thailand and India were identified as key destinations for outflows of proceeds of crime.

21. Myanmar has very significant exposure to cross-border illicit flows related to crimes in other countries. Myanmar has long land borders with China, Thailand, Lao PDR, India and Bangladesh. Many sections of its borders are controlled by 'ceasefire groups' that have a long history of involvement in transnational crime to fund their decades long conflicts with the Myanmar military. Myanmar's coastal borders with the Andaman Sea and the Bay of Bengal are about 2,276 km in length, and vulnerable to illegal smuggling of people, goods and money, as recognised by the draft NRA. Constrained capacity of border enforcement agencies and their vulnerability to corruption threats exacerbate the likelihood of cross-border threats materialising. Geographical considerations are also relevant to the risks posed by Myanmar's

[24] UNODC World Drug Report 2016 (United Nations publication, Sales No. E.16.XI.7).

[25] Ibid.

casinos. Most casinos are located on the Thai or Chinese border areas controlled by various ethnic armed groups, in particular the Wa, Kachin and Shan.

22. Myanmar's draft NRA estimates Myanmar's annual domestic proceeds of crime to amount to about USD15 billion, with tax and excise evasion, environmental crime (including illegal logging, mining, fishing and trade in wildlife) and corruption and bribery generating 63% of domestic POC. Illegal trafficking in narcotics and psychotropic substances, and counterfeiting and piracy of products are estimated to account for another 12% of proceeds of crime. The draft NRA estimates that 84% of overall proceeds are associated with organised crime groups, with 49% attributable to transnational crime groups, 35% to domestic crime groups and the remaining 16% to individuals.

23. Myanmar's draft NRA identifies illicit narcotics, counterfeiting / piracy, corruption/bribery and environmental crime as the main crime types resulting in flows of illicit funds into Myanmar. China and Thailand are perceived as generating significant inflows of proceeds from the drug trade. Other important source countries for inflows of proceeds of crime to Myanmar include Singapore, Bangladesh and India. Authorities estimate that proceeds of crime inflows from these countries amounts to about USD3 million annually, but this figure appears to be very low. Global Financial Integrity places illicit inflows in 2013 at about 17% of GDP (USD8.5 billion). This does not include smuggling of drugs, timber, precious stones and other goods.[26]

24. While the draft NRA mentions sectors misused for laundering proceeds of crime (banks, remitters, cash economy, precious metals and gem sectors), the assessment lacks details of prevalent techniques and channels of laundering, and details of the roles of third party professional launderers.

25. Prior to 2010 Myanmar had designated eight of the 24 armed separatist groups as 'terrorist organisations'. In 2010 the eight groups were all delisted as part of the peace process. The NRA highlighted that they are not considered terrorist groups as they are in armed conflict with the government and do not target civilians.

26. The draft NRA identified approximately 30 persons associated with one terrorist organisation operating in Myanmar, with the main organisation being the Arakan Rohingya Salvation Army (ARSA). According to the draft NRA about USD100,000 is raised annually to support ARSA terrorists. Funds raised to provide support to terrorists and terrorist organisations operating in Myanmar are thought to amount to USD30,000 and costs of supporting foreign terrorist fighters (FTFs) from Myanmar to USD10,000, with most of the remaining USD60,000 raised being used to carry out terrorist attacks domestically.

27. Myanmar assesses that there are limited transnational TF links associated with the emergence of ARSA. TF trends identified by Myanmar authorities identify small-scale domestic financing of the ARSA.

28. Despite a long history of political violence by insurgent and separatist groups over many decades, Myanmar has not, in general, faced significant transnational terrorism or TF risks from either local groups, groups operating in neighbouring countries or transnational terror groups from other regions. Myanmar authorities have closely assessed risks from foreign

[26] Global Financial Integrity *Flight Capital and Illicit Financial Flows to and from Myanmar: 1960-2013*, Dev Kar and Joseph Spanjers. Available at http://www.gfintegrity.org/wp-content/uploads/2015/09/Myanmar-Report-Final-1.pdf

terrorist fighters moving from the territories formerly controlled by ISIL to SE Asian countries. No cases or active networks have been found.

29. Myanmar's exposure to the economy of the DPRK (direct and indirect trade), increases the possibility of evasion of PF sanctions. The two jurisdictions have had a long standing and close relationship at a political level. Myanmar authorities explained that at present, there is no relationship between the two countries except diplomatic ties.

Country's risk assessment & Scoping of Higher Risk Issues

30. Overall, Myanmar faces very significant domestic and cross-border ML risks. This includes a wide range of threats. Myanmar is, on a global scale, a key source for the production and trafficking of narcotics and jade (see box below[27]). Myanmar faces very significant threats from wildlife smuggling, gold smuggling (see box below[28]), illegal logging and smuggling a range of other illicit commodities. There is a very significant presence of organised crime, with a long standing dynamic between organised crime groups, ethnic armed groups (ceasefire groups), and corrupt actors in the government and private sector. Corruption remains a very significant challenge for Myanmar.

Figure 4

Jade Mining and Export – Role of PEPS and Illicit Extraction and Smuggling

Detailed studies by Global Witness and other credible NGOs highlight the scope and dynamics of Myanmar's illicit jade industry and its connections to smuggling, arms trafficking and related financial crime. The reports highlight the key roles of senior military figures, state-owned enterprises or those owned by PEPs and leaders of ethnic armed groups.

Studies estimate that the mostly undeclared revenues from the jade industry are equivalent to nearly half Myanmar's GDP and are up to USD122 billion over the decade through to2014. The 2015 report found the local industry was worth up to USD31 billion in 2014 alone. That is equivalent to nearly half the GDP of the whole country.

Key jade smuggling routes are from Myanmar to SW China. Jade extraction is predominantly undertaken in ceasefire zones.

31. Myanmar, with assistance from the IMF, was in the process of finalising its first ML/TF NRA at the time of this report. Myanmar has not conducted any other ML/TF or sectoral risk assessment.

32. The Anti Money Laundering Central Body (AMLCB) is responsible for conducting the NRA, which commenced in 2015. The NRA Committee formed to conduct this assessment involves both public and private sector bodies and involves over 34 bodies. The NRA was undertaken predominantly through submission of perception-based surveys from relevant bodies and institutions.

33. The draft NRA report and other reliable sources analysing risk information allow the assessment team to make a number of observations on the ML and TF risks facing Myanmar.

[27] http://www.mining.com/myanmars-31bn-secretive-jade-industry-keeps-fuelling-rights-abuses/

[28] http://indianexpress.com/article/india/246-kg-seized-in-7-months-myanmar-new-top-route-for-gold-smugglers-4574173/

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Figure 5

Gold Smuggling – Cross Border to India

Regional typologies indicate that India is the largest market for illegal gold imports, which has a direct effect on gold smuggling to India from Myanmar. Indian officials have indicated that Myanmar is amongst the largest transit countries. Seizures on the Indian side of Myanmar's borders were over 250kg in seven months from late 2016 to early 2017.

34. Discussions with Myanmar authorities, findings of the draft NRA and research done by the team identified very significant systemic ML risks from un-checked market entry fit and proper of financial institutions and DNFBPs, including those with group structures. There are risks that large amounts of proceeds of the narcotics and other illegal sectors have been invested in domestic FIs and DNFBPs over a number of decades.

35. The team highlights challenges between the documentation and transparency of those parts of the Myanmar economy that are located in territories controlled by ceasefire groups and those controlled by the central government.

36. Myanmar authorities identified cases of national lottery winnings being misused as a common money laundering method. There is a monthly 1 billion Kyat (approx. USD 740,740) lottery in Myanmar. Authorities identified a number of cases where companies bought the winning ticket from the winner for more than its face value.

Scoping Note

37. The assessment team prepared a scoping note prior to the onsite in order to identify higher and lower risk issues to be considered in more detail in the course of the assessment. This included a focus on the criminal economy of ethnic armed groups, transnational organised groups and cross border crime trends, as well as the key crime types outlined above. The scoping exercise sought to identify lower risk areas and noted relatively few risks from microfinance and emerging part of the financial sector (e.g. insurance and securities).

38. The assessment team identified the following ML and TF threats facing Myanmar, which were also reflected in the ME scoping note:

- ***Drug production and trafficking*** – As acknowledged in the draft NRA, Myanmar is a very significant source and transit country for drug trafficking (opiates and ATS), with a critical role played by transnational crime groups. Myanmar is in one of the world's major regions for drug production being a key part of the 'Golden Triangle', known for production of opium, methamphetamine, etc. Myanmar is also susceptible to the influence of transnational organised crime groups, including in so-called ceasefire areas. Myanmar's geography creates a particular vulnerability with respect to smuggling of drugs and drug-related inputs in Myanmar. Myanmar demonstrated a number of significant drug prosecutions and some associated ML cases.
- ***Illegal jade mining and smuggling*** – Myanmar is the world's largest producer of jade. Studies indicate that it has an enormous sector of illegal extraction and smuggling of jade with the involvement of transnational crime groups, including in so-called ceasefire areas. Primary destination markets are China and some SE Asian countries. These offences are very rarely prosecuted.

- ***Proceeds of corruption –*** Myanmar faces significant challenges from corruption and bribery, although these offences are rarely prosecuted.
- ***Gold smuggling –*** Myanmar is a significant gold production economy and a transhipment point for smuggling to India, China and other markets where demand is high. There is significant involvement of organised crime groups. Challenges from corruption associated with the smuggling are noted. These offences are very rarely prosecuted.
- ***Human trafficking/people smuggling -*** Myanmar is a source, transit, and destination country for human trafficking (draft NRA p.32, 134-136, 144). The role of transnational crime groups, including in so-called ceasefire areas, is a highlighted. Key destination countries for persons trafficked from Myanmar include China, Thailand and Malaysia (UN Inter-Agency Project on Human Trafficking). Drivers for increased human trafficking and people smuggling threats for Myanmar include the security situation in Northern Rakhine state and areas facing separatist conflicts with the central government, poverty, socio-economic imbalance between rural and urban areas, a lack of employment, education and safe migration opportunities. Corruption challenges with cases noted involvement of LEAs and border enforcement agencies contributes to this threat.–Significant recent cases have involved joint investigations with Thailand. In the last 10 years Myanmar authorities have only prosecuted one case of human trafficking involving 'Rohingya / Rakhine Muslims' in Rakhine State.
- ***Arms trafficking/Illegal arms trade –*** Myanmar faces significant risks from arms trafficking and the illegal arms trade. This relates both to cross-border trade and with domestic separatist groups. Studies indicate involvement of transnational organised crime groups and threats associated with the involvement of corrupt officials. These offences are very rarely prosecuted.
- ***Illegal logging and wildlife smuggling*** - Illegal logging, associated smuggling, wildlife smuggling and associated activities and the laundering of illicit proceeds from these activities are significant threats recognised in the draft NRA. These offences are very rarely prosecuted.
- ***Fraud/scams –*** Myanmar highlights very significant ML threats arising from fraud and scams facing Myanmar businesses and citizens. There are an increasing number of predicate prosecutions.
- ***Tax evasion -*** Myanmar's NRA identifies tax evasion as amongst the highest ML risks. It is clear that the number and range of taxpayers and rates of compliance with tax laws are very low. These offences are very rarely prosecuted.
- ***TF associated with domestic or transnational groups -*** authorities and some analysts highlight limited transnational links with the emergence of the ARSA.

39. Overall, Myanmar has a wide range of significant vulnerabilities to ML risks. The assessment team identified the following ML and TF threats facing Myanmar from the draft NRA, regional typologies and reports of criminal trends from a range of credible sources:

- ***Cash and dollarized economy*** - Myanmar's predominantly cash economy with significant informal systems means that most transactions are conducted in cash. This is a major vulnerability to ML.
- ***Corruption –*** the NRA and other assessments highlight vulnerabilities from corruption facilitating various profit driven crimes and related ML. Corruption impacts of the

operation of regulatory and criminal justice systems. Corruption risks in certain sectors have been identified, including government procurement, state-owned financial institutions, etc.

- ***Misuse of the real estate market*** – The Myanmar draft NRA recognises this risk of laundering proceeds from corruption, narcotics, tax evasion, etc. through the real estate sector. The sector is characterised by predominantly cash transactions, many informal intermediaries and common use of informal nominees.
- ***Banking and remittance businesses –*** the banking and (mostly informal) remittance sectors are ranked in the draft NRA as particularly vulnerable, noting their role in cross-border transactions.
- ***Geographical and cross-border vulnerabilities*** - Myanmar has long land borders with China, Thailand, Lao PDR, India and Bangladesh. Its coastal borders are vulnerable to illegal smuggling of people, goods and money, as recognised by the draft NRA (p.40). Constrained capacity of border enforcement agencies and their vulnerability to corruption threats exacerbate the likelihood of cross-border threats materialising.
- ***Casinos –*** Myanmar has a large but completely unregulated casinos sector. Most casinos are located on the Thai or Chinese border areas controlled by various ceasefire groups.
- ***State-owned banks and enterprises*** - Myanmar has a range of poorly governed and weakly regulated state-owned FIs and state-owned enterprises. These are particularly vulnerable to corruption and fraud.
- ***Trade in precious metals and stones –*** this is a very significant sector for Myanmar. The involvement of PEPs and state-owned enterprises adds to vulnerabilities. AML controls over the sector are not yet in place. The industry is not well supported by the banking[29] and insurance sectors.

Materiality

State-owned enterprises and the role of PEP 'tycoons'

40. The OECD notes that Myanmar's legal and regulatory business framework has traditionally favoured state-owned enterprises (SOEs), which include military enterprises, and that these have been dominant in various sectors. Recent policy and regulatory changes are beginning to unwind this focus on SOEs. It is noted that SOEs and their joint-venture business partners are not required to register as enterprises unless they apply for incentives under the Foreign Investment Law (2012) or the Myanmar Citizens Investment Law (1994). The OECD highlighted that this may be conducive to less transparent management practices and finances.[30] A number of these SOEs have been active in key industries including banking, jade mining, ports, telecommunication, logging and infrastructure. There have been moves towards a number of the biggest SOEs moving to become public companies, but this has not yet come to fruition. Reports indicate that their management remains dominated by current and former military figures. Two of the biggest SOEs are Myanmar Economic Corporation (MEC) and Myanmar Economic Holdings Limited (MEHL). Subsidiaries of these SOEs, including Myawaddy Bank, account for three of Myanmar's top five income tax payers in 2015-16.

[29] http://www.nationmultimedia.com/news/business/aec/30319162

[30] Economic outlook for Southeast Asia, China and India 2014: Beyond the middle-income trap © OECD 2013

41. Commentators[31] highlight a policy-driven transition from a reliance on state-run enterprises to a form of market capitalism to capitalism. Myanmar's economy is marked by both military-owned firms and those owned or controlled by individual military officers and their family members who entered business, particularly from regional commanders, as well as entrepreneurs who dominate key sectors through continuing close relations with leading generals. A small set (approximately 15) favoured individuals were selected as "national entrepreneurs" and were systematically favoured by state patronage and now own Myanmar's largest conglomerates, with interests spanning banking, real estate, tourism, mining, timber, manufacturing, construction, transport and telecommunications. Many commentators and government sources indicate that these figures were once referred to as cronies dominant in the economy, but are now considered tycoons. While they control as little as 5% of businesses, sources indicate they control a majority of the country's wealth.

Economic Sanctions – bilateral & multilateral

42. Commencing in the 1990s, Myanmar was subject to a range of bilateral and multilateral economic and trade sanctions against the country and certain individuals and businesses. In some cases sanctions related specifically to persons and entities associated with narcotics trafficking or money laundering. Sanctions extend to key state-owned banks and timber and mining companies. The scope of sanctions varied, but sanctions were applied by the US, EU, Canada, Australia and others. These sanctions have now been lifted.

Cross border trade

43. Myanmar's cross-border trade has been increasing significantly. There are 15 border trade zones in Myanmar which link China, Thailand, India and Bangladesh. Of them, Muse (bordering China) has the greatest trade value. USD, Thai Baht and Chinese Yuan are widely used in some parts of Myanmar for trade transactions (formal and informal). Myanmar mainly exports pulses, corns, sesame, rice, rubber, fisheries, sugar and sugarcane to China, while importing from China fertiliser, construction materials and consumer goods. According to statistics of the Ministry of Commerce, bilateral trade between Myanmar and China stood at USD10.7 billion in 2016-17.

44. According to DICA, as at March 2016 the largest three foreign investors were China (28% of foreign investment - USD18,072), Singapore (20.5% - USD13,066) and Thailand (16% - USD13,066). The main areas of foreign investment were oil and gas and infrastructure (power plants, transport, and telecommunications) which make up over 74% (USD47,180M) of foreign investment. Manufacturing, real estate developments mining and hotels and tourism together accounted for almost 23.5% (USD14,828 million) of foreign investment.

Cash Economy

45. Myanmar's economy remains overwhelmingly cash-based and largely dollarized, despite some measures undertaken by the authorities to promote formal channels and the banking system. Salary payments, government transfers and utility payments in Myanmar are made almost exclusively in cash. The Ministry of Planning and Finance has been implementing a Financial Inclusion Roadmap (2014-2020) to promote formal finance channels and to reduce

[31] Jones, Lee (2014) The Political Economy of Myanmar's Transition, Journal of Contemporary Asia https://qmro.qmul.ac.uk/xmlui/bitstream/handle/123456789/5700/The%20Political%20Economy%20of%20Myanmar%27s%20Transition.pdf?sequence=14

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the cash-based and dollarized system. This aims to raise financial inclusion levels from 30% in 2014 to 40% in 2020. Very significant impediments to financial inclusion are discussed below.

Myanmar's banking system

46. Since 2011 Myanmar has pursued significant reforms in its banking system. Myanmar´s financial sector is growing very rapidly, albeit from a very low level. Deposits and loans as a ratio of GDP approximately tripled between 2011 and 2016. Commencing in 2011 reforms included: relaxing the controls on private banks; legislating for the CBM to be an autonomous regulator; issuing new licenses to establish private banks; establishing a legal framework for a microfinance sector; the breakup of the state insurance monopoly; unification of the exchange rate regime; the establishment of the Yangon Stock Exchange; granting limited licenses to foreign banks; the Myanmar Payment Union (MPU) was formed for inter-bank payments such as ATMs; a real-time gross settlement system (RTGS); etc. The reform emphasis of the government gave rise to an easing of international sanctions and the reintegration of Myanmar into the global economy.

Structural Elements

Political stability

47. The World Bank's global index of political stability considers both political stability and an absence of violence and ranks Myanmar at a low level, albeit demonstrating an improving trend. After almost 50 years of military governments, Myanmar underwent a series of political reforms from 2011. In November 2015, the first free general elections since 1990 resulted in the National League for Democracy forming a new government in 2016 with Htin Kyaw as the first non-military president since 1962, and with Aung San Suu Kyi in the newly-created position of State Counsellor. Myanmar's political system is characterised by continued military (Tatmadaw) influence (politics and the economy), capacity problems in parliamentary politics and problems of administrative capacity. Current and former military personnel and their associates represent an economic elite which influences political stability. The role and influence of ethnic armed organisations ('ceasefire groups') over significant areas of Myanmar territory has an effect on political stability.

A high-level commitment to address AML/CFT issues

48. Myanmar's government has expressed its high-level commitment to address AML/CFT issues. This was directly reflected through the FATF ICRG process and also in the preparation and conduct of the mutual evaluation. There is direct ministerial input to national level AML/CFT coordination structures, which reflect input from both those ministries controlled by the civilian government and those whose ministers are appointed by the Myanmar military.

Stable institutions with accountability, integrity and transparency

49. As mentioned above, the military maintains control over key elements of policy making and implementation, including certain key agencies involved in AML/CFT. The constitution provides that 25% of Parliamentary seats are held by the military. The 2008 Constitution provides that the military appoints ministers of Defence, Border and Home Affairs. Under the constitution, the civilian government has no oversight over the military, which independently administers and adjudicates all affairs of the armed forces. The military has a form of control over the national police.

50. Myanmar faces a number of significant challenges with open government, regulatory enforcement, rule of law and fundamental rights. The 2017 World Justice Project[32] uses data from 2016 and ranks Myanmar globally at 107th amongst 113 for open government, and 110th amongst 113 for fundamental rights.

51. There is a wide range of civil society organisations that are active to promote accountability and to work to improve integrity and transparency across Myanmar's society and economy. This reflects the wider social and political reform movement of recent years.

52. Media reporting, particularly on AML/CFT cases, has improved since the time of the last MER, but there are a number of impediments to freedom of the press in Myanmar. Media coverage of significant financial crime matters in Myanmar was generally available via open source media outlets. Details of financial crime cases are regularly available to financial institutions through media outlets, which assists with understanding elements of the risk environment for profit-driven crime. Media reporting on domestic terrorism cases lacks transparency.

The rule of law

53. The World Bank's Worldwide Governance Indicators rate Myanmar's performance in terms of political stability (23.3 on a scale from 0 to 100), control of corruption (30.8), regulatory quality (18.8), government effectiveness (16.3) and rule of law (16.8) in 2016. These scores, while low, are a significant improvement on Myanmar's 2015 results. The 2017 World Justice Project data ranks Myanmar globally at 100th of 113 countries surveyed for rule of law, 79th amongst 110 for fairness of regulatory enforcement, 109th of 113 for civil justice and 107th of 113 for effective criminal justice systems.[33]

54. Effective implementation of AML/CFT measures relating to detecting and investigating ML/TF in or connected to ceasefire areas is not possible due to security and jurisdictional issues.

A capable, independent and efficient judicial system

55. The Myanmar judicial system was established under the 2008 Constitution and the 2010 Union Judiciary Law. The Supreme Court of the Union, High Courts of the Region or State, District Courts and Township Courts were established according to the Constitution and Union Judiciary law. Prosecutions are carried out by the Union Attorney General's Office or, in relation to BSI investigations, by in-house BSI prosecutors.

56. The judgment of the Supreme Court of the Union in all cases is final and conclusive and there is no right to appeal against them. The Supreme Court of the Union supervises all Courts in the Union and may be directed to adjudicate in an important case of the High Court of the Region or State, Courts of Self-Administered Division, Self-Administered Zone and District Courts by a bench consisting of more than one judge. The Supreme Court of the Union is entitled to submit bills relating to the judiciary to the Pyidaungsu Hluttaw. The Supreme Court of the Union may issue rules, regulations, notifications, orders, directives, procedures and manuals as necessary.

[32] https://worldjusticeproject.org/our-work/publications/

[33] *WJP Rule of Law Index 2017-18 Report*. Available at https://worldjusticeproject.org/our-work/publications/rule-law-index-reports/wjp-rule-law-index-2017-2018-report

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57. There are two categories of lawyers in Myanmar - higher-grade pleaders, and advocates. Higher-grade pleaders can appear in township or district courts only, but advocates can appear before any court or tribunal in the union.

58. The International Commission of Jurists' (ICJ) 2013 report[34] found that significant changes have been made to the legal profession in Myanmar since 2011 with hundreds of laws being reviewed, amended, abolished and passed since the end of direct military rule.

59. There are capacity issues in the judicial system in Myanmar, with some reports that legal education is inadequate.[35] Free legal training given by the Myanmar Bar Association is available for young lawyers every week, covering many topics including AML, investment law, anti-corruption law and the Company Act. There have been some workshops/seminars held for judges on changes to Myanmar's laws, including a 2016 workshop on the new AML law, with one judge from each district court attending. Much self-education is also required for judges to keep informed of changes.

60. Judges carry a heavy workload of about 150 active criminal cases at any one time, in addition to around 100 civil cases. Each of these cases has one hearing per week. There are lengthy delays in the justice system, with the 2017 Courts annual report indicating District Courts have 13% of cases delayed more than six months.

Background and other Contextual Factors

Maturity and sophistication of the AML/CFT regime and the institutions which implement it

61. While Myanmar's AML/CFT system is not new, it is not yet at a mature or sophisticated stage of development. This is in keeping with the level of maturity of a range of governance institutions.

Issues of corruption

62. Corruption has been identified as a significant risk in Myanmar's draft NRA. The assessment team also considers corruption to be a significant risk factor pervading most other areas of risk relevant to the assessment. There is a need for a more detailed assessment of the specific dynamics of corruption facing Myanmar and related ML.

63. Myanmar has had a low ranking on Transparency International's Corruption Perceptions Index, albeit a score that demonstrates an upward trend. Myanmar had a score of 28 for 2016, which was up from 22 in 2015 (out of 100 with zero being a high perception of corruption and 100 being a very low perception of corruption).

64. The 2017 World Justice Project ranks Myanmar globally at 100 out of 113 countries surveyed for rule of law, with the rank for absence of corruption at 61 out of 113.[36] The 2014 World Bank Enterprise Survey reports that around 40% of 460 firms interviewed see corruption as an obstacle to business in Myanmar.

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[34] *Right to Counsel: The Independence of Lawyers in Myanmar.* Available at http://www.burmalibrary.org/docs16/ICJ-MYANMAR-Right-to-Counsel-en-red.pdf

[35] Ibid.

[36] *WJP Rule of Law Index 2017-18 Report*. Available at https://worldjusticeproject.org/our-work/publications/rule-law-index-reports/wjp-rule-law-index-2017-2018-report

Cash economy / informal economy

65. Myanmar is predominantly a cash-based economy. Studies estimate that Myanmar's economy is the most intensively cash-based economy within the ASEAN region. Salary payments, government transfers and utility payments in Myanmar are almost exclusively made in cash.[37] In addition to a lack of payment systems infrastructure, Myanmar has experienced previous banking and currency crises so that elements of the population continue to prefer cash. Myanmar has pursued rapid modernisation of payment systems in recent years.[38]

66. Myanmar's economy remains highly "dollarized" with the US dollar readily accepted at retail outlets. A significant challenge for the informal economy is the role of USD settlement and unregulated inward USD remittance.

67. Estimates put Myanmar's 'shadow economy' (i.e. the share of the market-based legal production of goods and services that is deliberately concealed from public authorities) at over 35%.

Financial inclusion / exclusion, including formal remittance

68. Myanmar suffers from low levels of financial inclusion, with particular problems in relation to inclusion in formal remittance. World Bank data from 2014 indicates that just under 23% of persons aged 15+ have an account at a formal financial institution. Over 49% of people had a mobile cellular subscription, but Myanmar had only two internet users per 100 people at that time.[39] Both of these later figures are rising rapidly – there are about 50 million active SIMS – almost 80% are using a smartphone with more than 50% using data. At this stage there is relatively little use of mobile financial services (MFS) such as Wave Money, and few MFS licences have been given by the CBM.

69. Myanmar has very few formal remittance channels and faces strong drivers for the use of underground banking and other informal remittance channels. Official estimates for 2015 were that Myanmar received only USD118 million in remittances. At that time the Ministry of Labour, Employment and Social Security estimated that annual remittances could be as high as USD8 billion.[40]

70. According to Myanmar Citizen Law, citizens are required to register with the Department of Labour, Population and Immigration at age 10. A National Registration Card (NRC) or 'pink card' is required to open a bank account, and for medical care, education, travel and voting. 37 million of Myanmar's 53 million people have paper ID cards.[41] Digital ID is being launched to replace the paper NRC.[42]

[37] Jose de Luna Martinez (2016): Financial inclusion in ASEAN; presentation for the ASEAN Working Group on Financial Inclusion, Kuala Lumpur, January 21, 2016.
[38] Myanmar's Financial Sector - A Challenging Environment for Banks (3rd Edition, October 2016) published by the GIZ On behalf of the German Federal Ministry for Economic Cooperation and Development (BMZ)
[39] World Bank Group. 2016. *Migration and Remittances Factbook 2016, Third Edition*. https://openknowledge.worldbank.org/handle/10986/23743 (page 190)
[40] World Bank, Migration and Development Brief 25 – Migration and Remittances – Recent Developments and Outlook, p.14 (2015)
[41] https://govinsider.asia/innovation/myanmar-launches-digital-identities-for-citizens/
[42] ibid

71. Many persons resident in Myanmar are not permitted to obtain an NRC and displaced, minority and stateless groups have poor access to legal identity rights.[43] 'White cards', or temporary identity certificates were granted to those without an entitlement to an NRC, but there have been recent moves to eliminate these cards. There have been particular challenges with identity systems in the Northern Rakhine State where the vast majority of the approximately one million stateless 'Rohingya/ Rakhine Muslim' population held Temporary Resident Cards (TRC) which were cancelled in early 2015. In mid-2016 the government restarted the process of issuing National Verification Cards, but there have been challenges.[44]

72. Loss or damage of NRC must be reported to police and immigration office. NRC's are rarely updated and appear extremely susceptible to forgery. The penalty for forgery of a NRC is 15 years imprisonment and fine of Kyat 50,000 (approx. USD37).[45]

Table 1: Migrant Remittance flows (WB estimates) – USD millions[46]

	2012	2013	2014	2015	2016	2017
Inflows	275	1,644	279	387	682	723
Outflows		419	561	364	262	

NB - Source: World Bank staff calculation based on data from IMF Balance of Payments Statistics database and data releases from central banks, national statistical agencies, and World Bank country desks.

Microfinance

73. There are 173 microfinance institutions in Myanmar. Microfinance institutions in Myanmar present a low AML/CFT risk, largely due to the extremely low value of transactions. MOPF has not done any AML/CFT supervision on microfinance institutions, although there is an overarching statement in the supervision manual.

SEZ

74. Myanmar has established three special economic zones (SEZ), based on the 2014 Special Economic Zone Law and 2015 Rules. – Thilawa (southern Yangon), Dawei (southern coast of Taninthayri) and Kyauk Phyu (central western coast on Ramree Island, Rakhine state). SEZ focus on export-oriented markets, with varying tax incentives, depending on whether or not the investor is located in an SEZ. All AML/CFT controls apply equally in the three SEZ. Investors locating in the Thilawa SEZ need to separately incorporate a new company at the DICA section responsible for SEZ.

AML/CFT strategy

75. Since 2011 Myanmar has been pursuing very large-scale economic and legal reforms. This has resulted in a significant opening up of the economy and a large number of legal and institutional changes to various sectors of the economy and to the government that have relevance to AML/CFT. Myanmar pursued a range of policies related to AML/CFT reforms in the period 2010-2016, which were particularly aimed at achieving Myanmar's successful removal from FATF ICRG listing.

[43] https://www.nrc.no/news/2017/june/half-a-million-identities/

[44] Annan Commission Final Report reference – page 27 - http://www.rakhinecommission.org/app/uploads/2017/08/FinalReport_Eng.pdf

[45] 1982 Myanmar Citizenship Law, Section 21

[46] http://www.worldbank.org/en/topic/migrationremittancesdiasporaissues/brief/migration-remittances-data [accessed 24 May 2018]

76. Myanmar does not have a formal AML/CFT strategy. Myanmar has decided to develop and adopt an updated AML/CFT national strategy following the completion of the NRA and the ME process. Agencies involved in the draft NRA process have not yet used the interim findings from the NRA to adjust policies and priorities based on risk.

Legal & institutional framework

77. The following ministries, agencies and authorities are responsible for formulating and implementing Myanmar's AML/CFT system:

Legal and Law Enforcement

78. The **Anti-Money Laundering Central Body (AMLCB)** is formed under the AML Law and is chaired by the Union Minister of Home Affairs and consists of the Governor of the CBM, and deputy ministers and high-ranking officials of the key agencies involved in AML/CFT. The duties and responsibilities of the AMLCB are AML/CFT policy making; national strategy; NRA; monitoring implementation of AML/CFT policies and strategies; directives of CDD; international cooperation; guiding government bodies; guiding awareness exercise; submitting reports to Union Government. The powers of AMLCB include the continuous assessment of risks (and disseminating the results); prescribing the threshold reporting amount of money and property value; issuing orders to FIs for search and seizure; issuing prohibition orders to relevant departments; assigning the AFCD (MFIU) to scrutinise and investigate.

79. The **Central Committee for Counter Terrorism (CCCT)** was formed by the CT law and is chaired by Union Minister for the Ministry of Home Affairs. The CCCT consists of Ministers, the Deputy Governor of the CBM, Chief of Division against Transnational Organised Crime, Chief of Police and Division Chief of Special Branch. The CCCT leads Myanmar's interagency coordination structures to combat terrorism, TF and PF and is responsible for submitting requests to the Union Government to designate persons and entities under UNSCR 1373, to issue freeze orders over funds of designated persons/entities, and to adopt measures for the prevention, removal and destruction of WMD.

80. **The Financial Intelligence Unit (MFIU)** was established in January 2004. Since 2016 the Anti Financial Crime Division (AFCD) of the MPF has been designated as the FIU. The MFIU is a sub unit within the AFCD. The MFIU issues reporting forms; provides results of scrutiny; compiles, maintains, disseminates information; cooperates and exchanges information with other domestic and foreign organisations; provides awareness, training and assistance to government departments; requests information from ROs; and enters into agreements with foreign counterparts.

81. **The Myanmar Police Force (MPF)** sits under the Ministry of Home Affairs. MPF has a security police command division, a border guard division and fourteen special departments (including CID, SB, anti-trafficking in persons, drug enforcement, railways, maritime, aviation, tourist, oil fields security and forestry). The Chief of MPF is also the Secretary of the Central Body, Central Committee and Central Authority. Special departments of the MPF with key AML/CFT roles include:

- The **A*nti-Financial Crime Division (AFCD*)** is responsible for investigating ML/TF and other financial crimes. AFCD has been designated by the AMLCB to perform the functions of the MFIU, which is a sub-unit of the AFCD.

- The ***Division against Transnational Crime (DTC)*** is responsible for security aspects of AML/CFT, related predicate offences, and transnational organised crime. The chief of DTC is also the Joint Secretary of the CCCT and a member of the AMLCB..
- The ***Special Branch (SB)*** is responsible for intelligence aspects of peace and security. The Chief of SB is also the Joint Secretary of the Counter Terrorism Central Board.
- The ***Criminal Investigation Department (CID)*** is responsible for investigating serious offences.
- The ***Anti-Trafficking in Persons Division (ATPD)*** is responsible for human trafficking offences.
- The ***Drug Enforcement Division (DED)*** is responsible for drug-related offences.

82. **Bureau of Special Investigation (BSI)** is established under the Ministry of Home Affairs to investigate and prosecute malpractice of public officials (corruption) and economic crimes. The BSI has been designated to investigate ML and TF offences. Almost all ML investigation bodies formed by the AMLCB are headed by a senior BSI official.

83. **Anti-Corruption Commission (ACC)** is the competent authority and policy-making body for advancing anti-corruption, including investigating and prosecuting corruption.

84. **Customs Department** is under the Ministry of Finance. Its responsibilities include monitoring cross-border transactions and investigating breaches of customs requirements.

85. **Internal Revenue Department (IRD)** is an agency under MOPF responsible for collecting taxes and cooperating in ML, TF and related issues of tax claims.

86. **Counter Financing of Terrorism Working Committee** was formed by the CCCT and is responsible for cooperating and exchanging information within government departments; providing awareness training regarding CFT; reviewing reports from the investigation body; directing the investigation body in exercising its powers; disseminating the designation list; reporting to CCCT; and contacting and informing other stakeholders.

87. **Central Committee of Drug Abuse Control (CCDAC)** is responsible for eradicating drug production, and investigating and prosecuting drug-related offences.

88. **Union Attorney General's Office (UAGO)** consists of four main departments:

- The ***Legislative Vetting Department*** advises on draft laws, rules, procedures, notifications, orders and directives and translates laws.
- The ***Legal Advice Department*** tenders legal advice as requested by the President of the Union, the Speakers of both houses of parliament and Union level agencies.
- The ***Prosecution Department*** conducts prosecutions, litigation and appeals in both criminal and civil cases for and on behalf of the Government.
- The ***Administration Department*** carries out functions in relation to civil service personnel affairs, inspection, budget, logistics, training, legal research, etc.

Financial Sector Bodies

89. The **Central Bank of Myanmar (CBM)** has broad powers under the 2013 CBM Law to operate with operational independence and autonomy in exercising regulatory and supervisory authority over a wide range of FIs, both State and privately owned. The CBM is responsible for formulating and implementing monetary policy, determining and implementing the exchange rate policy; maintaining and managing the international reserves of the State; managing the domestic currency; overseeing the financial system; regulating and supervising FIs; overseeing the money market and foreign exchange market; overseeing payment systems; etc.

90. **Ministry of Planning and Finance** administers Myanmar's monetary, fiscal policies and national planning. It formulates policies, supervises and issues licenses to other financial sectors that are not under the purview of CBM; namely microfinance institutions, insurance and securities companies. The overall oversight of these sectors is under Financial Regulation Department (FRD) with the support of:

- **Microfinance Business Supervisory Committee** responsible for overall policy and regulation for this sector, while the supervision and licensing tasked to FRD.
- **The Insurance Business Supervisory Board** responsible for overall policy and regulation for this sector, while the supervision and licensing tasked to FRD.
- **Securities and Exchange Commission** responsible for regulating and supervising securities business in Myanmar.

91. **Department of Cooperatives** (under the Ministry of Agriculture and Irrigation) administers the regulation, market entry and oversight of cooperatives.

Other regulators / supervisors

92. **The Supreme Court** is the licensing authority for lawyers and notaries. Licensing applications are assessed by Bar Council, chaired by the Attorney General and including AGO officers, Supreme Court judges and selected private practitioners. A similar committee issues licenses to notaries. Junior legal practitioners are admitted as high grade pleaders (Legal Practitioner Act) and more experienced legal practitioners as advocates (Bar Council Act).

93. **The Directorate of Investment and Company Administration (DICA)** is responsible for administering the Myanmar Companies Act, Myanmar Investment Law (2016) and other related acts, including registration and supervision of companies, both domestic and foreign-owned in Myanmar. DICA is under the MOPF and also acts as the secretariat of the MIC.

94. **Myanmar Investment Commission (MIC)** is responsible for verifying and approving investment proposals as well as issuing notifications of sector-specific developments. The MIC is comprised of representatives and experts from governmental and non-governmental bodies.

95. The **Myanmar Accountancy Council** (**MAC**) is a regulatory body for the accounting profession, operating independently in accordance with MAC Law. Office of the Auditor General of the Union (OAG) acts as the Secretariat of the MAC. MAC grants licenses under the MAC Law.

96. **The Myanmar Bar Council (MBC)** is a statutory institution overseeing the registration and discipline of advocates. MBC is a designated competent authority for AML/CFT.

97. **Myanmar Institute of Certified Public Accountants (MICPA)** is a non-government, national accountancy professional organisation for practicing and non-practicing certified public accountants in Myanmar. Its functions include cooperation with and advice to the MAC, communication with international accountancy bodies, professional development, etc. The MICPA is a designated competent authority for AML/CFT.

98. The **Myanmar Gems and Jewellery Entrepreneurs Association (MGJEA)** is a non-government industry association that represents the gemstone sector in Myanmar. The MGJEA is a designated competent authority for AML/CFT.

99. **Myanmar Gold Enterprise Association** is a non-government industry association that represents the gold sector in Myanmar. The Gold Enterprise Association is a designated competent authority for AML/CFT.

100. **Myanmar Real Estate Services Association** is a non-government industry association that represents the real estate sector in Myanmar. It is a designated competent authority for AML/CFT.

Financial sector and DNFBPs

Table 2: Financial Sector

FI Type	**Number**	**Size** *(assets, transactions)*	**Sectoral Supervisor / Regulator**	**AML/CFT Supervisor / Regulator**
Banks	41	Assets - USD 43.74 billion (Dec 2017) Deposits - USD 30.37 billion (Dec 2017)	CBM	CBM
State-owned banks	4			
Local Banks	24			
Foreign Banks	13			
Life Insurance	12 (1 state-owned)		Insurance Business Regulatory Board	MOPF
Securities	6 (4 listed co.s)	USD426 million market cap	SEC	MOPF
Microfinance Institutions	173 in total (35 Large; 12 Medium; 126 Small)	298 million MMK paid up capital, 735 billion MMK (approx. USD 544 million) loan disbursed 134 billion MMK (approx. USD 100 million) accepting deposit	Microfinance Business Supervisory Committee	MOPF
Mobile Financial Services	3		CBM	CBM
Non-bank money changers	1,238		CBM	CBM
NBFIs (Finance & Leasing Co.)	19		CBM	CBM

Table 3: DNFBPs

DNFBP Type	Number	Licensing / Registering Authorities	AML/CFT Supervisor
Casinos[47]		Not regulated/supervised	-
Real estate agents	301 companies 575 agencies 3,736 individuals	None	Myanmar Real Estate Services Association
Gem dealers	8,000 members - mining, production, cutting & retail	None	Myanmar Gem Enterprise Association
Precious metal dealers	2,000 members	None	Myanmar Gold Enterprise Association
Lawyers & independent legal professionals	12496 Advocates 48656 Higher Grade Pleaders	Supreme Court and Myanmar Bar Council	Myanmar Bar Council
Notaries	57	Supreme Court	Myanmar Bar Council
Accountants	582 Certified Public Accountants (practising)	Myanmar Accounting Council	Myanmar Institutes of Certified Public Accountants

101. Myanmar is not a regional financial centre or a centre for company formation and registration. In fact, up until late 2016 Myanmar had been subject to over two decades of bilateral and multilateral sanctions, which meant that integration with the international financial system was under-developed.

102. Myanmar financial sector is dominated by the domestic banking sector, which represents about 85% of all financial sector assets in 2016 with about MMK 40 trillion (Table 2). Foreign banks represent approximately 5%, with securities representing approximately 7%.

103. There were 21 private and semi-governmental domestic banks licensed as of 2016. Approximately two-thirds of the market share (assets) are held by the top three banks with total assets of private banks amounting to MMK 20.9 trillion (27% of GDP) in March 2016. Their total assets had increased by a factor of almost 11 times in the six years since March 2010. [48]

104. There are four state-owned banks and three municipality owned banks. They suffer from significant challenges with governance and capacity.

105. All of the domestic banks have weak levels of capacity and transparency. This includes those well-capitalised banks with relatively modern systems. Modern prudential controls over the banking sector were newly introduced through the 2016 FI Law. While the new FI Law reflects the core principles, its implementation has only just begun with domestic banks. Many

[47] NB that casinos openly operate in a number of 'ceasefire areas' within Myanmar, but these areas are not substantially under the jurisdiction of the government of Myanmar or any other country.

[48] Myanmar's Financial Sector - A Challenging Environment for Banks (3rd Edition, October 2016) published by the GIZ On behalf of the German Federal Ministry for Economic Cooperation and Development (BMZ)

of the domestic banks lack capacity with systems (e.g. challenges with core banking systems). Very few domestic banks have transaction monitoring systems.

106. Thirteen foreign banks have been granted a banking license since 2014. Each foreign bank has a restricted license and is allowed to open a single branch with functions limited to wholesale banking, granting loans to and taking deposits from foreign corporations and domestic banks in both international currency and MMK. Foreign banks' retail banking is restricted to export financing for local customers.

107. The Myanmar stock exchange (YSX) opened on 9 December 2015. There are currently three companies listed on the YSX, with Myanmar Citizens' Bank being the most recent listing in August 2016. However, foreign investors were not permitted to trade on the exchange at the time of this report.

108. While there have been some reforms to trade rules, foreign companies may not trade directly in Myanmar, but may enter into a joint venture with local companies to retail or wholesale a limited range of products in Myanmar.

Preventive measures

109. Preventive Measures are set out in the AML Law (2014), the CT Law (2016), the FI Law (2016) and related enforceable instruments. For example, Section 69 of the AML Law (2014) provides a statutory basis for the AMLCB, Ministry of Home Affairs, MFIU and competent authorities to issue binding regulations, rules, orders, notices, by-laws, directives, criteria and procedures. The AML Law, and other laws regulating the financial sector, include enabling provisions subsidiary statutory instruments to elaborate and reinforce obligations for preventive measures. Obligations elaborated in these subsidiary instruments are themselves enforceable. At the time of the onsite visit a number of key instruments had not been issued, including CDD Directives to cover DNFBPs and criteria for fit and proper checking.

110. Myanmar has not exempted specific sectors or activities from the AML/CFT requirements.

Legal persons and arrangements

111. Due to unique contextual factors of the Myanmar economy, including its extended isolation from the international economy and longstanding cultural practice of relying upon familial ties to obscure beneficial ownership, incorporation is a less common practice than would otherwise be expected from a jurisdiction of Myanmar's size.

112. Myanmar has assessed the AML/CFT risks arising from companies to a limited extent. Myanmar is not a regional centre for the formation or management of legal persons or arrangements. It is not apparent that legal persons and arrangements created in other jurisdictions (or under the law of another jurisdiction) hold significant assets or are used in the country other than through institutional foreign direct investment (FDI).

113. The Burma (Myanmar) Companies Act 1914 (MCA I) provides for the incorporation of private companies limited by shares, public companies limited by shares, companies limited by guarantee and unlimited companies. Each type of company is a separate legal entity and has members (shareholders) and directors. The most common type of company in Myanmar is the private company limited by shares (there are approximately 50,000 such companies).

114. Legal persons in Myanmar are established under one of the following statutes: the Myanmar Companies Act (1914); the Special Company Act (1950); Foreign Investment Law of 2012; the Myanmar Citizens Investment Law (1994); and the Law Relating to Registration of Associations (2014). Myanmar law does not provide for limited liability partnerships. Partnerships formed under the Partnership Act (1932) are not legal persons. Legal persons can exist in the form of:

- Local Private Company Limited;
- Local Public Company;
- Foreign Company incorporated in Myanmar and wholly owned by foreign investor (sole proprietorship);
- Joint Venture (foreign investor/ local partner); and
- Associations (non-profit organisations).

115. As of September 2017, there were 67,633 total companies registered with DICA. Between 2016-2017, 10,469 companies registered with DICA, of which 9,095 were domestic private companies, 52 were domestic public companies, and 1,322 were foreign companies or branches of foreign companies. There are only two publicly listed companies with the MSEC.

116. The Myanmar Trusts Act (1884) governs the formation of trusts in Myanmar. The law predates independence from Britain and all Myanmar interlocutors indicate that the law is not in use. However, the law has not been repealed and remains available to be used. As a practical matter, Myanmar does not recognise trusts under its domestic law; foreign trusts are not prohibited, but do not yet appear to have a meaningful presence in the Myanmar economy.

Supervisory arrangements

117. The CBM and the MOPF are the competent authorities for AML/CFT regulation and supervision in the financial sector. CBM provides AML/CFT and prudential oversight of banks, mobile financial service providers, non-bank money changers and NBFIs such as finance companies and leasing companies. MOPF (through its relevant departments and agencies) is prudential and AML/CFT regulator for life insurance, securities and microfinance institutions.

118. In 2017 Myanmar designated a two self-regulatory bodies (SRBs covering lawyers and accountants) and a number of non-government sectoral bodies (gems, real estate, gold dealers) as the competent authorities for AML/CFT regulation and supervision in the DNFBP sectors. At the time of the onsite visit DNFBP supervisory measures had not commenced.

International Cooperation

119. Myanmar faces very significant international ML risks from drug trafficking, environmental crime, gold smuggling, gem smuggling (especially jade), informal cross-border remittance (hundi), cross-border illegal casinos and human trafficking/people trafficking. The NRA and credible studies by IGOs and civil society groups highlight risks shared with immediate neighbours, other ASEAN countries and a range of jurisdictions sharing risks from transnational organised crime groups active in Myanmar.

120. Myanmar does not actively pursue formal or informal cooperation in keeping with its cross-border risks. There is a lack of structures to support formal cooperation (MLA) and Myanmar relies predominantly on informal cooperation. Myanmar pursues very little formal

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extradition, but MPF regularly uses deportation procedures under immigration laws rather than extradition.

CHAPTER 2. NATIONAL AML/CFT POLICIES AND COORDINATION

Key Findings and Recommended Actions

Key Findings

Risk, Policy and Coordination (Immediate Outcome 1)

- Myanmar authorities do not, overall, demonstrate a well-developed understanding of Myanmar's globally significant ML risks. Authorities demonstrate a better developed understanding of TF risks.
- Myanmar's first NRA was near to completion at the time of this report. However the complexity and style of the draft NRA report hinders stakeholders' ability to understand the findings. Agencies did not demonstrate an awareness of the detailed NRA findings.
- The assessment team has a serious concern that the overall scale of the POC environment appears to be underestimated in the NRA and not otherwise well assessed.
    - The draft NRA's identification of the key proceeds generating predicates is reasonable, with the important exception of the drug trade. The NRA appears to understate the domestic and transnational risks associated with drug trafficking.
- The draft NRA presents risks in quite general terms and lacks sufficient details of risks relating to areas controlled by armed ethnic groups, and the criminal activities of relevant those groups and their related networks.
- The draft NRA does not outline the techniques of ML or TF prevalent in Myanmar. The NRA identifies a number of vulnerabilities, chiefly focusing on legal and institutional gaps and details a number of threats that generate proceeds of crime or fund terrorism.
- Corruption is a significant risk factor pervading most other areas of risk in Myanmar, but the phenomenon of corruption has not been well assessed by Myanmar.
- Policies / priorities / activities of implementing agencies have not yet been adjusted to reflect the findings of assessments of risks. The allocation of resources does not reflect risk findings. Myanmar has taken a decision to develop an updated AML/CFT national strategy following the completing of the NRA and the ME process.
- There has been a good level of financial sector involvement in the NRA process, but the NRA results have not yet supported their further move towards a risk-based approach.
- Myanmar places a strong emphasis on inter-agency cooperation, and the membership, scope and utility of the coordination structures adds to effectiveness. The coordination has not yet sufficiently taken into account identified risks.
- Operational-level coordination between criminal justice agencies is strong, particularly in relation to CFT. There are weaknesses in the overall operational level coordination between regulatory and supervisory agencies.
- Cooperation on policy measures to combat PF was well demonstrated.

Recommended Actions

- Complete the NRA and produce other less complex versions of the NRA report to allow relevant agencies and private sector bodies to understand its findings.
- Ensure findings from the NRA and other assessments of risk are well understood and are used to set priorities for national and agency level actions.
- Develop and oversee policies to prioritise activities that reflect the risk based approach by government agencies and the private sector.
  - Prioritise actions to target ML in relation to drugs, environmental crimes and corruption.
  - Ensure that operational-level coordination structures target key risk areas and operate to drive effectiveness of AML/CFT activities.
- Conduct additional assessments on the key risk areas, for example:
  - ML associated with the drug trade;
  - ML networks associated with ceasefire groups and corruption (including ML associated with drugs, arms smuggling, jade smuggling, etc.);
  - Corruption and ML risks covering areas such as state-owned enterprises, public sector procurement;
  - PEPs ownership and controls of key conglomerates and FIs;
  - TF risks;
  - ML risks associated with large-scale casinos within Myanmar's borders (both within the ceasefire areas and on the Myanmar side (e.g. Tachileik).
- Prioritise additional sectoral and thematic risk assessments based on key findings of the NRA, for example a more comprehensive banking sector risk assessment.
- Ensure findings from the NRA and other assessments of risk are well understood by FIs and DNFBPs and are to support the risk-based approach.
- Ensure that financial sector regulators and supervisors develop a deeper understanding of risk and vulnerability issues, in particular informal sector (cash economy, hundi), financial inclusion, dollarization (including domestic USD transfer and debit card instruments), etc.

121. The relevant Immediate Outcome considered and assessed in this chapter is IO.1. The recommendations relevant for the assessment of effectiveness under this section are R.1-2.

Immediate Outcome 1 (Risk, Policy and Coordination)

Myanmar's understanding of its ML/TF risks

122. Myanmar is subject to a large number of globally significant domestic and cross-border ML threats. Myanmar faces some emerging TF risks, albeit at a much lower level and narrower scope than the ML risks.

123. Myanmar demonstrates some understanding of its ML/TF risks but there is a need for further work to be undertaken in order to achieve a deeper understanding of the risks.

124. Myanmar commenced preparation of its first NRA in 2015,[49] with substantial effort on the part of relevant authorities, including 34 parties to the NRA Committee representing government and private sector. The AMLCB has primary responsibility for the NRA and formed the NRA Working Committee, chaired by the Deputy Minister for the Ministry of Home Affairs and with participation of over 20 government agencies and six private sector representatives. The NRA covered the financial sector and DNFBPs.

125. The NRA was not complete at the time of the on-site visit, however a draft version of the NRA was available and had been shared with the stakeholder agencies and private sector players.[50] Further steps to be taken include ministerial endorsement of the draft NRA and final adoption of the assessment.

126. Myanmar used an NRA methodology provided by the IMF, with a process focused on identifying the ML/TF threats, vulnerabilities and consequences. The information collected for the NRA included both statistical and perception-based data. It was evident to the assessment team that there were challenges with the collection and dissemination of relevant statistical data. Statistical data covered the period 2011 to 2015. Myanmar acknowledged that there are deficiencies in both the amount of data collected as well as the accuracy of that data.

127. Myanmar further acknowledged that much of the basis of the NRA is subjective and authorities indicate that the NRA Committee deliberations decided to overestimate, rather than underestimate the scope of the risks. The lack of ability to benchmark these perception inputs gives rise to concerns over the accuracy of the analysis. Myanmar lacked existing threat assessments or sectoral risk assessments as a basis for the NRA. There was limited information able to be derived from MLA or other international cooperation requests. The NRA Committee drew on credible reports by international bodies and the academic research sector (UN, IMF and credible NGOs). Information available from STRs held by the MFIU and findings of supervisory reports was relatively limited. Seven private sector bodies were included on the NRA Committee and submitted perception surveys and attended committee meetings where the data and findings were discussed.

128. The NRA process included a very robust consideration of vulnerabilities, with a particularly strong critique of domestic legal and institutional capabilities. The NRA process appears to have lacked input of independent or LEA threat or sectoral risk assessments to be considered in the NRA. The draft NRA reflected only limited analysis of core risks and lacked

[49] Myanmar obtained technical assistance from the IMF for the NRA. The IMF did not conduct the assessment for Myanmar, rather Myanmar applied the IMF NRA methodology and drew on IMF assistance with planning and conducting elements of the process.

[50] Myanmar indicated that the NRA was completed in June 2018.

detailed coverage of how the proceeds of Myanmar's higher risk ML predicates are actually laundered and associated vulnerabilities of particular parts of Myanmar's economy.

129. Myanmar has assessed its overall risk in relation to ML as 'higher'. The NRA methodology included a seven point scale for rating risks[51] and a seven point scale for rating the effectiveness of controls on the risks (these were relative indicators rather than absolute categories). Factors impacting this rating include the likelihood of offenders not being caught, and even if prosecuted it is acknowledged that there is a much higher risk that they will not be adequately sanctioned.

130. The assessment team considers the threat of drug offences to be under-assessed in the draft NRA, especially given the draft NRA recognition that Myanmar remains the second largest opium poppy grower in the world after Afghanistan, and that it has also become a regional source for ATS. The assessment team highlights the significance of systemic risks of 'ceasefire areas' within Myanmar borders, where armed ethnic groups have maintained autonomy from the government over decades and are intrinsically involved with both the drug trade as well as arms trafficking and environmental crimes including illicit jade extraction and logging. These areas include the 'Golden Triangle' and other areas. The draft NRA lacks detail in relation to this issue which the assessment team considers critical to understanding the overall risk and threat of ML within Myanmar.

Figure 6

Drug Production and Ceasefire Areas

Myanmar is the largest opium producer in the world after Afghanistan and is a key player in methamphetamine trade, according to the UNODC.

About 90% of Myanmar's opium cultivation is in Shan state, with the remaining 10% in Kachin state. UNODC reports confirm links between opium production, organised crime and armed groups in subnational conflict zones in Myanmar. These areas provide a safe haven for drug production, as they are not under effective government control.

Opium production is important to the economy of the ceasefire areas and in the wider Myanmar economy. Many of the households involved in poppy cultivation rely on the money earned from opium for basic essentials. In addition, the armed groups and some militia rely on funds from opium for weapons to continue armed conflict.

The UNODC has found that the total area under opium poppy cultivation in Myanmar decreased by 25% from 2015 to 2017. East Asian and South East Asian countries are reporting a general decline in demand for opium, with a shift towards synthetic drugs, especially methamphetamine. Seizures of methamphetamine across SEA indicate that Myanmar is one of the world's largest methamphetamine producers. Myanmar's ceasefire zones are an attractive option for methamphetamine production.

131. With the exception of the analysis of the drug trade, the assessment team broadly agrees with the draft NRA identification of the key predicate offences generating proceeds of crime. The assessment team has a serious concern that the overall scale of the POC environment appears to be underestimated. Myanmar identifies (i) tax evasion, (ii) environmental crimes and (iii) corruption as 'higher risk'. The assessment team acknowledges that tax evasion is a serious issue within Myanmar. However, the assessment team was concerned that tax evasion was

[51] Following the IMF NRA methodology, the Myanmar NRA uses a seven level scale for indicators of risk: *extremely high; much higher; higher; medium; lower; much lower; very much lower*

ranked highest and the IRD reported that the level of tax compliance in Myanmar was extremely low. This gives rise to the perception that the amount of tax evasion was potentially significant, despite the fact that there was a lack of empirical links provided to any ML activities investigated by either IRD or any other competent investigative body.

132. The assessment team also considers corruption to be a significant and pervasive risk factor. It affects most other areas of risk relevant to the assessment, and there is a need for a more detailed assessment of the specific dynamics of the corruption facing Myanmar and related ML. Open source research indicates that Myanmar faces significant systemic issues in relation to corruption, which affect both government and private entities. It is notable that the category of environmental crime includes the enormously lucrative jade smuggling trade, which has strong links to corruption issues within Myanmar.

133. The more moderate ML threats identified in the draft NRA include: other proceeds generating crimes (Myanmar includes illegal remittance activity under this heading), counterfeit and piracy of goods, and then drugs offences.

134. Much of the draft NRA focused on the identification of the ML threats with less focus on the identification of vulnerabilities and consequences. The draft NRA did, however, highlight a number of vulnerabilities, chiefly focusing on legal and institutional gaps. The draft NRA assessed that the regulated entities most at risk in terms of ML are banks, legal persons, DPMS and FX dealers. DNFBPs and MSBs are identified as having moderate risk and securities, insurance, and NPOs as being low risk. These findings are not unreasonable, but appear to be relatively high level and do not outline the nature of sectoral vulnerabilities. There has been no detailed assessment of the risks of misuse of legal persons and arrangements.

135. The assessment team notes that the informal remittance sector ('hundi') operates on a very large scale in Myanmar and has a role in the movement of the proceeds of crime both domestically and internationally. The draft NRA lacks adequate assessment of this sector and authorities did not demonstrate a deeper understanding of the ML risks from hundi. A large proportion of Myanmar's population is "un-banked" and there is a significant reliance on cash within the economy.

136. One area not sufficiently considered is the extent to which key investors in Myanmar's financial institutions may be beneficially owned and controlled by persons and entities associated with key crime types in Myanmar. Commentators highlight the long legacy of proceeds from heroin trafficking being invested in the domestic economy over decades. The former bilateral economic sanctions on Myanmar domestic banks for involvement in drug trafficking and ML is noted in this context.

137. In regards to TF, the draft NRA has assessed the risk as 'higher' as a result of the assessed likelihood being higher and the consequence major. The assessment that a large proportion of TF activity is occurring outside the formal financial sector is likely accurate despite the lack of substantive statistical data. The overall rating of 'higher' for TF is attributed to perception to a significant degree and gives a great deal of weight to consequences. While this is reasonable, it should be taken within the context of Myanmar, and not compared to relative risk ratings of other jurisdictions. During the ME on-site meetings Myanmar stated that during the period for which data was collected for the NRA no TF or terrorism was reported, and as such it appears that all the assessment of TF risk is based on the perception of contributors to the NRA process.

138. Despite the draft NRA having been shared with many of the parties who were part of the process, most parties remain unaware of the details of the draft findings. The complexity and form of the NRA report renders it difficult to understand. A simplified presentation of the findings, is required to ensure all of the key agencies involved in the NRA and other AML/CFT are able to understand the findings of Myanmar's first NRA.

139. Outside of the NRA process, the AFCD (including MFIU), BSI, DED and the CBM appear to have a more developed approach to understanding ML/TF risks.

National policies to address identified ML/TF risks

140. In the period 2010-2015 there was a significant policy focus on AML/CFT reforms, but these were chiefly in response to international pressure through the FATF ICRG process. These national policies ultimately supported sufficient reforms for Myanmar to be de-listed. The national policy and activities during and since that time were not focused on addressing identified ML risks. The AMLCB has generally addressed any identified deficiencies by issuing orders pursuant to the AML Law of 2014 in what appears to be an ad hoc manner.

141. In recent years there has been a focus on national policies to address terrorism and, to a lesser extent, TF risks. This has been particularly evident since 2016 and the rise of ARSA, but has also extended to risks of returning foreign terrorist fighters using Myanmar as a transit point.

142. Myanmar indicated that it has increased the allocation of resources to human trafficking cases and associated proceeds of crime in recent years in response to its assessment of increased risks. Myanmar has implemented five-year action plans to tackle the human trafficking issue since 2007, and is currently implementing the third such plan which runs from 2017 to 2021, with significant analysis of the issue shaping Myanmar's response. This understanding has fed into the draft NRA but it appears that it has not been used to alter policies and practices directly linked to human trafficking.

143. Myanmar intends to develop and issue a national AML/CFT strategy arising from the final NRA and the findings of the MER. This is confirmed in the draft NRA and is an important policy outcome.

144. Myanmar has not, in general, used the draft NRA findings or other assessments to adjust policies and priorities or move toward the adoption of a RBA.

145. A significant challenge is that the NRA in its current form does not provide a sufficiently detailed basis to guide mitigation measures.

Exemptions, enhanced and simplified measures

146. The findings of risk assessments, including the continuing NRA process, have not led to implementation of enhanced or simplified AML/CFT measures or to any exemptions from AML/CFT requirements for lower risk activities.

147. Myanmar has not sought to exempt any sectors or financial activities from AML/CFT based on proven low risk. Whilst the AML Law of 2014 allows for the enhanced and simplified CDD measures based on a risk assessment, there were no such assessments or any evidence provided to the assessment team of any examples of where this has been applied.

Objectives and activities of competent authorities

148. The CBM demonstrates an improving understanding of risk within the sector and CBM incorporates risk indicators into the data template for offsite monitoring. CBM also conducted three instances of targeted supervision as a result of information from MFIU. AML/CFT on-site supervision is embedded within prudential supervision and is not sufficiently based on ML/TF risks. CBM has played a significant role in the production of the NRA as the banking regulator, however despite this involvement there have been no other sectoral assessments undertaken.

149. Myanmar law enforcement demonstrated a mixed understanding of the predicate crime risks, but even those LEAs with a very strong understanding of predicate risks have not adjusted their objectives and activities to comprehensively pursue related ML risks.

150. Of concern was that some bodies involved in the NRA process did not demonstrate an in depth understanding of the ML/TF risks faced within their respective area of responsibility. This may have carried over to the completion of the perception surveys which informed much of the NRA.

151. Myanmar has yet to adopt a RBA in relation to the allocation of resources and implementing preventative measures and mitigation strategies to address ML/TF issues. The AMLCB is focused on education and awareness raising in respect of ML/TF risks, as well as identification of deficiencies in laws and regulations. The assessment team acknowledges that there needs to be an improvement in the level of ML/TF understanding throughout the private and public sector for an effective RBA to be undertaken.

152. There has been no evidence of an increase in focusing ML investigations on those threats assessed as the highest such as tax evasion, environmental crime and corruption, with most investigations originating from drug and human trafficking predicate offending. Overall there have been few ML investigations when compared to the overall number of predicate crime investigations.

153. With the exception of CBM, other relevant AML/CFT supervisory bodies, despite their involvement in the NRA process overall demonstrated a very limited understanding of the risks relevant to their sectors. The two SRBs and non-government sectoral bodies (gems, real estate, gold dealers) designated to supervise DNFBPs demonstrate a particularly poor understanding of risk issues. They have not taken any action to respond to findings of ML/TF risks in their objectives and activities.

National coordination and cooperation

154. Myanmar has very detailed and high level institutional frameworks in place to support inter-agency coordination and cooperation. These provide the basis for the development of national policies and coordination on AML/CFT issues at a policy and operational level. The AMLCB established pursuant to the AML Law of 2014 has broad reaching powers and responsibilities in relation to AML/CFT, including conducting the NRA and then establishing policies at the national level. Cooperation with other government departments and reporting organisations is legislated and examples of cooperation in respect of awareness raising activities were provided to the assessment team.

155. Myanmar's interagency coordination structures in place to combat both TF and PF are led by the CCCT. This coordination appears to be working well, in particular to prioritise actions

against the emergence of Rohingya-related groups and also in recognition of sanctions evasion vulnerabilities related to the DPRK.

156. There is strong operational-level coordination amongst law enforcement agencies. All ML/TF investigations must be undertaken through joint agency task force style scrutiny boards. Through these structures there is an inherent cooperative approach to conducting any financial investigation.

157. There is a reasonable level of cooperation between the CBM and MFIU. This is particularly strong in relation to public sector outreach and awareness raising. Information is shared in relation to the investigation of AML/CFT matters as well as the requirement for the MFIU to scrutinise capital investments in the banking sector. There is a need for further cooperation between the two on sharing information on risk to guide the CBM's risk sensitive supervision. There is weak cooperation between other regulatory and supervisory bodies.

Private sector's awareness of risks

158. Despite the draft NRA having been shared with many of the parties who were part of the process, as with government stakeholders, private sector bodies appear to remain unaware of the details of the draft findings. Of the private sector, the banking sector appears most aware of findings on risk, both from the NRA and their enterprise assessments and scoping of risks more generally.

159. The MFIU and the CBM have taken a lot of steps to raise the private sector's awareness of AML/CFT obligations and elements of ML/TF risk. Much of the AML/CFT awareness raising with the private sector has been focused on base level understanding rather than specific areas of risk. CBM has communicated to FIs the concepts of AML/CFT risk but has failed to give specific guidance in relation to preventative measures. As a result many private sector institutions have a superficial understanding of AML/CFT risk based predominantly on a rules-based recitation of relevant standards.

160. Problematically the SRBs (lawyers and accountants) and non-governmental sectoral bodies (gems, gold, real estate) that have been designated as the AML/CFT competent authorities for DNFBPs, with the exception of the real estate sector, displayed a much more limited understanding of risk within their sector.

Overall conclusions on Immediate Outcome 1

161. ML risks are not sufficiently well identified, assessed and understood, although TF risks are better identified and understood. The preparation of the first NRA is a positive step, however understanding of ML/TF risks by key agencies and the private sector is not well demonstrated. Myanmar lacks a policy priority for combating ML risks, but has shown an increased focus on addressing risks posed by TF. Myanmar's law enforcement agencies demonstrate strong operational level coordination. There are weaknesses with cooperation between supervisors.

162. **Myanmar has a low level of effectiveness for Immediate Outcome 1**.

CHAPTER 3. LEGAL SYSTEM AND OPERATIONAL ISSUES

Key Findings and Recommended Actions

Key Findings

Use of financial intelligence (Immediate Outcome 6)

§ LEAs do not prioritise the use of financial intelligence for investigations of predicates, ML and TF. DATC, CID, ACC and Customs do not integrate financial intelligence with investigations.

§ MFIU collects a wide range of reports, but the range and number of STRs is very low and does not provide a good basis for its analysis.

§ MFIU lacks a process for prioritising STR analysis and the FIU is not sufficiently proactive in its analysis. The main focus of analysis is in response to requests by LEAs, CBM and MOPF. MFIU does not proactively analyse holdings to identify possible matters related to the high risk categories identified in the NRA. MFIU does not adequately focus on cross-border offences in the absence of foreign requests. There is an absence of analysis of cross border cash declarations.

§ There is a lack of personnel in MFIU's analysis and operation functions. Many staff work dual roles in the FIU as analysts and AFCD as investigators. Specialised intelligence analysis skills need further development and dedicated resources. MFIU's analysis function benefits from secondments from other agencies.

§ MFIU lacks analytical software for operational intelligence and is over-reliant on manual processes. MFIU infrastructure has only a single database access terminal.

§ While the MFIU has access to a wide range of data from ROs and government agencies, there are weaknesses with the quality of analysis and the 'value-added' to data sets.

§ The scope of dissemination of FIU products to LEAs does not wholly reflect the risk profile, either the predicate offences or the range of ML/TF risks.

§ Some MFIU disseminations have been used by LEAs to initiate ML investigations. MFIU disseminations are not regularly used to initiate predicate offence investigations.

§ MFIU gives priority to TF analysis and working with other agencies to obtain and share information to support their development of financial intelligence on TF.

§ MFIU and LEAs chiefly use informal channels to exchange information and financial intelligence, which creates challenges for protection and security of information.

ML Offence (Immediate Outcome 7)

§ ML investigations have not been prioritised and do not occur in parallel with predicate investigations. ML investigations exclusively focus on self-laundering where a conviction for the predicate has been obtained and proceeds of crime have already been identified. The ML offence is being pursued chiefly in support of proceeds of crime confiscation efforts

as opposed to a dedicated investigation into the laundering of proceeds of crime.

- LEAs lack an awareness of the ML offence and investigation strategies do not focus on following the money within criminal networks.
- All ML investigations are conducted as part of a joint agency scrutiny board, which supports strong inter-agency cooperation.
- The BSI and AFCD have the best developed financial investigation capacity and lead the work to investigate ML cases with trained and relatively experienced investigators.
- There has been a lack of political will to allow the ML offence to be used in most cases of predicate offence investigation (e.g. drug cases, jade smuggling, and illegal logging).
    - ML investigations have resulted from referrals from drug and human trafficking predicates. No ML investigations have commenced from tax evasion, corruption, or environmental crime investigations.
- The narrow focus on identifying assets acquired with the proceeds of the predicate offence has limited the ability of LEAs to expose others involved in the offending at both a higher and subordinate level.
- 36 ML cases were investigated by scrutiny boards from 2014 to 2017. 21 of these cases were relating to drug crime. These figures contrast to the thousands of higher-level predicates in the same period. Despite the corruption risks, no ML investigations involving corruption as a predicate offence have been commenced.
- There have no ML cases which have commenced as a result of predicate offences committed in a foreign jurisdiction where the proceeds of crime moved to Myanmar.
- The prosecution of ML offences is generally hampered by the lack of capacity and procedural issues within the criminal justice sector.
- Upon conviction, most offenders are sentenced to the maximum term of imprisonment, are fined and have any assets which are identified as being acquired as a result of either the predicate or ML offence confiscated.

Confiscation (Immediate Outcome 8)

- Confiscation of proceeds and instrumentalities of crime is not generally pursued as a policy objective. LEAs do not pursue asset tracing investigations in parallel with predicate investigations; rather AMLCB pursues asset tracing investigations only after a predicate case is complete. Myanmar could not provide comprehensive statistics of restraint of assets and confiscation based on criminal conviction.
- Restraint and confiscation actions have focused on proceeds of drug offences, however the scope of asset tracing and confiscation is not in keeping with the risk profile, even for drug matters.
- Confiscation of property of corresponding value is only available for tax offences.
- AFCD and BSI have the most developed specialist capacity for pursuing proceeds. LEAs tend

to rely on them to conduct financial investigations to trace assets.

- Statistics show only three cases resulted in the confiscation of proceeds of crime. Beyond instruments of crime, no confiscation has occurred for high-risk crime types of environmental crimes, jade smuggling, corruption or tax. There has been one case of confiscation related to proceeds of human trafficking.
- At the time of this report assets were under restraint in nine cases, with most related to drugs, one terrorism and one human trafficking.
- Asset tracing is hampered by challenges with collecting information. AFCD, BSI and other LEAs lack analytical tools to support financial investigations.
- Myanmar had only used its powers of restraint or confiscation relating to property involved with foreign predicates in one case. Myanmar has not pursued asset recovery with foreign counterparts.
- Processes for asset management are not well developed or supported and the value of restrained assets is not well preserved.
- Customs does not sufficiently regulate or enforce controls on the cross-border movement of cash. Customs lacks powers to confiscate undeclared cash.
- Customs focuses on export controls and does not make sufficient use of its powers to restrain or confiscate smuggled goods at the border. Despite the serious risks from gold, gems and cash smuggling, authorities do not target smuggling of these commodities.

Recommended Actions

Use of financial intelligence (Immediate Outcome 6)

- Myanmar should set policies and agency-level plans which prioritise LEAs, ACC and Customs using financial intelligence for investigations of predicates, ML and TF.
  - AMLCB should oversee and review requests for and ongoing use of disseminated MFIU intelligence particularly for high-risk crime types.
- MFIU should prioritise operational analysis relating to drug trafficking, tax evasion, corruption, gold and gems smuggling and other environmental crimes, human trafficking and TF to reflect the risk profile.
  - Improve international cooperation and information sharing in keeping with the risks.
- LEAs (particularly DATC, CID, ACC and Customs) need to significantly improve their integration of financial intelligence into financial investigations.
- MFIU should increase proactive disseminations to LEAs and develop proactive intelligence products to draw attention to criminal activity that may not be known to LEAs (e.g. identify predicate offences, target significant ML syndicates, etc.).
- Myanmar should consider reforms to the operational independence of the MFIU, with a clearer delineation from AFCD, while ensuring that resources allocated remain strong.

- Consider how other agencies (e.g. CBM, IRD, MAC) could support MFIU in its analysis and outreach work. This should involve the exchange of staff.
- Strengthen analysis, financial investigation capacity and capability in MFIU and each LEA (including ACC and Customs) to raise the level of skill in developing and using financial intelligence.
- Increase the resources for LEAs for financial investigations related to predicate offences, ML, proceeds of crime and TF (see IO.7-9).
- Increase the scope and volume of strategic analysis undertaken by MFIU.
- MFIU and Customs should obtain and make use of cross-border reports, prioritise cross-border offences and deepen the analysis of cash declarations.
- MFIU should engage with IRD and Customs on priority risks and consider data mining projects with IRD on tax.
- Prioritise feedback on STRs and risk issues to AML/CFT supervisors (see IO.3) and outreach to FIs/DNFBPs (see IO.4).

ML Offence (Immediate Outcome 7)

- Issue binding instructions and increase awareness for all LEAs to prioritise and conduct parallel ML investigations with predicate offences
  - Develop and implement ML investigation policies and procedures for each LEA with a focus on ML associated with key risks - domestic and cross-border.
- Increase the use of ML investigations beyond the tracing of tainted assets after a predicate investigation.
- Support better awareness and understanding of LEAs and prioritise the targeting of third party money laundering and using ML investigations to identify and target networks at the profit taking level of crime.
- Better target priority areas for ML investigations beyond predicate offences where convictions have been obtained.
  - Support investigation of transnational ML cases with formal cooperation (MLA).
  - AFCD should consider an expansion to larger cities to work alongside DED/BSI in the key hotspots for ML cases.
- Increase financial investigation capacity in each LEA to ensure that they provide experienced investigators to ML scrutiny boards.
  - Build capacity (both investigators and prosecutors) to support high-quality briefs of evidence and conduct of ML prosecutions.
  - Ensure cooperation and coordination between each LEA's AML Unit/Wing

- Pursue priority reforms to the judicial system including and beyond ML/TF prosecutions to address systemic weaknesses and resource challenges with the courts.
- Address significant capacity and integrity challenges with the judicial system.

Confiscation (Immediate Outcome 8)

- All agencies should prioritise targeting and asset tracing investigations, restraining and seizing assets, including coordinating with the MFIU.
  - Prioritise asset tracing, restraint and confiscation for offences going beyond drugs, especially corruption, tax evasion, environmental crime, gold smuggling, jade smuggling, etc.
  - Consider requiring a parallel criminal assets investigation with all serious predicate investigations.
- Amend legislation to ensure that confiscation of corresponding value can occur and ensure that prosecutors and the courts are aware of the availability of such remedies.
- Prioritise improving intelligence, investigative and confiscation measures to deal with cash smuggling. Legislate to empower Customs to confiscate undeclared cash.
- Establish SOPs and priority actions to act to freeze assets at an early stage in investigations.
- Develop more comprehensive procedures and mechanisms and dedicate resources to manage seized assets or consider establishing an asset management unit or protocols in MFIU, MPF, ACC, etc. to preserve the value of seized goods until confiscation.
- MFIU and other LEAs should seek international cooperation, including pursuing MLA and obtaining domestic orders against criminal proceeds located overseas.
- IRD should coordinate with MFIU and other LEAs to deepen asset tracing, freezing and confiscation in relation to tax offences. Tax should be considered as an alternative measure to confiscate proceeds of crime.
- Legislate to ensure explicit legal authorities to support and govern undercover policing techniques and controlled deliveries to trace proceeds of crime.

163. The relevant Immediate Outcomes considered and assessed in this chapter are IO.6-8. The recommendations relevant for the assessment of effectiveness under this section are R.3, R.4 & R.29-32.

Immediate Outcome 6 (Financial intelligence for ML/TF and predicates)

General frameworks

164. There is high-level political support for the MFIU. The AML Law provides that the AMLCB designates the MFIU, which occurred in 2016 when the Anti-Financial Crime Division (AFCD) of the Myanmar Police was designated to perform the functions of the FIU. The AML Law sets out the duties and functions of MFIU, which are in keeping with the international standards.

The MFIU is designated as an organisation which may operate freely to give the result of analysis and other relevant information to the relevant responsible persons or organisations urgently and to cooperate with the requests of internal and external partners. The MFIU sits within the AFCD with many staff holding dual roles within the MFIU as analysts and the AFCD as investigators.

165. AFCD has an establishment of 180 personnel, although only 64 persons were appointed at the time of this report. As various AFCD staff perform both FIU and financial investigation tasks, there are no exact numbers of staff who are working as the MFIU at any given time.

166. AFCD is also the MPF specialist ML/TF investigation unit, and the financial investigation side of the AFCD receives disseminations from the FIU side, as do other parts of the MPF and other LEAs. The AML designates AFCD with responsibility to form joint agency Scrutiny Boards to investigate ML/TF offences, proceeds of crime and assets of terrorists and terrorist groups.

Use of financial intelligence and other information

167. LEAs' use of financial intelligence and information overall is low compared to the number of STRs or predicate offence cases. BSI and the AFCD itself are the LEAs that most regularly make use of MFIU information for investigations.

168. MFIU's financial intelligence has been used by AMLCB to initiate ML investigations. However, MFIU's financial intelligence is not regularly and systematically used to initiate predicate offence investigations.

169. MFIU did not report receiving any requests for financial information or intelligence from any other LEAs.

170. MFIU supported 36 ML cases investigated by BSI and AFCD-led scrutiny boards from 2014 to 2017. Of these cases, 21 cases were relating to drug crime, two cases were relating to trafficking in person crime, one hundi case, one terrorism case, one fraud case and eight other cases. Most of the cases relate to drug trafficking. Myanmar did not provide any statistics to show ML investigations related to tax evasion, corruption or environmental crimes.

171. Myanmar law allows LEAs to directly obtain access to certain financial data from both public and private sector entities. This includes tax records, company records, real estate and movable property records. Despite these powers, Myanmar competent authorities do not use financial intelligence from MFIU for evidentiary purposes to support investigations and prosecutions, or to identify, trace and detect criminals and proceeds of crime. They obtain information directly from other government agencies and via search warrants.

172. Financial intelligence created by MFIU is often used in ML/TF investigations or to develop evidence and trace proceeds related to ML/TF. The use of financial intelligence in investigations related to predicate crimes is however limited, and not all LEAs use financial intelligence to support their investigation.

173. Some LEAs, especially DED, CID and BSI create their own financial intelligence by using human intelligence and financial data to investigate, trace and restrain assets and detain suspects.

Figure 7

Mr. Y.T. Case

In 2014 the DED seized 301,000 amphetamine tablets, one heroin block (market value of 1,540 million kyats – approx. USD 1.14 million), two small arms and bullets from offender Mr. Y.T. and his wife in 2014.

DED investigations found that Mr. Y. Ye Tun Kyaw and his wife had used proceeds of drug trafficking to purchase companies, hotels, houses, apartments, shops, warehouses, motor vehicles, vessels, businesses in Yangon and Sitwe Cities and bank accounts in domestic and foreign countries.

This case was transferred to AFCD to examine ML offences and assets. The case opened in October 2014 and a full ML investigation commenced in April 2015. Mr. Y.T. and his wife were charged with ML and many assets were identified as involved with drug trafficking. Given the timing of the conduct, asset confiscation actions can be taken under the Control of Money Laundering Law (2002) and the AML Law (2014). The case was being prosecuted under both laws at the time of this report.

174. A lack of understanding of the TF risks in Myanmar by ROs results in the MFIU receiving little quality information related to TF (i.e. only one STR related to terrorism).

175. CT and related TF matters have been pursued by Myanmar Police with strong support from the MFIU. MFIU gives priority to TF analysis and works with other agencies to obtain and share information to support their development of financial intelligence on TF.

176. Customs intelligence products do not make use of financial intelligence including cross-border transaction reports.

177. ACC has not used financial intelligence and has not conducted financial investigations.

178. IRD creates its own financial intelligence for the purpose of tax collection only.

Reports received and requested by competent authorities

179. MFIU collects a wide range of transaction data including STRs, immovable property transactions, cash transactions and gems purchasing data from a wide range of ROs. Despite obligations on all relevant FIs and DNFBPs, at the time of the report only banks had filed STRs, and threshold reports are rarely reported by other sectors. MFIU is designated to receive CTR reports, however the threshold amount is 100 million kyat (equivalent to approx. USD75,000) and USD10,000 and other equivalent amount for any foreign currencies transactions.

180. MFIU receives reports through its electronic reporting system, encrypted report files through CDs/Flash drives and paper forms through the post.

Table 4: Reports received by MFIU – STRs, CTRs, others[52]

Report types	2012	2013	2014	2015	2016	2017 (Aug)
STR Reports	107	45	51	44	786	1,499
Cash Transaction Reports	191,834	228,259	269,183	412,036	399,778	230,556
Immovable Property Transaction Reports	1,248	822	1,077	2,104	3,378	903
Movable Property Transaction Reports	3	3	1	76	112	167
Cross border cash declarations	3,118	2,869	1,201	546	602	458
Myanmar Gems Enterprise	1,166	428	763	3,676	-	-
Mining Department	-	-	-	-	-	-
Share (Banks/ Companies)	36	17	18	-	3	-
Exchange Counter	3,727	3,957	3,053	-	-	-
Myanmar Insurance Enterprise	-	-	-	3	-	-
TOTALS	**201,239**	**236,400**	**275,347**	**418,485**	**404,659**	**233,583**

181. Most of the STRs and CTRs reported to MFIU are from the banking sector. No STRs have been reported by non-bank FIs or DNFBPs.

182. There was a very significant increase in the numbers of STRs reported by the banking sector during 2016 and 2017 (2,000% p.a.). This reflects increased outreach and guidance (MFIU and CBM), increased AML supervision by the CBM, entry of foreign banks into the market in Myanmar and the introduction of online reporting for banks. Despite the proportionally huge increases on previously years, the numbers of STRs reported was low overall, even from the banking sector, and is not in keeping with the risk profile.

183. The narrow scope of sectors filing STRs limits the reports available to the MFIU for analysis and there are no STRs related to gambling activity or 'ceasefire groups'.

184. Since 2016, MFIU has received 90% of reports submitted by reporting agencies, chiefly banks, through the MFIU electronic reporting system. MFIU is planning to extend the electronic reporting system to the DNFBP sector. For reports received in paper form, MFIU registers the submitted reports and enters critical data into a form created by MFIU. Customs provides monthly cash declaration reports in a searchable format. DNFBPs provide monthly reports, but in paper form.

185. STRs received before 2016, CTRs from 2015 and 2014, and all immovable property transaction reports are able to be electronically searched. All other paper-based MFIU documents, while scanned, are only searchable via a manual index and have not yet been captured to ensure that each piece of data is searchable within the database.

[52] Including gem reports, and other reports.

186. The assessment team has some concerns about the infrastructure and business continuity of the MFIU, with only a single database access terminal. MFIU is planning to improve operational analysis and strategic analysis, capacity building for staff, sharing knowledge on AML/CFT to relevant agencies, enhancing cooperation with regional and international AML/CFT agencies and enhancing coordination with inter-governmental agencies which are involved in the AML/CFT regime.

Table 5: Customs Department reports to MFIU

Year	2012	2013	2014	2015	2016	2017	Total
Transaction Report	3,118	2,869	1,201	546	602	458	8,794

187. The number of cross-border cash reports from 2015–2017 is low in the context of Myanmar's cash based economy and the increase in cross-border movement and the assessed risk profile. Customs detected only six incidents of non-declaration from 2006-2017. Customs reported all of these detections to MFIU, BSI and CBM as cross-border cash cases. MFIU seldom uses this information to create financial intelligence. There is an absence of analysis of cross-border cash declarations.

Operational needs supported by FIU analysis and dissemination

Analysis

188. MFIU lacks analytical software to support the production of intelligence and is over-reliant on manual processes. The quality of analysis and the 'value-added' from many data sets from other relevant agencies has gaps, reflecting overly manual processes and challenges with timely access to data from other agencies.

189. For STRs, the analysts compare the data involved in the report to the lists investigated by scrutiny boards and the data held by MFIU database and MFIU's check list. MFIU's check list is an instruction for analysts to review STRs received from ROs, request further data from ROs and complete an STR analysis summary on the STR database.

190. If it is required, MFIU will request other CDD/KYC information from ROs, criminal records, tax records, and company registration information from relevant departments and organisations, including law enforcement agencies, tax authorities and the company registration department in order to compare and check with suspicious transactions.

191. MFIU does not have a process of prioritising analysis of STRs. MFIU received a much larger number of STRs in 2016 and 2017 (over 2,000) than in previous years. The MFIU indicated that all STRs have been analysed and are searchable in MFIU's database.

192. MFIU does not have direct access to relevant government records. AMLCB membership supports information exchange between agencies. MFIU analysts obtain information held in other agencies' databases such as census registration, business registration information, vehicle information, tax records, criminal records etc. However, MFIU does not regularly use IRD tax data in its analysis.

193. MFIU does not have any MOU or any agreement with domestic agencies. However, MFIU has good cooperation with relevant agencies who are members of AMLCB. For an informal request, MFIU can get a response within 24 hrs. For formal requests, it takes around 3 days, for requests through MOFA up to 10 days.

194. MFIU has powers to obtain further information from any of the ROs in the course of analysis or investigation. These powers to access information can be exercised by the scrutiny board and investigation body but in practice, CBM will send a request to FIs on behalf of MFIU and LEAs. CBM sets a timeframe of 5 working days for ROs to respond to data requests. MFIU also obtains further information related to STRs and CTRs directly from ROs.

195. There is a lack of staff in MFIU's analysis and operation functions. AFCD is both FIU and financial investigator. Many staff work dual roles in FIU and AFCD, but there is more focus on investigation functions, and specialised intelligence analysis skills need further development and dedicated resources.

196. MFIU's analysis function benefits from secondments from other agencies: 2 from Customs, 2 from IRD, 2 from Department of Agricultural Land Management and Statistics and 1 from BSI. This supports both analysis and operation functions. This is very positive and the MFIU would benefit from CBM staff also being seconded to analytical and outreach functions.

197. The analysis output is very low compared to the number of STRs received by MFIU, as shown in the table below.

198. MFIU is not sufficiently proactive in its operational analysis and there is no strategic analysis. The main focus of analysis is in response to requests by LEAs, CBM and MOPF. There is no indication of proactive analysis of FIU holdings to identify possible matters related to high-risk categories identified in the NRA (e.g. tax evasion, corruption, etc.).

199. MFIU analysis related to information requests from CBM concerning bank capital, identified a strategic issue with loan back schemes being used to increase capital ratios. MFIU intelligence products and disseminations resulted in the CBM issuing a notice to financial institutions that bank loans are not acceptable as a source of funds to establish a new private bank or invest a large amount in a bank or NBFI.

200. For server security, FIU has restricted access to enter the server room in the operation section. There is no internet connection to MFIU server in order to avoid external interference to secure information. The server is only accessible within the MFIU local area network. Staff download the encrypted reporting files. When the internet connection is cut out at 4 p.m., those encrypted files are uploaded to the server. Only authorised staff can extract this information from the server. MFIU's analysts cannot access the MFIU database directly. They need to submit a request to the operational section to search the reports for them.

Dissemination

Table 6: Receipt / analysis / Disseminations from the MFIU

Year	Receiving			Dissemination of STRs (results of analysis)								Investigating Cases
				Spontaneously					Upon Request			
	CTR	PTR	STR	BSI	CID	MPF (Hq)	Local Police	AFCD	MOPF	CBM	MPF	
2013	235,102	1,253	45									
2014	273,455	1,841	51							8		4
2015	412,585	5,856	44	16				4	4	58		10
2016	400,383	3,490	787	12				1	17	55		11
2017	230,806	1,070	1,165	6	2	2	3	1	2	22	2	11
Total disseminations				**47**					**168**			**36**

201. The head of MFIU makes the decision to disseminate. This occurs when there are reasonable grounds to believe that an ML/TF or predicate offence has been committed.

202. LEAs and CBM are receiving financial intelligence spontaneously from MFIU. However, LEAs' use of financial intelligence and information overall is low compared to the number of STRs or predicate offence cases.

203. The MFIU made 47 STR case disseminations, involving 264 STRs to BSI, MPF (human trafficking, CID, AFCD and Local Police) between 2015 and 2017 where there were grounds to suspect ML/TF and predicate offences were being committed. The very low numbers of disseminations to AFCD are noteworthy. It is not clear whether the MFIU has disseminated STRs to the DED. The scope of dissemination of FIU products to LEAs does not wholly reflect the risk profile. While the disseminations data shows a very recent increase in the period 2015-2017, these led to just a few investigations.

204. BSI indicated that MFIU disseminations were of a good quality. However, no further indicators can confirm the quality of disseminations by MFIU from LEAs. Some MFIU disseminations have been used by the scrutiny board to initiate ML investigation. The MFIU supported 46 ML cases investigated by scrutiny board from 2014 to 2017.

205. For information security, sections 12(a) and 66 of the AML Law prohibits disclosure of FIU information, except in cases specified in the AML Law. MFIU, LEAs and public officers are similarly bound to confidentiality by the Officials Secrets Act. FIU staff must follow the procedures stated in the staff duty manual to maintain and secure confidential/sensitive information.

206. Myanmar has not established a sufficiently secure channel for disseminating intelligence. The dissemination of MFIU intelligence reports is undertaken by sending letters in hard copies marked confidential and sent by hand or through facsimile. It is common for MFIU and LEAs to share intelligence and information through the phone calls to get a very quick and effective response from their counterparts. However, it poses greater risks of breach of confidentiality and security of the information and intelligence.

207. MFIU and relevant LEAs (BSI, AFCD MPF etc.) generally rely on informal channels to exchange information and financial intelligence requests. Channels for dissemination and response are governed by AML Law and the Official Secrets Act, however, there were no records of informal exchange. This may raise questions about how information is protected and secured.

Cooperation and exchange of information/financial intelligence

208. There is good cooperation and exchange of financial information and intelligence between MFIU and other competent authorities.

209. CBM and other regulators make quite regular use of MFIU information to support regulatory and supervisory work. CBM and MOPF also request MFIU to share information on market entry. From 2014 to 2017, disseminations upon request were made 23 times to MOPF, 143 times to CBM, and 2 times to MPF.

Overall conclusions on Immediate Outcome 6

210. LEAs do not prioritise the use of financial intelligence for investigations of predicates, ML and TF. With the exception of DED, AFCD and BSI, LEAs do not integrate financial

intelligence with investigations. MFIU disseminations support asset tracing cases and predicate cases undertaken by DED, BSI and AFCD, which adds to effectiveness. DED, CID and BSI also create their own financial intelligence to support their investigations. MFIU is able to receive a wide range of information, but the quality and range of STRs received is narrow, and does not provide a good base for analysis. MFIU is not sufficiently proactive in its analysis, and is heavily reliant on manual processes, but regular secondment from other agencies enhances its analysis function. MFIU has good cooperation and exchange of financial information with CBM, MOPF and other competent authorities, and MFIU information is used by regulators to support regulatory and supervisory work.

211. Myanmar has a moderate level of effectiveness for Immediate Outcome 6.

Immediate Outcome 7 (ML investigation and prosecution)

212. Myanmar's legal system provides a broad range of powers and responsibilities for LEAs to investigate and prosecute ML offences. Legislative provisions allowing undercover policing methodologies, including the use of controlled deliveries, are implied and not explicit, which effects the ability of agencies to infiltrate and disrupt criminal syndicates

ML identification and investigation

213. All ML investigations within Myanmar commence as a result of a referral to the AMLCB which then forms a scrutiny or investigation body to assess the case. These bodies are joint agency teams generally headed by a senior BSI investigator and include a representative from the AFCD, a representative of the department which conducted the predicate investigation, and any other required agencies. The officers attached to these bodies are senior officers who are then able to task other staff to carry out the investigative tasks. It is evident that there is strong cooperation within departments at this level as a result of this structured approach.

214. Overall, ML investigations rely primarily on a referral to the AMLCB by predicate offence investigators and often only after a finding of guilt has been handed down in relation to those predicate offences.

215. LEAs' awareness of the ML law is low and investigative strategies do not include a real focus on following the money within criminal networks, this is particularly evident when funds are remitted offshore. The majority of ML cases undertaken by competent authorities have related to drug and human trafficking crimes, this is despite the NRA identifying the top three risk offences as tax evasion, environmental crimes and corruption.

216. Between 2014 and 2017 there were 46 ML cases investigated by AMLCB-formed scrutiny boards. In these cases, 21 were related to drug crime, two to trafficking in persons crime, one hundi case, one terrorism case, one fraud case and eight other cases.

Figure 8

Case Study – ML Related to Human Trafficking

A CID investigation of human trafficking from Rakhine State to Malaysia identified an offender, Tin Saw, who had purchased 17 plots of land (valued over 90 million kyats – approx. USD 67,000) and a number of houses using proceeds of crime. He also laundered proceeds by purchasing a winning State Lottery ticket of 150 million kyats (approx. USD 110,000) from the actual winner for 151.5 million kyats (approx. USD 111,100). Tin Saw, was convicted for

trafficking persons and sentenced to 3 years rigorous imprisonment.

An AFCD-led Scrutiny Board formed in May 2015. The ML investigation found Tin Saw owned 3 real properties, 16 plots of land, 2 motor vehicles, 2 motor cycles and 8 bank accounts with a total value of 506.85 million kyats (approx. USD 375,000). ML prosecution commenced in March 2016 and the trial was underway at the time of this report.

Figure 9

Case Study – ML related to drug trafficking

A CCDAC drugs investigation identified possible proceeds of crime. CCDAC transferred the case to AFCD to investigate in October 2015. The offender owned a brick building and a rubber plantation (estimated value 54.63 million kyats – approx. USD 40,500). In July 2016 the offender was convicted of ML, sentenced to 10 years rigorous imprisonment and the brick building and rubber plantations (valued at 54.63 million kyats) were confiscated.

217. At law the BSI, AFCD and ACC are designated as being able to conduct their own ML investigations without the need to refer to the AMLCB. However in practice all ML investigations are subject to a referral and assessment by the AMLCB. Due to this practice there was little evidence of any parallel financial investigations being carried out. The decision to refer a case for ML investigation is based solely on the amount of assets suspected of being acquired with the proceeds of crime that have been identified in the predicate crime investigation.

218. BSI and AFCD have the best developed financial investigation capacity and lead most of the work to investigate ML cases. BSI is experienced in conducting financial enquiries as part of their other predicate offence investigations.

219. All ML investigations discussed during the ME on-site visit reflected an exclusive focus on self-laundering where a conviction for a predicate offence had been or was very likely to be obtained, and the assets acquired using the proceeds of crime had already been identified. The ML offence appears to be pursued chiefly in support of proceeds of crime confiscation efforts, rather than identifying additional actors involved in the financial aspects of profit driven crime. This narrow focus on identifying assets for confiscation efforts has limited the ability of LEAs to expose others involved in the offending at both a higher and subordinate level. Only one ML case was shared which extended to the investigation of ML by a party not directly involved in the predicate. The case involved a foreign predicate drug trafficking conviction with the wife of the convicted trafficker discovered to have concealed proceeds of crime in property in Myanmar.

220. LEAs did not demonstrate a deeper understanding of potential ML investigations. LEAs show a strong preference to investigate and charge predicate offences in the first instance. The AMLCB, BSI and AFCD are actively supporting an ML education program and run awareness raising workshops on a regular basis with the support of TA providers.

Consistency of ML investigations / prosecutions with threats, risk profile, & AML policies

221. Predicate drug offences make up a significant portion of overall police investigations within Myanmar, however there are very few ML investigations involving drug cases. While the majority of drug cases are low level drug possession or use charges, in 2016 alone there were

984 high level investigations undertaken. These cases involved the trafficking of drugs but only four cases were referred to the AMLCB for assessment of ML. Data is set out below:

Table 7: Predicate Offence Cases by Category

Predicate investigations	Number of cases per year[53]					
	2012	2013	2014	2015	2016	2017
Illicit trafficking in narcotic drugs	4,006	4,928	6,696	6,414	8,800	9,525
Trafficking in humans/ migrant smuggling	120	102	124	130	130	225
Corruption and bribery	-	-	8	9	13	40
Terrorism, including terrorist financing	-	-	-	-	-	-
Sexual exploitation, including sexual exploitation of children	285	308	379	390	548	445
Illicit arms trafficking	7	7	6	6	14	1
Illicit trafficking - stolen /other goods	73	102	37	45	62	4
Fraud	1,895	1,865	2,095	2,017	2,849	4,443
Counterfeiting currency	8	10	23	38	38	14
Counterfeiting and piracy of product	1	1	3	-	2	3
Environmental Crime (e.g. illegal logging, jade smuggling, wildlife smuggling)	94	144	238	232	298	355
Murder, grievous bodily injury	3,504	3,342	3,647	7,496	3,744	6,873
Kidnapping, illegal restraint, and hostage taking	27	3	5	3	11	14
Robbery or theft	3,633	3,907	4,320	4,155	4,659	5,470
Smuggling (Customs & excise duties)	-	-	-	-	-	-
Extortion	17	40	41	44	82	90
Forgery	16	6	26	14	23	88
Piracy (e.g., maritime)	-	-	-	-	-	-
Insider trading / market manipulation	-	-	-	-	-	73
Tax crime	60	49	54	40	51	-
Money Laundering	5	3	9	10	11	9

Table 8: ML Cases by Year

	2012	2013	2014	2015	2016	2017	Total
Money Laundering Cases	5	3	9	10	11	9	**47**

[53] Myanmar was unable to clarify whether these figures relate only to registered investigations or prosecutions

Table 9: Investigation (Formation of Money Laundering Scrutinising Body), Prosecution and Action Taken

Year	Scrutinising Team	Case closed	Number of freezing orders & amounts frozen	Ongoing ML investigations	Prosecutions	Taken Action						
						Verdict		Offenders	Order	Confiscation order (million kyats)	Punishment	Amount realised under confiscation (million kyats)
						Guilty	Not guilty					
2014	4	1	MMK7,137million USD 486,437 SCD370; MYR 29	1	2	1	-	3 (Male) 4(Female)	Case 181/2015 Myitkyinar District Court	4893.8	CMLL S.22/32 10 Years prison AML Law Section 43 7 Years prison	4893.8
2015	15	8	MMK 2,329.69 million THB 85163	-	7	3	-	8(Male) 3(Female)	Case 83/2016 Tachileik District Court	54.63	CMLL S. 22(b) 10 Years prison	54.63
									Cases 84 & 85/2016 Tachileik District Court	798.39	CMLL S.23 10 Years prison AML Law S.43 10 Years prison	798.39
									Cases 1/2017 Tamu District Court	10.93	CMLL S.22(b) 10 Years prison	10.93
2016	11	3	MMK 8,990 million; Car (7) USD700.72; SCD2,250	5	3	-	-	30(Male) 7(Female)				
2017	16	7	MMK 1,371.35 million	9	-	-	-	26(Male) 5(Female)				
Total	46	19	MMK 19829.47 Million; USD487,138 SCD 2620; MYR29; THB 85,163; Car (7)	15	12	4	-	67(Male) 19(Female)		5757.75		5,757.75

222. Myanmar's investigation and prosecution of ML cases is not in keeping with its risk profile, nor with the most areas of priority investigation. The pursuit of ML matters is not in keeping with the patterns of predicate offending investigated and prosecuted.

223. In both 2016 and 2017 the predicate offence category which led to the most ML investigations was drug related crime. Myanmar appears to give significant priority to investigating predicate drug offences which is reflective of the very large and transnational nature of the drug trade in Myanmar. However, very few of the drug related ML cases involved international cooperation.

224. The conduct of ML cases does not yet reflect policy priorities. As discussed in IO.1, Myanmar does not yet have a national AML/CFT strategy or any agency-level policies for ML investigations in line with Myanmar's ML risk.

225. ML investigations follow the key risks identified by the assessment team and independent reports (i.e. drugs), although this diverges with the draft NRA findings (see IO.1). The draft NRA outlines the top three threats as tax evasion, corruption and environmental crimes, but there have to date been no cases relating to these crime types referred to the AMLCB for investigation. The ACC, as an independent body tasked with the investigation of corruption, and designated as capable of investigating related ML matters, has not referred any matters to the AMLCB, nor has it conducted any independent ML investigations. IRD is responsible for taxation matters but undertakes no enforcement action and has not yet used AML measures. MPF have overall responsibility for the investigation of environmental crime (including jade smuggling), and whilst there have been a significant number of investigations surrounding the illegal exportation of timber, metals, gems and wildlife, there have been no related ML referrals made to the AMLCB.

226. Prosecution of ML offences is hampered by the lack of capacity and by procedural issues within the criminal justice sector. The requirement for judges and prosecutors to concurrently run an extremely large number of cases, coupled with the requirement to call a large number of witnesses, results in very significant delays in the finalisation of criminal trials. During discussions with the assessment team it was also highlighted that there were challenges with relatively new concepts and terminology contained in the AML Law being translated to the Burmese language and then applied in criminal trials.

227. Whilst the UAGO and BSI did not report any concerns in relation to the quality of ML case files presented by LEAs, this may be in part due to the fact that all ML cases were based on a successful predicate prosecution and focused chiefly on identifying proceeds of crime for confiscation following a conviction of the ML offence.

228. Prosecutors at the UAGO are all generalists with no prosecutors being specialists in prosecuting areas such as financial crime. Prosecutors at the BSI are more specialised with complex financial crime matters, including ML cases.

229. Overall, there is a lack of guidance and training resources for judges and prosecutors to understand and apply the relatively new legal and procedural elements of the AML Law. It should however be noted that some prosecutors and judges have attended ML training programs coordinated by the MFIU and other international partners.

Types of ML cases pursued

230. As discussed above, the few ML cases that have been pursued by Myanmar are focussed on self-launderers who have come to light as the result of predicate offence investigations, with the vast majority relating to domestic drug cases. The ML investigations are never conducted in parallel to the predicate case, but always follow on from the completion of the predicate offence investigation and, in most cases, commence once a conviction for a predicate offence has been obtained and significant assets obtained with the proceeds of crime have been identified.

231. Given that the AML Law is the only statute with powers to reverse the burden of proof in relation to suspected proceeds of crime, the ML investigations conducted appear to be primarily pursued in support of proceeds of crime confiscation efforts. They are chiefly asset tracing investigations, rather than a financial investigations dedicated to identifying networks of persons involved in laundering proceeds of crime. The ML investigations to date have not identified other parties apart from the primary predicate offender, and have not focused on following the money in order to reveal further criminality.

232. The focus on domestic predicate offences has also meant that ML investigations have been focused on domestic actors. AFCD, BSI and other LEAs have not, in general sought cooperation from foreign authorities to identify targets or assets that may have moved beyond Myanmar's borders or assets that may have originated outside Myanmar.

233. LEAs have not focused on the role of third party professional money launders operating in Myanmar or outside of Myanmar to service organised crime syndicates which are very active in the country.

234. ML investigations have not focused on the role of ML through or involving ceasefire areas or those armed ethnic groups 'ceasefire groups'.

235. There is no evidence of an increase in focusing ML investigations on those threats assessed as the highest such as tax evasion, environmental crime and corruption, with most investigations originating from drug and human trafficking predicate offending.

236. The lack of third party ML investigations and prosecutions is further evidence of the need for LEAs, prosecutors and the judiciary to undergo specialised training in ML and financial investigations.

Effectiveness, proportionality and dissuasiveness of sanctions

237. The AML Law of 2014 allows for a term of imprisonment up to ten years for a natural person, as well as a fine. In terms of legal persons, the company or organisation is subject to a fine and the beneficial owner can have a term of imprisonment of up to seven years imposed.

238. It was reported to the assessment team that the majority of those charged with ML offences upon conviction are sentenced to the maximum term of imprisonment as well as having a fine imposed, and having any of their assets which have been identified as having been acquired with the proceeds of crime confiscated. Whilst this may appear to be effective and dissuasive it must be noted that in nearly all cases the offender was also convicted of a predicate offence and sentenced to a much more lengthy concurrent term of imprisonment. The ML conviction was chiefly pursued to trigger asset forfeiture provisions.

239. Whilst the legislation provides an avenue for criminal sanctions to be applied to legal persons, there were no investigations reported to the assessment team in which a legal person was charged with an ML offence. Overall, there seemed to be a lack of understanding of beneficial ownership and how this factors into to ML offending.

Other criminal justice measures

240. Where a conviction for ML offences was not possible, Myanmar has not shown evidence of pursuing other legal measures in order to disrupt ML.

Overall conclusions on Immediate Outcome 7

241. ML cases have not been prioritised and are not pursued in keeping with the risk profile. There is no evidence of parallel financial investigations, with ML investigations usually taking place only at the conclusion of a predicate offence investigation, and once assets have been identified. There is an exclusive focus on self-laundering, and this usually follows the completion of the predicate offence investigation, and the identification of assets obtained with the proceeds of crime. There is a lack of understanding by both investigation and prosecution officials of the potential of ML investigations and further specialist training for prosecutors and investigation staff is required.

242. **Myanmar has a low level of effectiveness for Immediate Outcome 7.**

Immediate Outcome 8 (Confiscation)

243. Myanmar's legal framework for restraint and conviction-based confiscation of proceeds and instruments of crime is set out in the AML Law, Narcotic Drugs and Psychotropic Substances (NDPS) Law and Criminal Procedure Code (CrPC). LEAs can directly issue restraint orders under the AML and NDPS laws. Confiscation is based on conviction, but the AML law includes a reversal of the burden of proof if the defendant cannot prove that their assets were legitimately obtained. The Anti-Corruption Law (2013) provides a basis for non-conviction based confiscation in relation to bribery and corruption. Powers to confiscate property of corresponding value is only available to the IRD in relation to tax offences.

Confiscation of proceeds, instrumentalities and property of equivalent value as a policy objective

244. Myanmar lacks clear policy objectives and agency-level operational priorities for pursuing proceeds of its major crime risks or other crimes and has a limited policy focus on pursuing instrumentalities of crime. Myanmar has not legislated to allow it to pursue property of equivalent value.

245. The AML law does, in part, provide the most comprehensive statutory scheme for tracing and confiscating proceeds of crime, but LEAs do not regularly use the powers in the AML Act or other laws to prioritise the pursuit of criminal proceeds and instruments of crime. As outlined in IO.7, when the ML offence is pursued, it is done so chiefly to trigger asset confiscation provisions, however this is not done systematically to target key crime types or criminal groups to go after the profit-taking levels of crime networks.

246. At the time of the onsite visit Myanmar only reported nine cases where assets were under restraint. The majority related to drug matters, with one terrorism matter and one human trafficking matter. A number of ongoing drug cases included a significant number and

value of assets under restraint. The small number and low value of assets seized or restrained is not in keeping with the risk profile of Myanmar.

Figure 10

Trafficking in Persons - Case Study 1

In April 2017, Mrs. M returned from China and offered Miss W 200,000 kyats (approx. USD150) per month to work in Mrs. M's dumpling shop in China. Miss W agreed and went to China via Muse. In July 2017 Miss W was sold by Mrs. M to a Chinese man for marriage for 50,000 Yuan. Mrs. M was arrested under the Anti Trafficking in Persons Law (2005), land bought by Mrs M after April 2017, and jewellery bought using cash from selling victims were seized.

Figure 11

Trafficking in Persons - Case Study 2

In March 2017, Madam M and associates deceived a young woman Miss L to work at Madam M's clothes shop at Pyin Oo Lwin City, Myanmar. Madam M brought Miss L into China and sold her to a Chinese man. In May 2017, Madam M and her associates were arrested under section 24 of the Anti-Trafficking in Persons Law (2005). A vehicle (valued at 30 million kyat – approx. USD22,220) and jewellery bought with the proceeds were seized.

247. ACC has only commenced actions to issue a limited number of seizing or freezing orders in late 2017. At the time of report, ACC had two cases with a combined total of MMK2,934 million (USD2.17 million) assets under restraint. ACC had not taken confiscation action.

Table 10 Freezing by Anti-Corruption Law

Order	Section/	Exhibit / property Seized	Order of the Court/ Date
9/2017 (26-5-2017)	Sections (56/63/512) 25-7-2017	Toyota Vehicle Est. value 20 million Kyat (approx. USD15,000)	The Court ordered seizure of the vehicle. Investigations were ongoing.
33/2017 (22-12-2017)		2 x houses- approx. 1,836 million kyat; 1 x condo-280 million; 1 x estate with gristmill- 798 million kyat. **Total** of 2,914 million kyat (approx. USD2.15 million)	The Court is scrutinising the assets of the case. Two estates with a building, one condo, a gristmill that is still setting up to operate, and one estate are temporarily seized.

Table 11 ACC Confiscation under the Anti-Corruption Law

Order	Section/ Date	Exhibit	Court Order / Date
6/2015 (27-8-2015) by ACC	ACC Law S.56 & CrPC s.512 - 18-12-2015	2.2 million Kyat (approx. USD1,600)	To confiscate 2.2 million Kyats (approx. USD1,600) - 22-3-2016.

248. IRD is the only agency that can confiscate assets on an administrative basis and this extends to property of corresponding value in the form of a pecuniary penalty order in tax

evasion cases. LEAs do not regularly refer matters to the IRD for consideration of tax assessments and related confiscation of unpaid taxes.

249. Myanmar was unable to identify the extent and frequency of its use of administrative and conviction-based confiscation of goods. BSI transferred several cases to IRD to levy tax based on predicate offences investigation.

Confiscations of proceeds from foreign and domestic predicates, and proceeds located abroad

Proceeds of crimes, instrumentalities and property of corresponding value

250. Authorities reported a mixed approach to seize and seek forfeiture of instrumentalities. The information and statistics that Myanmar provided were very limited and did not demonstrate regular confiscation of instrumentalities of crime. It is not clear that agency-level priorities include seizing and pursuing confiscation of instruments of crime except in cases where an ML investigation has commenced.

251. Myanmar could not provide comprehensive statistics of restraint of assets and confiscation based on criminal conviction. During the past few years, AFCD statistics show only three cases which resulted in the confiscation of proceeds of crime. There were additional confiscation actions highlighted in other case studies, but the available data indicates very low levels of confiscation in recent years.

252. Confiscation is non-existent or remarkably low for predicate offences such as environmental crimes, corruption and tax evasion. For example, MPF reported that there were no confiscations associated with tax, organised crime or sexual exploitation offences between 2015 and 2017, despite the significant numbers of predicate offences. In that period, there were 17 organised crime cases involving 75 defendants; 1,667 sexual exploitation (including of children) cases involving 1,705 offenders; and one criminal tax case. Myanmar was unable to provide details as to the numbers of these cases finalised or any statistics of related confiscation.

Table 12: BSI Investigation, Prosecution, Conviction & Confiscation – Various Predicates

Year	Investigation	Prosecution	Conviction (persons)	Confiscation (kyats)	Approx. USD equivalent
2012	124	112	46	244,338,529	$181,000
2013	346	2	4	937,600,000	$695,000
2014	301	148	24	9,214,695	$7,000
2015	212	23	15	10,650,000	$8000
2016	73	39	18	14,175,937	$10,500
2017 - to June	36	27	10		
Total	**1,092**	**351**	**117**	**1,215,979,161**	**$901,500**

Table 13: Anti-Corruption Commission - Prosecution and Confiscation

Year	Investigations	Prosecutions	Conviction (persons)	Confiscation (kyats)
2014	8	5	3	0
2015	9	3	3	0
2016	13	9	5	0

2017	25	13	3	0
Total	**55**	**30**	**14**	**0**

Table 14: DED Seizure of Properties Relating to Drug Offences

Year	Cases	Amounts (Kyats)	Approx. USD equivalent
2014	873	1,260,656,801	$950,000
2015	1,051	1,101,413,378	$825,000
2016	984	774,442,220	$580,000
2017			
Total	**2,908**	**3,136,512,399**	**$2,355,000**

253. The statistics and case studies provided by MPF illustrate that the value of confiscated assets are significantly lower than the proceeds generated from key crime types identified in the NRA. DED did not provide statistics for property confiscated following seizure. As shown in the table above, the value of seizures and confiscation compared to the numbers of cases and prosecutions is extremely low.

Table 15: Environmental Crime – Confiscated Instruments of Crime

Year	Cases	Offenders	Confiscated
2015	904	1513	Timber 3,919 Ton; Lead 6,041 kg; Engine 48; Bike 3; Vehicle 4; Adrift 2; Orchid 8 798 kg; Armadillos; 32.4 kg; Bile 3 kg; Tusk of a wild boar 38; Goat Horn 3; Various Bone 112 Kilo; Cranium 1.1 kg; Animal Horn 13;Tiger Hide 1; Tiger Bone 1; Animal Bone 1; Animal Hide 1; Goad Leg 4; Elephant Horn 5; Elephant Bone 4; Elephant Leather 65 kg; Horn 13; Tiger Hide 8; Carapace 5 kg; Parrot 188
2016	1251	1960	Timber 6,065 Ton; Lead 5 633 Kg; Engine 23; Bike 2; Vehicle 23; Adrift 5; Animal Horn 8; Wild Beast 0.5 kg; Monkey Fingernail 15; Gall-Bladder 1; Elephant Hide 196; Elephant Horn 3; Elephant Bone 2; Barking Deer 51; Cat 4; Various Bone41.25kg; Water Hen 1; Snake 445; Thanakha Bark 20 kg; Parrot 853
2017	1357	2059	Timber 7,836 Ton; Lead 1 346 Kg; Engine 48; Bike 1; Vehicle 3; Adrift 5; Animal Horn 12; Barking Deer 8 ; Wild Ginger 490 kg; Fragrant Wood 1.4 ton; Pied Hornbill 9; Orchid 12,100 kg; Armadillos 9; Tubers and bulbs 3964kg; Snake 1654 ; Tortoise 10; Carnivorous 195 kg ; Elephant Hide 33 Kilo ;Dead Tiger 1; Dead Porcupine 12; Pig Claw 2

Table 16: Terrorism – Confiscated Instruments of Crime

Year	Case	Offenders	Confiscated
2015	-	-	
2016	-	-	
2017	242	72	Iron ring (1); Iron Peg, 0.2 inches (10); Telescope (2); Knives(10); Mine Chips (2); Mine (2); Mask (1); Lighter(1); Gun(1); iron arrow (15); Marble (18); Catapult(3); Crowbar(1)

254. The tables above confirm that MPF and other LEAs are focusing on the instrumentalities of crime rather than the (much more valuable) proceeds.

Foreign predicates and property moved overseas

255. Myanmar does not have any experience in asset recovery with foreign counterparts, either for proceeds of foreign predicates located in Myanmar, or proceeds from domestic predicates laundered outside Myanmar. In some cases Myanmar financial investigations led to foreign accounts, but investigations did not extend to seeking details of assets held in those accounts and cooperation with freezing or confiscating such assets.

256. Myanmar has a legislative basis to request assets from a foreign jurisdiction and to repatriate assets back to requesting jurisdictions. Section 26(a) of the Mutual Assistance in Criminal Matters Law provides that Myanmar that can return and share the asset with the requesting state if they have a bilateral agreement. However Myanmar had not entered into any asset sharing agreements.

257. Myanmar made no MLAT requests for information, freezing or seizing assets or confiscation from foreign countries. However, MFIU sent several requests to foreign counterparts for financial and asset information to support the domestic investigation of ML offences and domestic confiscation under AML Law. Myanmar did not, at that time, seek cooperation from foreign partners in tracing and restraining assets, possibly held in those jurisdictions, that were suspected to be proceeds of crime subject to ML investigation in Myanmar.

Confiscation of falsely or undeclared cross-border transaction of currency/BNI

258. Despite the very significant risks faced from bulk cash smuggling, Customs authorities do not target cash, gold or gem smuggling at the border and do not seek cooperation from foreign counterparts to effectively target and restrain smuggled commodities.

259. Myanmar has a declaration system for cross-border control. The declaration threshold is USD10,000 or equivalent. This includes currencies, bearer negotiable instruments, and precious metals and stones such as gold or jewellery.

260. Myanmar identified a number of cases of detection of cash at the border, however, no suspicion of ML was reportedly raised. Furthermore, all the information relating to these cases was submitted to MFIU but no non-conviction based confiscation action was taken. It seems that there is a lack of awareness of the ability to detect whether cases relate to proceeds of a crime.

261. Myanmar Customs has power to seize currency and bearer negotiable instruments under the AML Law but cannot confiscate falsely declared currency and bearer negotiable instruments. Customs has to submit the falsely declared cases to MFIU and CBM to take further action under the AML Law.

262. Since 2009, the Customs Department has only taken action on two occasions for false declarations / disclosure of cross-border movement of currency.

Table 17: Myanmar Customs – Detection of False Declaration of Cash

Date	Nationality	From	To	Category
30-11-2015	Thailand	Bangkok	Yangon	Kyats - 1 800 000
10-5-2017	Myanmar	Myanmar	Bangkok	33,000 EUR; 5,261,000 JPY; 28,505 MYR; 33,193 CNY; 610 GBP; 50,700 TWD; 1,001,000 HKD

Figure 12

Case Study – Confiscating Undeclared Cash

In May 2015, Mr. U was arrested at Yangon Airport en route to Thailand together with 9 kinds of foreign exchange currency including USD467,240. Interrogation found the beneficial owner of a money changer, Mr T. The BSI investigated and prosecuted both offenders under the Foreign Exchange Management Law (2012) and the Penal Code. Both were convicted in 2017 and sentenced to 6 months rigorous imprisonment. USD467,240 was confiscated.

263. Customs does not sufficiently regulate or enforce controls on the cross-border movement of cash. Customs focuses on export controls and does not make sufficient use of its powers to restrain or confiscate smuggled goods at the border. This particularly relates to high-risk areas and high-risk smuggling of gems, gold and timber.

264. If a person fails to declare cross-border movement of cash, gold or gems (AML law Section 39), the goods will be detained. However, if they present proof for these goods Customs will return the goods and the matter will be recorded. Applicable fines for undeclared goods will be paid. If the person cannot provide proof, Customs will inform MFIU and seize the goods.

Consistency of confiscation results with ML/TF risks and national AML/CFT priorities

265. The range of matters, the number of cases and the amounts of assets identified is miniscule when considering Myanmar's risks and the amount of criminal proceeds being generated. The value of confiscation of proceeds and instrumentalities for predicate cases is very small.

266. DED has taken the greatest number of actions to seize assets that represent proceeds of drug offences. Neither the ACC nor BSI has taken action to trace and confiscate proceeds of corruption and bribery offences, despite the very significant risks. So far, there are no confiscation cases for high-risk crime types of environmental crimes, jade smuggling, corruption or tax. There is one case of confiscation related to proceeds of human trafficking.

267. Legal regulations or guidelines to manage asset forfeiture are not sufficiently clear to ensure effective implementation.

268. The processes for asset management are not well developed or supported and the value of assets is not well preserved. This ultimately undermines the effectiveness of confiscation. Myanmar does not have a centralised asset management system before final confiscation order.

269. LEAs are responsible for managing seized assets at the local level. Exhibits that were confiscated are managed by the relevant agencies. For example, illegal logs will be auctioned by

Ministry of Environmental Conservation and Forestry, wildlife will be preserved at a zoo or national park. Carcasses will be sent to a museum (e.g. ivory, tiger skin etc.) or destroyed.

Overall conclusions on Immediate Outcome 8

270. Myanmar does not have a policy focus on pursuing and confiscating proceeds/instrumentalities of crime, and these have not been followed where the proceeds have been moved to other countries. Myanmar's legislation does not allow the confiscation of property of equivalent value, except to the IRD regarding tax offences. Myanmar Customs cannot confiscate falsely declared currency and bearer negotiable instruments. While statistics of restraint and confiscation are not well maintained, the available data indicate that Myanmar's confiscation results are minimal and do not reflect ML/TF risks.

271. **Myanmar has a low level of effectiveness for Immediate Outcome 8.**

Key Findings and Recommended Actions

Key Findings

TF offence (Immediate Outcome 9)

- Myanmar's commitment to combating terrorism, including through investigations, is clear and is complemented by high-level interagency coordination structures and allocation of resources to police and other agencies for CT work.
- All CT and CFT cases are conducted through joint agency scrutiny boards overseen by the CCCT. This joint agency approach helps to overcome capacity constraints.
- There were a significant number of CT cases under investigation at the time of the report. However, the lack of investigation into the financial aspects of these cases is not in keeping with Myanmar's TF risk profile.
- There have been no prosecutions or convictions related to TF activities under the CT Law, however there was one successful investigation of TF conduct that was ultimately prosecuted and convicted under the AML law as the CT law was not yet in force.
- The value chain (STRs, MFIU, LEAs) has not resulted in any TF-related disseminations to support targeted TF investigations outside of ongoing matters related to Arakan Rohingya Salvation Army (ARSA).
- Investigating TF is not specifically prioritised by the authorities to take place in parallel with CT investigations. While there are no legislative impediments for the authorities to pursue stand-alone TF cases or to run a parallel TF investigation concurrently to a CT case, in practice, authorities will only pursue a financial investigation following the conclusion of a CT investigation.

Preventing terrorists from raising, moving and using funds (Immediate Outcome 10)

- Myanmar has a legal and institutional framework to give effect to UNSCR 1267 and 1373.
- No assets have been frozen pursuant to UNSCR 1267 or 1373. This appears to be broadly in keeping with the risk profile.
- The authorities have not been able to implement TFS without delay in relation to UNSCR 1373.
- The understanding by FIs of their TFS obligations appears to be reasonable but very weak amongst DNFBPs. There is lack of written guidance to support implementation.
- While all banks appear to be implementing TFS procedures, smaller banks lack monitoring systems for transactions and accounts. Transaction monitoring faces delay due to manual-heavy processes. DNFBPs do not appear to implement the obligations. The CBM supervises the implementation of TFS. Poor implementation of CDD undermines effective TFS implementation.
- Myanmar has recently prioritised the use of TFS for combating terrorism through the

proscription of ARSA in 2017. Myanmar assisted the implementation of the designation by issuing definitive lists of persons connected to ARSA.

§ Myanmar assessed some risks in the NPO sector (NRA process) and finds them to be a low-risk area for TF. Registration for smaller NPOs is not compulsory and there is a lack of incentives for registration. There are strong controls on international NGOs and a reasonable range of controls on at-risk domestic NPOs.

§ GAD regulates and oversees NPOs and it is reasonably well resourced.

§ INGO's compliance with registration and filing obligations appear to be good, but local NGO's compliance is not at the same level. GAD, MFIU and other agencies have conducted awareness raising activities.

§ Practical guidance is needed for NPOs working in high-risk zones on their risks from financial abuse, including TF.

Proliferation Financing (Immediate Outcome 11)

§ Myanmar has strong coordination structures in place through the CCCT for combating PF.

§ Myanmar has recently issued a new regulatory framework for aspects of TFS against the DPRK. This is an important step and reflects high-level commitment to significant risks in the region, however there are significant technical gaps.

§ The FIU has raised awareness on UNSCR asset freezing obligations with ROs. Most banks have systems in place for screening accounts and transactions against lists of persons designated under both TF and PF sanctions. However, only the largest banks have the ability to automatically screen transactions (DNFBPs and smaller FIs rely on manual checking).

§ Myanmar has adopted the good practice of circulating notices to ROs to inform them of new UNSCRs related to PF.

Recommended Actions

TF offence (Immediate Outcome 9)

§ Myanmar's National AML/CFT Strategy should include specific plans and strategies to address Myanmar's TF risks.

§ Prioritise LEA intelligence development, including cooperation with security intelligence agencies, to target terrorist financiers in parallel with CT cases, including by focusing on informal channels.

§ Prioritise investigation of the financial aspects of every terrorism case - MPF should issue a binding instruction in this regard.

§ Prioritise MFIU support to LEAs, including any dissemination of STRs related to TF to initiate and support TF matters.

§ Prioritise stand-alone TF investigations of terrorist groups and financiers. These

investigations should not be dependent on the completion of any related CT investigation.

§ Further develop and train specialist capacity in those LEAs (SB, BSI, AFCD) jointly responsible for financial investigations relating to terrorism and TF.

§ Train and develop capacity of prosecutors and judges responsible for TF cases on all aspects of presenting and adjudicating TF cases and related MLA.

Preventing terrorists from raising, moving and using funds (Immediate Outcome 10)

§ Implement 1373 designations and freeze orders concurrently to ensure freezing obligations are not delayed. Consider amending the CT law to provide for a single instrument of designation / freeze order.

§ Expedite processes between the decision to designate and the time it is received by the market.

§ Ensure all sectors are notified of updates to UNSCR designations to complement the standing order.

§ Implement a standardised approach to distributing such notifications to all relevant authorities and the private sector without delay.

§ Provide further guidance and conduct additional outreach to support TFS implementation.

§ Implement regulatory frameworks and create incentives for volunteer NPOs to incorporate, register and engage with the regulator.

§ Conduct further assessments of risks in the NPO sector especially along the ceasefire and border areas to support targeted controls, outreach and monitoring related to TF risks.

§ Ensure more targeted outreach and sharing risk information to help protect the at-risk elements of the NPO from misuse for TF.

Proliferation Financing (Immediate Outcome 11)

§ Adopt a comprehensive legal framework for TFS related to PF and its other proliferation-related obligations under the various UNSCRs.

§ Issue PF-related guidance on an expedited basis and ensure that it is made publicly available and circulated beyond ROs. Include specific guidance on possible sanctions evasion in the Myanmar context (e.g. ports, shipping, etc.) to guide vigilance and implementation.

§ Undertake a more comprehensive analysis of the PF context facing the country and issue guidelines

§ Develop a mechanism to inform ROs of updates to the UN lists on a more timely basis.

§ Conduct further outreach to ensure that all FIs and DNFBPs and other sectors of the economy that may face particular risks of sanctions evasion (e.g. port and shipping authorities) are aware of the risk and the obligations to freeze and deny financing.

- Conduct further supervision to ensure that all FIs and DNFBPs are effectively implementing their PF-related obligations, particularly ROs that are not under the supervision of the CBM.
- Myanmar should take steps to improve implementation of beneficial ownership (IO.4) for effective sanctions checking by all ROs.

272. The relevant Immediate Outcomes considered and assessed in this chapter are IO.9-11. The recommendations relevant for the assessment of effectiveness under this section are R.5-8.

Immediate Outcome 9 (TF investigation and prosecution)

273. Myanmar has demonstrated a high-level commitment to combating terrorism, including a commitment to support implementation of targeted financial sanctions. This is complemented by high-level interagency coordination structures and allocation of resources to police and other agencies for CT work.

274. Myanmar has not traditionally faced significant transnational terrorism or TF risks from either local groups, groups operating in neighbouring countries or transnational terror groups from other regions. Myanmar authorities have closely assessed risks from foreign terrorist fighters moving from the territories formerly controlled by ISIL to SE Asian countries, but no cases or active networks have been found.

275. Myanmar authorities and some analysts highlight limited transnational links with the recent emergence of the Arakan Rohingya Salvation Army (ARSA), including possible TF. TF trends identified by Myanmar authorities identify small-scale domestic financing of the ARSA and some possible funding from the Middle East and South Asia.

276. There are concerns that the context of conflicts over ethnic identities and continuing government security operations serve to increase the conditions that allow radicalisation and related TF to spread. This is particularly evident with the emergence of the ARSA and risks of other transnational terror groups targeting Myanmar and seeking to foster radicalisation of diaspora 'Rohingya / Rakhine Muslim' populations from Myanmar as security operations have intensified.

277. Myanmar enacted its CT Law in June 2014 and CFT Rules in September 2015 which criminalise TF. There are some minor shortcomings in the offence, which include ambiguity as to whether the TF offence in section 41(a) of the CT Law is available where there is no link to a specific terrorist act. The offence is also ambiguous as to whether it extends to participation as an accomplice or organising or directing others to commit an attempted TF offence. There are no provisions clearly applicable to the CT Law that allow for the intent and knowledge required to prove the TF offences to be inferred from objective factual circumstances.

Prosecution/conviction of types of TF activity consistent with the country's risk-profile

278. There had been no prosecutions or convictions for TF at the time of this report. This is inconsistent with Myanmar's TF risk profile. It should be noted that the lack of TF prosecutions does not appear to have been related to the technical compliance gaps with the TF offence.

279. There has been one investigation and prosecution of third party financing of terrorist training activities that resulted in convictions for ML and the confiscation of property in 2015. The case was pursued as a ML offence due to the lack of a TF offence at the time (Figure 13).

280. One stand-alone TF offence was being investigated at the time of the onsite visit, which was prompted from STRs. The almost complete lack of investigations or prosecutions of a stand-alone TF offence is related, in part, to LEAs predominantly taking a sequential approach and only investigating TF matters once a CT investigation is complete. While police investigators do develop intelligence and collect evidence related to financial aspects of terrorism cases, the presumption that TF investigations will only follow completed CT investigations results in a lack of focus on financial aspects and may reduce the effectiveness of financial investigations to identify terrorist networks through parallel CT and CFT investigations.

Figure 13

Financial Investigation of Conduct Related to Terrorist Financing

As there was no TF offence in Myanmar at the time, the following investigation of TF conduct was pursued as a money laundering case.

From 2013 Harsen and his wife actively recruited over 40 Muslim youths for terrorist training with the aim of forming an Islamic Army to carry out terrorist attacks against the government in Myanmar. Training was given by the Kachin Independence Army in Kachin state, where Harsen had bought land and erected a building. Harsen financed the terrorism training and attempted to obtain financial support from international terrorist organisations.

Harsen and his wife owned automobiles, land and buildings in Kachin and Yangon. They had bank accounts in China, and between 2010 and 2014 Harsen, his wife, son and daughter withdrew over MMK 503 million (approximately USD372,600) through a money remitter in Kachin. Harsen and his wife were not able to explain their source of income. They also did not pay any tax for the buying and selling of their land and houses. There were no import licences for 1 vehicle and 2 motorcycles in their possession.

An investigation was conducted by an AFCD-led scrutiny board, involving representatives from the BSI, CBM, IRD, Department of Land Management and Statistics, Special Branch and the CID. This resulted in Harsen and his wife being sentenced in 2015 under the Control of Money Laundering Law and the AML Law for a total of 20 years rigorous imprisonment for tax evasion and money laundering. Properties, and the two motorcycles and one vehicle without an import licence were confiscated. The approximate value of these assets was MMK4,893 million (approx. USD3.62 million). Harsen has absconded.

The 40 youth were not charged with any offences as the conduct predated the 2014 CT Law.

TF identification and investigation

281. Myanmar authorities were able to identify a number of techniques and trends with TF in Myanmar and cases where aspects of financial investigations have commenced or been completed. These cases have chiefly commenced based on intelligence or evidence obtained through CT investigations. Myanmar advised of one stand-alone TF matter identified and currently being investigated based on STRs.

282. As mentioned above, in 2014 prior to the enactment of the CT law, there was an investigation and prosecution of ML for conduct that was, in substance, TF involving a third party financing terror training activities.

283. There were a significant number of CT cases under investigation in Myanmar at the time of the onsite. However, the commencement of investigations into the financial aspects of

these cases was not in keeping with Myanmar's TF risk profile. One ongoing CT investigation, which commenced in late 2016, included some financial investigation of funding related to a domestic terror attack. However, at the time of the onsite visit, Myanmar had not formed a scrutiny board to formally investigate a stand-alone TF case related to the identified conduct. As a matter of practice, it appears that the authorities would only pursue a stand-alone TF case following the conclusion of a CT investigation. There is no legislative impediment to parallel CT and TF investigations, but this is not currently done.

284. Under the CT Law, for any investigation of a stand-alone TF offence, the authorities would form a scrutiny board involving, at a minimum, the AFCD, Special Branch and BSI, and would also include other LEAs and government authorities. The scrutiny board would be overseen by the CFTWG of the CCCT.

285. Myanmar police investigators, including those in AFCD, have financial investigation experience (mainly in relation to money laundering) and have received some specialist training on TF investigations. This has included in-country and regional training of investigators within the AFCD, BSI, and Special Branch. The authorities have demonstrated that investigators have made use of financial investigative techniques in pursuing CT cases. However, the authorities also recognise that there is a need for additional training to enhance investigators' capacity to effectively pursue stand-alone TF investigations.

286. MFIU intelligence development has generally not been a source of identification of matters for TF investigation, however the MFIU has provided support to continuing LEA investigations of matters related to the ARSA. There has only been one TF-related STR filed with MFIU based on statistics provided by the authorities. Limitations in the information received and capacity for analysis (see discussion in IO.6) have resulted in no TF-related disseminations to support TF investigations outside of ongoing matters related to the ARSA.

287. Myanmar has taken some steps to seek assistance from foreign counterparts in cross-border CT cases. These have been through informal police-to-police channels only and have not sufficiently considered the financial aspects of the cases. There have been no formal MLA (including extradition) requests made by Myanmar to foreign counterparts in relation to a CT case or its financing elements. Cooperation between border enforcement agencies on TF investigation matters in not yet well developed. Myanmar has not received any requests from foreign partners relating to TF investigations.

TF investigation integrated with -and supportive of- national strategies

288. Myanmar's commitment to combating terrorism, including through investigations, is clear and is complemented by high-level interagency coordination structures and allocation of resources to police and other agencies for CT work. However, the investigation of TF is not specifically prioritised by the Myanmar authorities nor is it integrated with or used to support national CT investigations. For example, the investigations leading up to the designation of ARSA as a terrorist organisation do not appear to have included any financial components. While there are no legislative impediments to the authorities using a TF investigation to support a CT investigation, the authorities will only pursue a financial investigation following the conclusion of a CT investigation.

Effectiveness, proportionality and dissuasiveness of sanctions

289. There have been no TF convictions in Myanmar and thus no sanctions applied under the CT Law. However, Myanmar has demonstrated an ability and willingness to apply

proportionate and dissuasive sanctions in respect of conduct that was financing terrorism in the case of Harsen. This case predated the CT Law and significant terms of imprisonment were imposed by relying on provisions in the Control of Money Laundering Law and AML Law.

290. Section 50 of the CT Law provides criminal sanctions for any persons convicted of a TF offence that are proportionate and dissuasive, including penalties from ten years up to life imprisonment and unlimited fines.

Alternative measures used where TF conviction is not possible (e.g. disruption)

291. Myanmar did not identify cases where a TF conviction was not possible and alternative measures had been used.

Overall conclusions on Immediate Outcome 9

292. Myanmar has a high-level commitment to fighting terrorism, which is supported by the allocation of resources. However, there is a lack of prioritisation of investigation of TF, with financial investigations only commencing after the conclusion of the terrorism investigation. At the time of this report, no successful TF prosecutions or convictions had been obtained under Myanmar's 2014 CT Law.

293. **Myanmar has a low level of effectiveness for Immediate Outcome 9.**

Immediate Outcome 10 (TF preventive measures and targeted financial sanctions)

294. Coordination structures (CCCT) are in place between agencies for designations under 1373 and to guide policies and the implementation of targeted financial sanctions (TFS) overall.

Implementation of targeted financial sanctions for TF without delay

295. Myanmar has demonstrated high-level commitment to combating terrorism, including a commitment to support implementation of TFS. This is complemented by high-level interagency coordination structures and allocation of resources to police and other agencies for CT work.

296. Myanmar has established a legal and institutional framework to give effect to UNSCR 1267 and 1373 through the CT Law and Rules and has issued a standing order to ensure that all current and future 1267 designations enter into force in Myanmar simultaneous to their designation at the UN. There are some mechanisms to inform reporting parties when there is an update to UN lists, but this needs to be more systematically done and to be more timely. The CBM receives and disseminates notices on all 1267 updates, but these are well after the point of UN designations entering into force in Myanmar.

297. Overall, Myanmar's implementation of the TFS is slow and is not well supported across the financial sector or other at-risk sectors of the economy.

Designations

298. Myanmar has not made or co-sponsored any proposal to the 1267/1989 committees for designation. Myanmar informed the UN Counter Terrorism Committee Executive Directorate on 5 September 2017, through its permanent mission in New York, that it would be proposing the Arakan Rohingya Salvation Army (ARSA) as a terrorist group to the UN. However, it had not

submitted a proposal for designation of ARSA to the UN at the time of the report. Coordination structures are in place between agencies for designations under 1373 and to guide policies and implementation (CCCT).

299. The ARSA, formerly known as Faith Movement or Harakah Al Yaqeen, first emerged in October 2016 when it attacked several police outposts and killed nine police officers. Further coordinated attack on multiple police outposts on August 25, 2017 resulted in another twelve police fatalities.

300. On the recommendation of its Working Committee (WC), the CCCT sought and received approval of the Union Government to designate ARSA as a Terrorist Group pursuant to Article 6 of the CT Law. The CCCT designation order was signed and issued with legal effect on the same day as the August 2017 attack through an emergency meeting of the full Union Government Cabinet.

301. Per CFT Rule 8, the WC should have issued a freeze order following the designation of ARSA, without delay or prior notice, to all persons in Myanmar. The WC freeze order was issued three weeks after ARSA was designated as the authorities worked to gather information on 57 associated individuals who were made subject to the freeze order. While this delay may not have resulted in assets being moved out of the jurisdiction, the process did not follow the requirements of the CFT Rules.

302. Myanmar authorities also encountered delays in communicating the WC freeze order to ROs. The order was published on relevant government websites and the Official Gazette, as required by CFT Rule 9(a), but the WC circulated the freeze order to supervisory bodies for onward transmission to entities under their purview (rather than directly issuing the freeze order to reporting organisations as required by CFT Rule 8). In some instances, this resulted in a further delay of several days before ROs received a copy of, or actioned, the WC freeze order.

303. The Myanmar authorities shared the designation and freeze order for ARSA pursuant to UNSCR 1373 with a number of neighbouring jurisdictions. The designation and freeze order were not shared with these jurisdictions until after the on-site visit and over one year from when the CCCT first issued the designation order.

~~304.~~ Despite some cross-border terrorism and TF risks along its north western border with Bangladesh, Myanmar had not requested Bangladesh or any foreign country to give effect to its domestic UNSCR 1373 list. This may reflect concerns over the international political concerns of Myanmar's treatment of 'Rohingya/Rakhine Muslim' populations and the designation of ARSA. While Myanmar did share the details of the ARSA designation and the 57 persons associated, it did not call on foreign countries to designate the organisation in parallel to Myanmar's action~~.~~

305. Myanmar has not yet implemented mechanisms to consider and decide on de-listing requests.

306. The CT Act allows Myanmar to make a 1373 designation for both domestic and foreign terrorists. Myanmar did not demonstrate that it has received and considered any requests from foreign jurisdictions to give effect to their designations.

Freezing actions taken

307. No assets have been frozen by Myanmar pursuant to 1267/1989. As such, the procedure to coordinate with the UN on access to funds has not been tested. Given Myanmar's

risk profile, it is not surprising that no 1267-related assets have been frozen. However, there is relatively weak implementation across many sectors.

308. At the time of the onsite visit, no assets had been frozen pursuant to the 1373 designation of ARSA.

309. There are some issues relating to identifier data for persons included in ARSA-related freezing orders issued under 1373. This is due to use of common names, where several people may have the same first name and surname. Myanmar authorities indicated that they would update reporting organisations when they have additional data to help with implementation. In one case, a FI had identified a potential match with a 1373 designation and sought clarification to confirm whether it was a positive match. Members of the CCCT working committee coordinated to clear the false positives and give instructions to the relevant FI to monitor the situation. More detailed instructions need to be provided to FIs for actions to be taken to immediately freeze assets pending confirmation of a positive match or a false positive. This was not clearly done in the one case encountered.

310. In the absence of any matches and frozen property, Myanmar has not had any experience of considering requests for access to funds or claims from innocent third parties. At the time of the on-site visit, Myanmar was preparing to request foreign partners to give effect to their domestic designation of ARSA under 1373.

Implementation of TFS by ROs and government agencies

311. There are some mechanisms to inform reporting parties of updates to the UN lists, but this needs to be done in a more systematic and timely way. The CBM receives and disseminates notices on every 1267 update, but these are well after the point of UN designations entering into force in Myanmar.

312. Myanmar assisted the implementation of the designation by issuing definitive lists of persons connected to ARSA and subject to freezing in the orders issued in September 2017.

313. Authorities have held awareness raising events with FIs and DNFBPs on UNSCR asset freezing obligations. The understanding by banks and FIs is reasonable but is very weak amongst DNFBPs. There is a lack of specific guidance on risk elements to key sectors to guide vigilance and implementation, and implementing guidelines need to be issued for TFS related to terrorism.

314. There are number of strengths and weaknesses with the implementation of routines for TFS:

a. All banks appear to be implementing TFS to some degree, although most banks lack well developed monitoring systems for transactions and accounts.

b. Most banks have monitoring systems for wire transfers, but rely on manual systems for sanctions screening at the point of 'on-boarding'.

c. In most instances, transaction monitoring cannot be done without delay, due to manual-heavy processes (all domestic banks).

d. DNFBPs lack awareness and do not appear to implement TFS obligations.

315. The CBM supervises the implementation of targeted financial sanctions. This adds to the awareness of obligations and the depth of implementation by the banks. However, poor implementation of CDD, in particular beneficial ownership, undermines effective TFS implementation.

Targeted approach, outreach and oversight of at-risk non-profit organisations

Assessing and conducting outreach on NPO sector risks

316. There are more than 3,000 associations registered with the General Administration Department (GAD). Myanmar has given some consideration of risks in the NPO sector during the NRA process. The draft NRA finds NPOs to largely be a low-risk area for TF. This was confirmed during the on-site, especially for the bigger NPOs and international NPOs, as there is sufficient scrutiny over their financial reports which are a requirement for annual renewal of operating licenses. There is however a concern over the smaller local NPOs especially those operating near and in the ceasefire areas and a lack of information on charitable collections by these NPOs.

317. Despite its perceived low risk, authorities have held awareness raising events on the possibilities of abuse of the sector for TF. Most NPOs have been made aware of the 1373 designation of ARSA and the names of the 57 listed ARSA members. This occurred in outreach workshops (300 participants x3 workshops). The understanding by the bigger NPOs on the risk to the sector is reasonable.

318. The GAD, MFIU and other agencies have recently increased awareness raising activities, with a particular increase in the second half of 2017. More awareness is needed considering the large number of associations (more than 3000).

319. The authorities have not yet issued practical guidance to NPOs working in high-risk zones (e.g. border areas) on their risks from financial abuse, including TF. A draft directive to NPOs was being finalised by the Union Registration Board at the time of the onsite visit.

Registration and monitoring of NPOs

320. The GAD is responsible for registration information of all NGOs and the oversight of their local activities. There are more than 3,000 associations registered with the GAD. The GAD is a well-resourced agency present right across the country. INGOs' compliance with registration and filing obligations appears to be good. Local NGOs' compliance is not at the same level. GAD conducts monitoring at local levels, in particular monitoring projects run by INGOs. In recent times there has been an increase in the GAD's scrutiny of INGOs' financial records.

321. There are strong controls on INGOs. These do not arise from heightened TF or ML risks, rather from political considerations by successive military governments. Annual renewal of registration is mandatory, with audited financial statements submitted to the Associations Registration body. The INGOs are required to sign MOU with relevant Ministry related to their area of work and also operate using their internal guidelines, with their activities scrutinised by regional head offices.

322. Registration for smaller NPOs is not compulsory and there is a lack of incentives for such NPOs to register. The key incentive for registration of local NPOs is for them to be able to operate a bank account in the NPO's name. International and domestic donors will not provide funding assistance if an association has no bank account. This remains a high-risk area for TF.

Further, the lack of presence of authorities in the ceasefire areas means a lack of oversight of the smaller NPOs operating in the area.

Deprivation of TF assets and instrumentalities

323. Currently no assets and instrumentalities related to TF activities (including ARSA) have been identified and frozen. Authorities advised that ROs could not find any assets linked to the individuals identified.

324. In one terrorism case in 2017 Myanmar authorities seized and confiscated instruments associated with terrorism. A total of 69 instruments/assets were seized. The significant items were one gun, two telescopes, knives, mines, mine chips and iron arrows. More than 70 persons were charged in this case.

325. Two cases were ongoing where authorities were in the process of identifying assets of two persons believed to be financiers of terrorist acts.

Consistency of measures with overall TF risk profile

326. Myanmar is generally implementing UNSCR 1267 in keeping with its risk profile. However, considering the openness of Myanmar's borders, the availability of ceasefire zones and Myanmar's geographical position, authorities should give greater focus to implementing TFS related to the movement of FTF and fund transfer to/from FTF especially regional FTF. Better information and guidance on risk is an essential element to improve effectiveness. MFIU has conducted some outreach on this issue.

327. Application of asset freezing measures in relation to UNSCR 1373 is in line with Myanmar's risk profile. Authorities indicated that all the designated persons were identified because of their involvement in terrorist acts.

328. In relation to NPOs, the above measures are somewhat consistent with the perceived overall TF risk. The lack of information on the smaller local NPOs including lack of information on charitable collections and expenditure is an area for concern that authorities need to address. Authorities have no presence in the ceasefire areas so the extent of the operations of local NPOs near and within these areas is also a case for concern.

Overall conclusions on Immediate Outcome 10

329. Myanmar has sought to use TFS as a tool in combating domestic terrorism and related TF, however overall Myanmar's implementation of targeted financial sanctions is slow and poorly implemented. Myanmar has designated the ARSA under UNSCR 1373, however the freezing mechanism was not implemented without delay and no assets have been frozen pursuant to this designation. No assets have been frozen pursuant to UNSCR 1267/1989, which is in keeping with the risk profile. All banks are implementing some level of TFS, but DNFBPs are not implementing TFS and are largely unaware of their TFS obligations. In Myanmar's draft NRA, NPOs are rated as low risk, which appears reasonable. INGOs face a strong level of scrutiny and mandatory registration, but there is concern about the smaller NPOs in ceasefire areas. Registration for smaller NPOs is not mandatory, and authorities have no meaningful presence in certain parts of the country. Practical guidance needs to be given particularly to smaller NPOs working in ceasefire areas on their risks of financial abuse.

330. **Myanmar has a low level of effectiveness for Immediate Outcome 10.**

Immediate Outcome 11 (PF targeted financial sanctions)

Implementation of targeted financial sanctions related to proliferation financing without delay

331. In 2017 Myanmar issued a new regulatory instrument under section 6(d) of the CT Law, with the intention of giving effect to targeted financial sanctions (TFS) against WMD proliferation. This important step reflects high-level coordination within the CCCT and high-level recognition of the need to respond to risks of PF that Myanmar faces. There are, however, significant gaps in the new legal framework. CCCT Order 1/2017 provides only limited measures to freeze assets in relation to UNSCR 2270 and successor resolutions against the DPRK. The Order does not apply in respect earlier UNSCRs relating to DPRK or to UNSCR 2231 relating to Iran. Moreover, these limited measures were not implemented without delay as CCCT Order 1/2017 was issued in February 2017 meaning that the applicable freezing obligations did not have legal effect until almost one year after UNSCR 2270 was adopted.

332. Section 6(d) of the CT Law, under which CCCT Order 1/2017 was issued, is a generic provision in relation to proliferation that does not provide a clear legal basis for issuing a freeze order in relation to WMD proliferation. This is in contrast to section 6(l) of the CT Law, which provides scope for the CCCT to issue freeze orders to implement TFS in relation to TF. As discussed under Recommendation 7, the freezing obligations in Order 1/2017 apply only to ROs rather than all natural and legal persons.

333. There are a number of gaps in the scope of funds and other assets that must be frozen. Provisions related to unfreezing, access to funds, and delisting requests are also absent.

Identification of assets and funds held by designated persons/entities and prohibitions

334. CCCT Order 1/2017 obliges all ROs to search for any assets of listed individuals and entities in their possession and to report the findings within three working days to the CCCT. However, there have been no cases reported of assets of individuals and entities subject to TFS related to PF being frozen.

335. Myanmar has taken a number of positive steps to address risks of sanctions evasion and PF. Myanmar authorities have, through the CCCT, shared information regarding possible risks of sanctions evasion and a diplomat at the DPRK Embassy to Myanmar was deported in April 2017 on the basis that the individual had ties to a designated person in the DPRK.[54] During the on-site, the assessment team also learned of other prudent measures that the Myanmar authorities are currently taking, but that cannot be included in the mutual evaluation report due to their sensitive nature.

FIs' and DNFBPs' understanding of and compliance with obligations

336. The regulatory framework to implement TFS related to PF is relatively new as CCCT Order 1/2017 was issued in February 2017. At the time of the on-site, the understanding of and compliance with the obligations contained in the Order among ROs was largely limited to financial institutions under CBM supervision.

[54] Authorities also notified through the Embassy of the DPRK that 21 DPRK citizens would not have their stay-permits extended and would be required to leave the country in March 2018.

337. MFIU has conducted awareness raising on UNSCR asset freezing obligations with financial institutions and DNFBPs, including those related to PF. The CCCT has also issued letters following the adoption of UNSCRs 2371, 2375 and 2397 to remind reporting organisations of their searching and freezing obligations pursuant to Order 1/2017, which applies to UNSCR 2270 and successor resolutions. The effectiveness of this good practice, however, was undermined by the delays of up to two months in issuing the letters after the UNSCRs were adopted. In addition, the CCCT circulated a letter to all ROs informing them of recent sanctions applied against DPRK persons by the United States Office of Foreign Assets Control (OFAC). As the letter was circulated after the on-site visit, its effectiveness was not assessed. ROs will benefit from the CCCT's ongoing work to develop guidance in relation to UNSCR 1718.

338. Banks in Myanmar have systems in place for screening accounts and transactions against lists of persons designated under both TF and PF TFS regimes, but only the largest and most sophisticated banks have the ability to automatically screen transactions. Most financial institutions have the ability to conduct sanctions screening when conducting customer onboarding. However, ROs have a generally poor understanding and ability to implement CDD obligations, particularly in relation to beneficial ownership, which undermines the overall effectiveness of TFS implementation.

Competent authorities ensuring and monitoring compliance

339. Monitoring of ROs compliance with their obligations to implement TFS related to PF has chiefly been conducted by the CBM for those FIs regulated by the CBM. Other categories of NBFIs and all DNFBPs have not received attention from supervisors related to implementing TFS against WMD proliferation. It is apparent that compliance monitoring for TFS implementation is carried out by the CBM through its regular on-site and off-site supervision activities. There have been no cases of a competent authority in Myanmar, including CBM, applying sanctions for non-compliance or breaches of obligations related to TFS by ROs. In the case of CBM, this seems to stem from a lack of political will and a limited tool set to pursue sanctions under a statute outside of the FI Law (see discussion in IO.3).

Overall conclusions on Immediate Outcome 11

340. Myanmar has not yet instituted a regulatory and institutional framework to provide a basis for effectively implementing TFS against WMD proliferation. Myanmar's inter-agency coordination on combating PF is a positive contribution as Myanmar moves to understand and respond to the vulnerabilities it faces for sanctions evasion and possible PF.

341. **Myanmar has a low level of effectiveness for Immediate Outcome 11.**

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CHAPTER 5. PREVENTIVE MEASURES

Key Findings and Recommended Actions

Key Findings

Preventive measures (Immediate Outcome 4)

- The draft NRA has some detail to support the risk-based implementation of measures by FIs and DNFBPs. However, this information has not yet been fully disseminated and understood by FIs for them to improve their internal risk assessments. Most banks have made progress with enterprise-level risk assessments, with support from the CBM.
- While the CBM and MFIU have extensively communicated to FIs general concepts of AML/CFT risk, this outreach has not resulted in FIs and DNFBPs understanding the risks they face. Most pressingly, there is a lack of awareness of high-risk issues arising out of Myanmar's geopolitical context. FIs lack specific and detailed guidance as to how they can effectively implement preventative measures within their particular contexts.
- Most of the core elements of CDD are adequately reflected in the AML/CFT legal and regulatory frameworks, but implementation is predominantly rules-based. As a result, there are significant weaknesses with respect to all of the core elements of CDD. In addition, FIs do not meaningfully differentiate between CDD and enhanced CDD, and also weakly implement controls related to PEPs, correspondent banking, and wire transfers. The implementation of routines to identify and report STRs is weak and the rate of STRs filed is extremely low considering the risk profile and size of the financial sector.
- There are a number of high-risk DNFBP sectors that have not yet moved to implement even basic AML/CFT controls, and have not moved to respond to key risks.

Recommended Actions

- Myanmar should issue comprehensive obligations (directives, etc.) covering risk-based preventive measures for DNFBPs, given the significant risks from the sector.
- Issue, as soon as possible, detailed and tailored sector specific guidance that explains and guides practical steps for risk-based implementation of CDD and other preventive measures, taking into account the risks and context of the particular sectors in Myanmar.
- CBM should require larger banks to improve their monitoring systems as soon as possible, in terms of improving core banking systems, as well as instituting automated transaction monitoring systems.
- Pursue policies and legislation to establish a regulatory framework, with incentives, to bring MVTS 'hundi' operators into the regulated sector and apply AML/CFT controls to that new sector. CBM and other regulators should provide more support and outreach to banks and money changers on risk findings and how to implement a risk-based approach.
- Myanmar should work with the MBA for them to take a more substantive approach to support outreach and awareness raising and training in order to guide its members.
    - CBM should consider asking MBA to form an AML/CFT committee.

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- Foreign banks should be more deeply integrated into the MBA, in particular on compliance and training issues.

- Competent authorities should provide guidance on key risk areas identified in the draft NRA, as well as more regularly disseminate risk indicators and related guidance.
- The CBM should provide meaningful guidance on identifying PEPs and implementing EDD on them, tailored to Myanmar's specific risk and context.
- Competent authorities should provide more specific education and guidance on beneficial ownership obligations and processes.
- CBM and other authorities should continue to promote financial inclusion and products and services that are covered by AML/CFT.

342. The relevant Immediate Outcome considered and assessed in this chapter is I0.4. The recommendations relevant for the assessment of effectiveness under this section are R.9-23.

Immediate Outcome 4 (Preventive Measures)

Understanding of ML/TF risks and AML/CFT obligations

343. The CBM has extensively communicated to FIs AML/CFT obligations and concepts of ML/TF risk, but little of the details of risks facing Myanmar's FIs. CBM issues guidance on risk management to FIs on a regular basis, including recent guidance as to how FIs should update their risk assessments and CDD processes. CBM also recently met with all banks individually in person to discuss risk profiling, CDD, and other ML/TF issues.

344. These communications have outlined general principles consistent with the international standards and Myanmar law, but lack specific and detailed guidance as to how FIs can practically implement preventative measures, taking into account their size, the types of products and services offered, and other factors. CBM, MFIU and others have held some discussions with the financial sector on elements of risk, relevant typologies, and emerging trends, but much more is needed. Accordingly, while many domestic FIs demonstrate a general understanding of ML/TF risk, this appears to be a rules-based recitation of the relevant standards rather than a reflection of the elements of risk facing the Myanmar economy. This impedes effective risk-based implementation of the AML/CFT controls in Myanmar, as most domestic FIs do not demonstrate an understanding of how to adequately mitigate risks.

345. The draft NRA has some detail to support the risk-based implementation of measures by FIs and DNFBPs. However, this information has not yet been fully disseminated to FIs for them to improve their internal risk assessments.

346. There is a lack of guidance on high-risk issues as they relate to FIs and DNFBPs. This is a significant gap, particularly in relation to financial transactions with customers based in ceasefire areas, drug proceeds, corruption risks, tax evasion, proceeds of environmental crimes, and gem smuggling, among other topics. While regulated FIs are generally not permitted to operate in ceasefire areas, there is a high degree of interconnection with customers, transactions and trade involving entities located in or operating in areas not under government control.

347. CBM's work in the banking sector to provide regulatory guidance, oversight and feedback on enterprise-level risk assessments of banks is a positive development to support some necessary inputs for them to move to a risk-based approach. However, in practice, the enterprise assessments do not yet sufficiently assess particularised risks that Myanmar banks face across their enterprise (including other business in group holdings, exposure to informal channels, dollarized transactions, varying nature of PEP risks, etc.).

348. Domestic FIs assess high-risk countries in a cursory fashion, relying predominantly on existing lists, without taking into consideration Myanmar's regional risks and the varying nature of country risk.

349. The CBM has not provided adequate support to the Myanmar Bankers Association (MBA) in the MBA's efforts to assist all banks to better understand AML/CFT obligations and risks, and to share best practices with regard to implementation. The MBA is a key structure in the banking sector, but does not prioritise AML/CFT activities or take any steps to ensure that its member banks understand ML/TF risks and the banking sector's AML/CFT obligations.

350. Certain DNFBP sectors are very significant in the Myanmar economy, and of these the gold, gem and real estate sectors face very significant ML risks. Comprehensive regulations have not yet been issued to cover DNFBPs. Most of the competent authorities empowered to regulate DNFBPs sectors for AML/CFT lack capacity and are unable to support effective outreach, awareness raising, and support to the sectors. With the exception of parts of the real estate sector, most DNFBPs do not have a good understanding of the risks. The gold and gem sectors, in particular, which face the highest risks, display the weakest understanding of their ML risks.

351. The emerging securities sector demonstrated some understanding of ML/TF risks facing the sector, and AML/CFT controls (albeit in the context of limited business and operations). Customer and transaction volumes are generally quite low, making management of risks an easier task. The sector will need to adapt and increase its awareness of risks that will emerge as the sector rapidly expands.

352. Microfinance institutions in Myanmar present a low AML/CFT risk, largely due to the extremely low value of transactions. Outreach to the sector about obligations and risk mitigation has been strong and the new sector demonstrated a reasonable understanding of the risks it faces and their role in mitigating risks.

353. Finance companies, in the early stage of development in Myanmar, currently present a low AML/CFT risk, but the risk will likely increase as the sector grows.

354. Mobile money is also in the early stage of development in Myanmar. Some of the players in the market demonstrated a detailed understanding of AML/CFT risk and their responsibilities for risk mitigation. Mobile money accounts for individuals are limited to extremely low-value transactions, rendering the risk for these types of accounts low. Commercial accounts do not have such limits, and are therefore higher risk, particularly in conjunction with the deficiencies related to beneficial ownership of legal entities as described in IO.5.

Application of risk mitigating measures

355. Most of the core elements of CDD are adequately reflected in the AML/CFT legal and regulatory frameworks for FIs. The risk-based approach (RBA) is new and so far only extends to

the banking sector in a limited fashion. Other sectors have not yet demonstrated progress to implement the RBA.

356. While DNFBPs are subject to a range of CDD obligations in the law and rules applying to DNFBPs, comprehensive implementing rules for CDD for DNFBPs are missing. Regardless of the regulatory instruments, there was no indication that DNFBPs are implementing their AML/CFT obligations at all.

357. Banks appear to run rules-based routines for CDD at a moderate level. In practice, there is an over-emphasis on checklists of documentation, account opening forms, and declarations of source of funds. A number of challenges are noted:

- There are significant weaknesses in verification of identity, based on the deficiencies in the NRC system, described in Chapter 1. On top of these issues, NRCs are very rarely updated and appear to be extremely susceptible to forgery, making them a shaky foundation for customer identification purposes as a part of CDD.

- Ongoing CDD appears to be regularly conducted, but in a cursory manner.

- Domestic banks' ability to monitor is severely limited by the lack of automated monitoring systems. This is particularly an issue for the largest institutions that conduct large volumes of transactions on a daily basis. The manual processes described by the largest institutions are inadequate.

- Controls over walk-in customers are limited to collection of identity and focus on single points of identification (NRC or passport).

358. In practice, meaningful beneficial ownership information is not collected. Banks lack a good understanding of the concept of beneficial ownership and control as it operates in Myanmar. CBM needs to improve its understanding of beneficial ownership concepts and to educate FIs on the identification and verification of beneficial ownership through detailed operational guidance.

359. Overall there is little information available on beneficial ownership of legal persons and trusts (see IO.5), so CDD in this area is inherently challenging in Myanmar.

360. Domestic FIs generally view ownership and control structures as disclosed to DICA or reflected in business licenses as equivalent to beneficial ownership. Domestic institutions have not demonstrated that they understand how to assess the beneficial ownership of complex legal entities.

361. FIs generally ask the right questions about the nature and purpose of funds and customer relationships. They do not appear to use this information in a manner that meaningfully risk ranks customers and products.

362. A lack of progress with financial inclusion in Myanmar is a major impediment. Much of the population continues to rely on the substantial unregulated informal sector, and efforts to regulate the hundi sector have been unsuccessful. Besides the longstanding reliance on the hundi sector, other significant factors reducing financial inclusion include:

- Difficulties related to persons obtaining NRCs, which are a de facto requirement for entry into the formal financial system. Among other things, NRCs can only be obtained in a Myanmar national's home township.
- Prohibitions on the categories of persons entitled to NRCs—many persons resident in Myanmar are not permitted to obtain them.
- Recent moves to eliminate a recognised alternative form of identification for those without an entitlement to an NRC ("white cards").

Application of enhanced or specific CDD and record keeping requirements

363. Record keeping requirements are well implemented by FIs. This was confirmed by supervision.

364. In practice, domestic FIs do not appear to differentiate between CDD and EDD in any meaningful way, with the exception that there is greater inquiry into source of funds for EDD. Otherwise, descriptions provided by domestic financial institutions suggest that there are not meaningfully heightened measures for monitoring and applying additional controls for higher-risk customers. This was confirmed by CBM supervision.

365. Correspondent banking controls are very weakly implemented. This is a very significant problem for possible de-risking in the future.

366. Controls for wire transfers appear to stop at the account holder rather than the sender and beneficiary. This was confirmed by CBM supervision.

367. Banks conduct sanctions monitoring at the on-boarding stage and with international wire transfers. This was confirmed by CBM supervision.

368. DNFBPs do not appear to implement any of the measures related to CDD.

369. PEPs are a very significant risk issue for Myanmar FIs, in light of its history and economic situation. FIs do not demonstrate an adequate understanding of how to address this issue, and the CBM has not articulated a specific definition of what constitutes a PEP.

370. There are a number of challenges with implementing PEPs obligations:

- A number of banks and other FIs are owned or controlled by PEPs.
- FIs do not appear to effectively identify PEP customers (including family members and associates).
- There is an over-reliance upon lists of PEPs provided by international services, due in part to an absence of guidance from domestic authorities. There is no demonstration that any type of meaningful EDD is performed on PEPs and their activities.
- State-owned banks and a number of banks that appear to be closely tied to military sectors have significant exposure to PEP vulnerability.
- FIs do not sufficiently focus on military figures, including former officers.

- The weaknesses with beneficial ownership undermine the ability to identify PEPs.
- High-risk DNFBP sectors (gems, gold and real estate) are predominantly controlled by PEPs, and their private sector bodies designated as competent authorities to oversee the sectors are made up of PEPs.

Reporting obligations and tipping off

371. Prohibitions against tipping off are not well understood or well executed. There are serious deficiencies, observed by many banks of obtaining board approval before the filing of an STR. In effect, this type of disclosure of STRs is significant tipping off. This is particularly an issue given the close relationships that many domestic banks have with PEPs, as described above.

372. The number and scope of STR reporting is extremely low, taking into account the risk and context, but they are increasing. Significant contributing factors to this deficiency include the lack of adequate monitoring of transactions for suspicion, the lack of understanding of ML/TF risks or indicators of suspicion particular to Myanmar and weaknesses with systems for identifying ultimate beneficial owners. The implementation of routines to identify and report STRs is weak and the rate of STRs filed is extremely low considering the risk profile and size of the financial sector.

Internal controls and legal/regulatory requirements impending implementation

373. Banks and some other FIs have internal controls and procedures for AML/CFT compliance. This reflects a focus from CBM in its guidance, outreach and supervision. The levels of controls in banks do, to a degree, reflect the size and scope of operations, although not the risks faced by the enterprise. The sector of foreign banks operating in Myanmar implements robust internal controls that reflect home regulatory requirements and a good awareness of cross-border risk issues. Other FIs have, in general, appointed compliance officers and have elements of internal controls for AML/CFT.

374. DNFBP sectors, in particular the sectors with the highest ML risks, lack internal controls for AML/CFT.

375. There are no indications of legal or regulatory impediments (e.g. secrecy) to internal controls across any sectors in Myanmar, including group structures.

Overall Conclusions on Immediate Outcome 4

376. FIs and DNFBPs lack understanding of high-risk issues, despite outreach on basic AML/CFT issues, and few banks have moved to a risk-based approach. Most DNFBPs do not yet have a basic understanding of AML/CFT obligations and have not begun to implement any AML/CFT controls. Specific and detailed guidance is required on implementation of preventive measures. CDD measures, and measures relating to PEPs are poorly implemented. There is little understanding of beneficial ownership and beneficial ownership information is not collected in any meaningful way. Only banks are reporting STRs, and the STRs filed are generally of poor quality.

377. **Myanmar has a low level of effectiveness for Immediate Outcome 4.**

CHAPTER 6. SUPERVISION

Key Findings and Recommended Actions

Key Findings

Supervision (Immediate Outcome 3)

- CBM and other regulators' implementation of fit and proper controls is not well targeted to mitigate the significant risks that criminals and their associates enter the market.
- CBM implements measures to prevent criminals from holding management positions in banks, however the absence of checking on beneficial ownership and control diminishes CBM's assessment of those behind the license.
- Myanmar has not yet been able to bring informal 'hundi' MVTS into the formal sector and regulate them for AML/CFT.
- CBM demonstrates a number of features of effective regulation and supervision on the banking sector. The supervisory framework by the CBM, is guided by detailed guidance/SOP for onsite examination and offsite monitoring. CBM supervisors demonstrate increasing skills and experience and a move to the risk-based approach.
- The intensity and frequency of CBM's supervisory interventions is not sufficiently driven by ML/TF risks. CBM demonstrates a generally sound understanding of supervised institutions and some related ML/TF risks.
- The offsite supervision undertaken has been useful in CBM's understanding of ML/TF risks faced by banks and the control measures in place.
- Other sectors (beyond banks) under CBM's purview are not subject to similar supervisory intensity, including non-bank money changers which are identified as higher risk.
- MOPF lack of ML/TF risk understanding and weak regulatory measures undermines effective risk-based supervision of microfinance, insurance and securities business.
- DNFBPs face very significant ML/TF risks but have not been subject to any supervisory measures by government authorities or the designated private sector regulatory bodies.
- Private sector bodies designated to supervise DNFBP sectors lack sufficient capacity and designated supervisors for the highest risk DNFBP sectors (gems, gold and real estate) face unmanaged conflicts of interest to be designated as supervisors.
- Significant TC gaps coupled with structural issues within CBM and lack of political will hinders serious enforcement actions for AML/CFT failings by banks or other FIs.

Recommended Actions

- Resolve technical compliance issues to strengthen legal and regulatory frameworks:
  - Ensure accurate and comprehensive designation of competent authorities to cover all sectors. Expedite supporting relevant law reforms (e.g. licencing or registration

regime for real estate agents).

- Designate a government agency (possibly FIU) as a competent authority to supervise and regulate gem dealers, gold dealers, real estate agencies and other higher risk ROs.

§ Following re-allocation of supervisory responsibilities and assessments of risk, prioritise offsite and onsite supervision of gem, gold and real estate sectors.

§ Issue updated fit and proper regulations, including requiring checks on those who beneficially own or control the license, for all sectors and take a targeted approach to implementation. Checking procedures with LEAs should be further developed and consistent, including a transparent and centralised approach.

§ Support periodic involvement of FIU to provide feedback to supervisors on STRs and risk information on various sectors and institutions.

§ Establish a joint-agency task force to target possible hundi/hawala operators, in particular monitoring and supervision (and awareness raising) of money changers, banks, etc.

§ Focus CBM supervision on those thematic areas that demonstrate significant risks (CDD, PEPs/'tycoons', high-risk geographic areas, STRs, etc.).

§ Further refine CBM's data collection template to reflect NRA findings.

§ Continue training and strengthen CBM resources, including a dedicated AML/CFT unit within FISD and the reassignment of off-site examination and enforcement function to FISD while FIRD would focus on regulatory matters.

§ Leverage the CBM supervisors' capacity and capability in mentoring / training of MOPF and other supervisors.

§ Ensure CBM better applies remedial actions and sanctions to improve sector's compliance with AML/CFT rules and regulations.

§ CBM should provide more detailed and timely feedback to supervised FIs, including explanations of supervisory findings and specific weaknesses.

§ CBM and other supervisors should implement a clear enforcement strategy focusing on when and how to support enhanced compliance, using available legal provisions to sanction serious or repeated cases of non-compliance.

§ Establish an engagement and coordination platform among the financial sector supervisors (CBM and MOPF) to discuss and resolve supervisory and regulatory matters especially issues of entities that cut across multiple sectors (i.e. financial group – bank, insurance and securities), as well as knowledge-sharing.

§ MOPF / SEC should leverage existing prudential periodic data collection to initiate AML/CFT off-site monitoring by embedding ML/TF related questionnaires (such as classification of customers and location of business).

378. The relevant Immediate Outcome considered and assessed in this chapter is IO.3. The recommendations relevant for the assessment of effectiveness under this section are R.26-28 & R.34 & 35.

Immediate Outcome 3 (Supervision)

Institutional Framework

379. The CBM and MOPF regulate and supervise financial institutions for market entry, prudential issues and AML/CFT. CBM's Financial Institutions Supervision Department (FISD) based in Yangon is responsible for examination of banks and NBFIs for prudential and AML/CFT matters. Meanwhile, CBM's Financial Institutions Regulation Department (FIRD) based in Nay Pyi Taw is responsible for the regulation of banks and NBFIs for prudential and AML/CFT matters. FIRD is also in charge of license processing, AML/CFT off-site monitoring and follow-up measures after the onsite examination by FISD.

380. Other non-bank financial service providers operate but are not within the AML/CFT regulatory regime. These include pawn shops (licensed by local/municipal authorities) and cooperative institutions (supervised by the Department of Cooperatives under the Ministry of Agriculture and Irrigation).

381. A much more significant sector is the substantial informal remittance (hundi) sector. Studies estimate that the volume of this sector could reach up to billions of dollars per year[55], due to high migration of Myanmar nationals abroad and the unavailability of systematic formal remittance channels.

382. Due to the features of Myanmar's company formation law, which does not require the appointment of company secretaries, specialised company secretarial practice does not exist in Myanmar. The involvement of gatekeepers such as lawyers and accountants is limited to advisory services in company formation and auditing financial statements. Similarly, trust services do not currently exist in Myanmar, despite the existence of pre-colonial trust law. As such, Myanmar's economy shows few activities by lawyers and accountants in the formation or management of companies (no activity on trusts), or the management of clients' transactions or property. The NRA identifies these gatekeepers as a lower risk.

383. There are no legal casinos in Myanmar, although large-scale casinos operate within Myanmar's borders in ceasefire areas which are not controlled by the central government. Banks are not permitted to operate in these ceasefire areas.

ML/TF Risks in the FI and DNFBP sectors

384. Banking is dominant in the financial sector due to its size and importance, as the banking assets represent the highest percentage compared to other financial sectors (approx. USD43 billion – see chapter 1), with other inherent factors such as a high number of access points. Banking represents an inherently higher ML/TF risk, which is in keeping with the draft NRA findings. In addition, there are features of the Myanmar banking sector that represent particularly high risks. For example ownership by 'tycoons' and high-risk PEPs; narcotic/ML-related sanctions in the past, vulnerable financial sector features such as a highly dollarized economy, weakly regulated domestic USD settlement and dominant informal systems including hawala. These and other risk elements are not sufficiently considered in the draft NRA (e.g. cross-sectoral ownership and control (unregulated group structures)). The authorities and FIs the assessors met with during the onsite recognised the prevalence of informal financial systems, especially hundi, and the cash economy.

[55] https://www.iom.int/countries/myanmar

385. Amongst DNFBPs, the gold, gems and real estate sectors represent the biggest risks. This is due to the vast natural resources of gems and precious stones within Myanmar and the threats from related illegal activities such as smuggling and corruption. The risk of money laundering through real estate derives primarily from the inflow of foreign ownership and the absence of proper regulators for the industry.

386. While this is not highlighted in the NRA, the team notes that the casino sector poses significant risks. Casino business is prohibited, but its existence in ceasefire zones continues to increase its risks from informal connectivity with banking and other financial services. This is inevitable due to the establishment of branches of banks within or near to the ceasefire regions where the casinos are operating.

Designation of supervisors

387. CBM and MOPF are designated AML/CFT supervisors for the financial sector.

388. There are technical gaps in designation of Myanmar's self-regulatory bodies (SRBs) for DNFBPs as most of the SRBs or associations lack a sufficient legal basis, scope of membership, or institutional capacity to serve as the AML/CFT supervisor and joint regulator for the sectors. The Myanmar Real Estate Services Association, Gem Enterprise Association, Gold Enterprise Association and Myanmar Institute of Certified Public Accountants (MICPA) do not have the authority to license the business/activity and impose fit and proper requirements. Membership of these associations is voluntary (except for MICPA) and does not represent the whole industry. As a result, none of the SRBs seem aware of their responsibilities under the law or have a plan to activate their roles as regulator / supervisor.

389. In relation to DNFBPs, Myanmar has a number of industry and professional bodies that work closely with government, however their capacity is generally low and independent commentators on the Myanmar economy highlight the dominance of certain 'tycoons' and PEP-related families in key sectors. With the exception of accountants and, to some degree lawyers, SRBs in Myanmar are not at a level of development or do not have processes and controls with well supported integrity frameworks to perform the SRB functions envisaged under the FATF standards.

390. The assessment team has a serious concern that in the context of Myanmar, the designation of private bodies as supervisors for the gold and gems sectors cannot be effective, and that the real estate sector will face significant challenges until major legal reforms to the status and role of real estate agents. They face a number of challenges:

a. The conflicts of interest and very high ML risks in these high risk sectors seem impossible to manage through delegation of regulatory and supervisory functions to those non-government actors, as current committees in these associations are also actively involved in business. This is coupled a with lack of understanding of ML/TF risks and AML/CFT requirements. As outlined in section 1, the NRA findings and a range of credible studies highlight corruption challenges in the sectors, business ties to non-state actors in the ceasefire zones and very large-scale smuggling problems with reported involvement of the businesses involved in production and wholesale of gold and gems. There is a need for a government agency to take on the role of competent authority for these high risk sectors.

b. The designation of the MICPA as the competent authority for accountants does not seem to be suitable. The Myanmar Accountancy Council is government-controlled and is

responsible for licensing and disciplinary actions on accountants. It may be more suitable to perform the role of AML/CFT supervisor.

c. The Bar Council seems unaware of its role as regulator and supervisor for lawyers and notaries.

Licensing, registration & controls preventing criminals & associates from entering the market

Financial Institutions

391. CBM's fit and proper regulations cover many elements of the FATF standards but there are gaps in relation to beneficial owners. An enhanced regulation was issued in 2010, but there have been no new banking licenses approved since 2015 with a number of licenses currently being processed. The existing law and procedures require the source of funds for capital requirement to be checked by AMLCB and the tax office to ensure it is not from criminal proceeds.

392. CBM fit and proper checking does not sufficiently consider systemic ML risks from criminals and their associates seeking to own or control banks, other FIs or DNFBPs, either directly or through beneficial ownership or control. There are significant technical gaps with fit and proper controls not applying to beneficial owners. The particular market entry risks facing Myanmar, include close involvement by PEPs and persons associated with high risk industries (e.g. jade mining) and trade with ceasefire areas controlled by armed separatist groups. The earlier bilateral sanctions on Myanmar banks for their involvement in laundering narcotics proceeds is a further point of context. It is notable that Myanmar's banking sector has recently experienced very significant expansion of the numbers of branches and the size of domestic banking groups, however the CBM statistics of fit and proper checking do not demonstrate an increase on fit and proper checking by the regulator in keeping with the rapid expansion of branch networks.

393. The CBM has recently rejected three NBFI licenses upon recommendation by AMLCB due to uncertainty of the source of funds and past criminal records of applicants. Similarly CBM advised that two non-bank money changer licenses were rejected due to an objection by the Bureau of Special Investigation.

Table 18: CBM Market Entry - License Applications for Banks, NBFIs and MFS

	Bank		NBFI		MFS	
Year	Applications	Licenses Granted	Applications	Licenses Granted	Applications	Licenses Granted
2014	2	1	6	6	-	-
2015	5	1	8	1	-	-
2016	4	-	9	6	5	1
2017	2	-	9	7	5	2

Table 19: CBM Market Entry – Licence Applications for Money Changers

Year	Money Changing - Banks		Money Changing – Non Banks	
	Applications	Licenses Granted	Applications	Licenses Granted
2014	166	166	60	60
2015	135	135	52	48
2016	181	181	65	59
2017	105	105	64	57

Table 20: CBM Market Entry - Senior Management, Director and/or Shareholder

Year	Bank		NBFIs	
	Applications	Rejected	Applications	Rejected
2014	2	2	-	-
2015	3	1	-	-
2016	4	2	-	-
2017	18	-	1	3

394. For non-bank money changers, background checks are conducted with the BSI. This is evidenced by the non-clearance by BSI during the license application process.

395. The effectiveness of the checking with Home Ministry, AMLCB/FIU and BSI was not demonstrated, as no information was provided on the actual process and procedures in supporting CBM and MOPF on this measure. There are inconsistent approaches as checking is conducted with different LEAs. For example, CBM checks with AMLCB/FIU for banking licenses, while for non-bank money changers, the checking is done with BSI. At the same time, the applicant needs to obtain a clearance certificate from the local police certifying that they are free from criminal activities.

396. Shareholders and directors are not required to declare or provide information as to their beneficial ownership or control arrangements. With limited infrastructure on legal person registration in the country and sole reliance on DICA information, CBM faces challenges in determining the beneficial owner or controlling interest of the applicants and applying fit and proper controls.

397. MOPF has established a regulation on checking fitness and propriety of microfinance applicants, including checking before the establishment of joint ventures with other entities or obtaining additional grants or funding. Limited evidence was shared on the checking done with Home Ministry as part of the fit and proper process before granting the microfinance license. MOPF applies a simpler process to insurance companies with no indication of criminal checking on the profile of applicants and their key responsible person (KRPs). For those who would like to apply for a microfinance licence using application form MFI-01, MOPF checks offence clearance, blacklist and source of funds and interviews regarding permission or refusal on issuing license. According to the eligible criteria, regarding permission or refusal of license, there is a case of a microfinance business license refused because of a criminal case. There were no further details available on the checking done by SEC with Home Ministry on the background check of the securities license applicants.

Table 21: Microfinance Institution License Applications Received and Approved by MOPF

Year	Application	Approved	Rejected
2014	47	37	10
2015	36	30	6
2016	23	15	8
2017	21	15	6

398. No new licenses have been granted to insurance business since 2014, while SEC only approved 6 securities licenses from 52 applicants for the period from 2014 to 2017.

DNFBPs

399. As outlined in the TC annex, market entry fit and proper controls on DNFBPs are very narrow. With the exception of lawyers and accountants, general provision under respective laws provides an avenue to impose fit and proper requirements, however Myanmar did not demonstrate any measures to address the significant risks that criminals and their associates may seek to own or control other higher risk DNFBPs (real estate agencies, gem dealers, gold dealers). Myanmar Real Estate Services Association, the Gem Enterprise Association and the Gold Enterprise Association do not have the authority to license business/activity and impose fit and proper requirements. The technical gaps in designation of the sectoral associations for gem, gold and real estate make it almost impossible to prevent criminals from controlling the business entities, as membership of these associations is on a voluntary basis and does not represent the whole industry.

Supervisors' understanding and identification of ML/TF risks

400. The CBM demonstrates an improving understanding of relevant sectors and their risks. This is demonstrated by the incorporation of relevant risk indicators into the data template for offsite monitoring. This also includes the recognition of the existence of informal channel such as hundi system and specification of high-risk regions. There has been some engagement with the MFIU on risk factors with particular sectors, regions and enterprises. CBM's offsite supervision, including its consideration of banks' enterprise-level risk assessments has further developed CBM's understanding of ML/TF risks faced by banks.

401. CBM was closely involved in the NRA process at both policy and working levels. Their involvement in the NRA process has contributed to CBM's understanding on the ML/TF threats faced by the country such as corruption, drug trafficking and terrorism.

402. There is a need for supervisors to develop and apply a deeper understanding of risk, especially for the CBM, given the strategic dominance of the banking sector. Relevant risk factors that need further consideration by CBM, MOPF and others include cross sectoral ownership/control, activities and methods of informal remittance and its links to the formal banking sector, vulnerabilities of trade financing and banking transaction with customers from ceasefire zones or international border zones (China, India and Thailand). Moreover, the vulnerabilities of existing financial sector policies such as the existence of a dollarized economy and weakly regulated domestic USD settlement should be properly understood.

403. MOPF supervisors show a limited understanding of the nature of their sectors and their ML/TF risks. The assessment team shares the view of the supervisors that these sectors are considered to be lower risk, on the basis that the microfinance sector is small and due to the strict regulation on limiting business for insurance and centralised database of all insured persons with MOPF. Nevertheless, the ML/TF risk cannot be disregarded, especially for the insurance sector, as it is still open for abuse including the risk of beneficial owners owning multiple insurance policies below the thresholds imposed. Similarly, lack of regulations and measures by the supervisors would increase the risk of the sectors being complicit with or abused by criminals.

404. The bodies designated to be the AML/CFT regulators/supervisors for DNFBPs have a generally weak understanding of risks of the sector being abused for ML/TF activities. Myanmar Real Estate Services Association demonstrated some understanding of ML risks in its sector, and amongst the DNFBP supervisors, only the real estate association indicated a strong commitment to support the proper regulations and sound understanding of the risks and vulnerabilities of

the sector. The risks understood by gold and gems associations were limited to the fraud risk related to gold/gems business.

Risk-based supervision of compliance with AML/CFT requirements

405. AML/CFT supervision of banks is divided between FIRD and FISD of CBM. Off-site monitoring for AML/CFT and sanctioning is done by the FIRD while the on-site supervision is undertaken by FISD. The split in responsibilities between these two departments creates gaps in the risk-based approach and reduces effectiveness of supervisory measures.

406. For example, even though the off-site monitoring analysis by FIRD has classified the ML/TF risk for each bank, this identification does not guide the implementation of risk-based onsite examination by the FISD, mainly due to the segregation of supervisory tasks. Nevertheless, some information, such as the institutional profile required for offsite monitoring is held by FISD who is the prudential supervisor. From the enforcement perspective, any follow-up action including enforcement action, cannot be properly implemented as it falls within FIRD's responsibilities even when the examination findings were identified by FISD. It would be more practical, given the segregated geographical location (between Nay Pyi Taw and Yangon), if FISD was involved in end-to-end supervisory activities, from off-site to onsite and follow up measures while FIRD could focus solely on the regulation aspect.

407. FIRD offsite supervision has been useful in informing CBM's understanding of ML/TF risks faced by banks and the state of their control measures. The CBM Offsite AML/CFT Handbook provides a comprehensive guide in assessing the inherent risk and control measures. This information is further analysed with the institutional profile to determine the level of ML/TF risk. Based on this qualitative and quantitative assessment, 7 banks were rated as high, 11 moderate and 22 as low.

408. There is however a need for a deeper risk-based approach to offsite supervision. This includes the incorporation of indicators faced by Myanmar, including reflection of NRA results as the template also requires the collection of data on sectors that do not exist i.e. non-bank money remitters. In addition, further improvement is required for the understanding of high risk regions (as it currently represents most of the states in Myanmar). Further details and understanding on high risk countries is also crucial.

409. The planning and conduct of offsite supervision is not sufficiently integrated and coordinated with FISD. The results of offsite supervision are not yet used as a starting point for risk-based onsite supervision.

410. The application of supervisory approach by CBM is progressing with further improvement required. FISD demonstrates a well-resourced AML/CFT capability with 60 officers and staff and is developing and applying sound procedures and a strong focus on training and supporting its supervisors. FISD has made good use of external technical assistance to enhance the capacity of its supervisory staff.

411. The onsite supervision by CBM is guided by an onsite manual handbook, which specifies procedures and checklists for each AML/CFT examination activity, mapped against the relevant AML/CFT law, regulation and directives. The handbook is comprehensive, providing step-by-step guides for each stage of examination from planning, inspections with a list of 12 areas, procedures for sample selection, meetings, interviews and post inspections.

412. The application of RBA at a sectoral level is still developing as current on-site supervision is still driven, in part, by prudential assessment priorities. As such, the depth and intensity of AML/CFT supervision is not based on ML/TF risks and the timing and intensity follows the pattern of annual prudential on-site examinations. Overall there is not a sufficiently deep risk-based approach to onsite supervision.

413. In 2016 CBM undertook three short and targeted AML/CFT examinations. These were an exception and were targeted based on surveillance information on the illegal activities that passed through the concerned banks.

Figure 14

Thematic On-Site Examination

Based on surveillance by CBM, a targeted on-site visit has been conducted on Bank YYY. The surveillance identified a possible illegal investment scheme and related illegal transactions through Bank YYY.

The inspection focused on the CDD, EDD and STR identification and submission process by the bank. As a result, the CBM found significant gaps with these processes and issued a warning letter to Bank YYY to rectify the gaps.

414. CBM has done basic AML/CFT supervision on all banks every year for the last three years. This has not been wholly risk-based approach, but has increasingly sought to include risk inputs. The CBM mentioned approximately a week is spent for AML/CFT examination as part of a month-long prudential examination. CBM appears to have sufficient well-trained supervisors to support this level of offsite and onsite supervision.

Table 22: Number of Institutions Inspected for AML/CFT - Embedded with Prudential: Number of ROs (number of visits)

	CBM				MOPF	
Year	**Banks**	**NBFIs**	**MC**	**MFSP**	**Microfinance or Insurance**	**Securities**
2014	22 (25)	6 (7)	28 (28)	-	-	-
2015	13 (15)	4 (4)	27 (27)	-	-	-
2016	22 (22) + 3 (3) – targeted AML/CFT examination	1 (1)	-	-	--	-
2017	15 (15)	7 (7)	53 (53)	-	-	6 (6)

415. There has been a focus on headquarters and Yangon branches of banks. As some banks were lacking full core banking or centralised banking systems, a principal focus on examination at headquarters cannot give a complete picture of risks and controls, especially for branches operating in higher risk regions.

416. CBM supervisory staff have parallel responsibilities for prudential and AML supervision of banks, which provides advantages in understanding the profiles and certain risks of banks. CBM supervisors demonstrated that their combined roles allow them to identify systematic strengths and gaps to be rectified with the banks (e.g. core banking systems), as the access to institutional profiles, such as size, accessibility, products and services offered, the adequacy of control measures would provide similar insight in understanding the ML/TF risk faced by the banks and their level of compliance.

417. Beyond banks, the other financial sectors under CBM are not subjected to a comparable scope of AML/CFT supervision. There is an absence of AML/CFT supervisory framework for mobile financial service providers (MFSPs), NBFIs and non-bank money changers. This is a particular concern with non-bank money changers which are ranked as high risk. These sectors have not yet been subject to detailed offsite supervision or any onsite supervision for AML/CFT. Incorporation of ML/TF relevant risk indicators within the periodic financial data submission would be a good start for off-site monitoring and subsequent supervisory measures.

418. MOPF has not done any AML/CFT supervision on microfinance and insurance companies, despite an overarching policy statement in their supervision manual. While these sectors are considered to be at lower ML/TF risk, there is a need for some form of offsite supervision. For example, MOPF does not yet capture relevant ML/TF risk indicators within the periodic financial data submission for off-site monitoring. MOPF will conduct onsite supervision on microfinance institutions (MFIs) according to Directive No. 4/2015 of the Supervisory Committee.

419. In contrast, despite being considered as having low risk and a small number of players, SEC has conducted onsite supervision in 2017 on all six securities companies covering the examination of business conduct, IT systems and AML/CFT.

420. Another concern held by the assessment team is the involvement of conglomerates in multiple financial services businesses, namely banking, insurance and securities, which cut across the jurisdictions of CBM and MOPF. Many of these entities have close exposure to networks of PEPs. The absence of consolidated regulatory and supervisory frameworks for this financial group structure would pose cross-laundering risks due to different levels of regulations and control measures. There is no clear channel for communication and coordination between CBM and MOPF to support oversight of group structures.

421. DNFBPs have not been subject to any supervision. There are technical gaps for DNFBPs where some of the SRBs or associations do not have a sufficient legal basis, scope of membership, or institutional capacity to serve as the AML/CFT supervisor and joint regulator for the sectors. While the SRBs for lawyers and accountants are established sectoral regulators, the assessment team noted that no supervision activities were conducted by the designated associations on their own sectoral rules, even prior to the very recent designation of those bodies as competent authorities for AML/CFT.

Remedial actions and effective, proportionate, and dissuasive sanctions

422. CBM has had a focus on follow up letters and remedial actions in response to offsite and onsite supervision.

423. Administrative letters and memoranda issued to the banks relate to basic compliance issues and are generally broad without setting out specific failings. The supervisory reports or follow-up letters do not include detailed requirements for remedial actions. Only three warning letters were issued in 2016, with no evidence of follow up action by CBM to check measures taken to address the deficiencies identified. This is evidenced by 11 subsequent warning letters issued in 2017 (including to the banks warned in 2016) which clearly indicate the same deficiencies in AML/CFT programs.

424. This appears to reflect a lack of political will and a structured policy and procedures for pursuing serious enforcement actions for AML/CFT failings by banks or other financial institutions.

425. There are significant technical gaps with CBM's ability to apply the wider range of enforcement powers available under the FI Law (2016) to AML/CFT failings. As referenced in R.26, this stems from a lack of AML/CFT regulations issued under the FI Law.

426. In addition, there are significant practical challenges with applying the sanctions under the AML law, as the fines and enforcement powers under the AML Law are all based on a criminal sanction, which would require a long process of prosecution. CBM does not appear to have a plan or the capacity to regularly apply these criminal enforcement powers.

427. The division of responsibilities between FIRD and FISD may contribute to an absence of enforcement actions following onsite supervision. There are very significant delays in CBM issuing enforcement letters following onsite visits. This reflects, in part, a split in responsibilities with FIRD responsible for sanctions based on the results of onsite supervision. FISD does not currently have a role for AML/CFT sanctions and the coordination between the divisions needs to be improved when considering responses to supervision.

428. Reflecting the lack of supervision, no remedial or enforcement actions have been taken with any DNFBP. This also follows technical gaps in designation of supervisors and their lack of action to implement the SRBs' or associations' new roles as competent authorities.

Impact of supervisory actions on compliance

429. With limited information provided by the authority and measures imposed, the impact of supervisory actions on compliance is not well demonstrated. It is clear from the statistics of administrative letters issued to the banks, that very few of those banks improved their AML/CFT frameworks as similar breaches were found in follow up supervision. The failings by CBM to sanction cases of continuing non-compliance undermines the good work on outreach and supervision and fails to result in positive impacts to prevent ML/TF.

Promoting a clear understanding of AML/CFT obligations and ML/TF risks

430. The FIU and CBM have delivered numerous awareness raising workshops since 2014. The majority of these were to FIs, with DNFBPs receiving limited outreach and very little written guidance. Approximately 20 awareness sessions were conducted affecting more than 1,000 bank officers at various levels. Looking at the repetitive compliance issues, there is a need to revisit capacity building strategies to ensure productive outcomes in enhancing the compliance level.

431. MOPF and SEC, in coordination with MFIU, have conducted a relatively small number of awareness programs targeted to entities under those two regulators.

432. The initiatives to promote DNFBPs understanding of AML/CFT requirements and ML/TF risks by the industry bodies designated as supervisors are at a beginning stage and should be improved. Commendable approaches include a directive issued by MICPA on CDD and STRs, and the inclusion of an AML/CFT module within MRESA's compulsory modules for association membership purposes. DPMS indicated the existence of an information sharing platform on fraudulent customers and activities related to gold/gems trading. An extension to ML/TF related risk information would be beneficial on this platform.

Overall Conclusions on Immediate Outcome 3

433. Fit and proper checks by financial supervisors require further improvement, especially the checking on beneficial owners, and a consistent approach to checking with law enforcement authorities. For DNFBPs, measures to prevent criminals from controlling or owning the institutions cannot be discharged properly.

434. Despite the very significant risks, there has been no supervision of DNFBPs. There are serious concerns about the capability for the bodies designated to be AML/CFT supervisors for most DNFBP sectors.

435. CBM has demonstrated significant progress towards risk-based supervision and has increased its capacity and the scope of supervision of banks. The current enforcement approach by CBM on banking institutions is ineffective, due to repetitive compliance issues and the absence of a structured enforcement framework.

436. **Myanmar demonstrated a low level of effectiveness for Immediate Outcome 3.**

CHAPTER 7. LEGAL PERSONS AND ARRANGEMENTS

Key Findings and Recommended Actions

Key Findings

Legal persons and arrangements (Immediate Outcome 5)

- Information on the creation and types of Myanmar legal persons is publicly available. There is a central public register for companies that lists basic information on companies registered in Myanmar (which does not include beneficial ownership information).
- The quality of the information held by DICA has some significant weaknesses (not sufficiently kept up to date, a lack of verification, etc.) but Myanmar has undertaken some efforts to remove inactive companies from the register.
- The Myanmar Trusts Act (1884) governs the formation of trusts in Myanmar. The law predates independence from Britain and all Myanmar interlocutors indicate that the law is not in use. However, the law has not been repealed and remains available to be used. As a practical matter, Myanmar does not recognise trusts under its domestic law; foreign trusts are not prohibited, but do not yet appear to have a meaningful presence in the Myanmar economy.
- Myanmar's draft NRA includes a basic analysis of the risks associated with legal persons; however this assessment does not take into account Myanmar's specific geopolitical and historical risk and context. The risks associated with legal persons do not appear to be well understood by competent authorities or domestic financial institutions.
- Myanmar relies on CDD conducted by FIs and DNFBPs to allow authorities to obtain beneficial ownership information of legal persons and arrangements. As outlined in IO.4, CDD to identify the beneficial owners and controllers of customers is not well implemented and such information is unlikely to be available to LEAs and other authorities. There is no statutory requirement for legal persons to disclose or record their beneficial ownership at the company registry, or to otherwise be held by the company.
- There is a lack of planning and practice by the MFIU and LEAs to obtain information on the beneficial ownership and control of legal persons in the course of developing financial intelligence or conducting financial investigations, but this requirement is neither well-understood nor well-implemented.

Recommended Actions

- Deepen the assessment of risks of legal persons and arrangements, including ensuring that the Internal Revenue Division (IRD) plays a bigger role in sharing insight into risks.
- Issue guidance for FIs and DNFBPs on identifying beneficial ownership and control in the course of conducting CDD on customers who are legal persons or arrangements.
- Improve the capacity of the Directorate of Investment and Company Administration (DICA) so that it can conduct regular and greater verification of registration information provided by legal persons.

- Raise awareness among LEAs to focus on companies for AML/CFT investigations and ensure that the MFIU and LEAs have an SOP for obtaining beneficial ownership and control information from FIs or DNFBPs.
- Pursue legislative and regulatory changes to:
  - Extend controls on nominee shareholders and directors in keeping with the standards.
  - Give more robust enforcement powers to DICA to monitor requirements and sanction non-compliance.
  - Require any foreign ownership of legal entities to be registered with DICA.
  - Ensure the phase out of bearer shares and share warrants in a timely manner.
- Consider pursuing legislation to require companies to:
  - Hold up-to-date and accurate beneficial ownership information and report such information in a timely manner to DICA.
  - Submit available beneficial ownership information to tax authorities.
- Improve cooperation between DICA and IRD to improve the transparency of legal persons and arrangements.

437. The relevant Immediate Outcome considered and assessed in this chapter is IO.5. The recommendations relevant for the assessment of effectiveness under this section are R.24 & 25.

Immediate Outcome 5 (Legal Persons and Arrangements)

438. At the time of the onsite[56], Myanmar law recognised the following types of legal persons: private limited liability company by Myanmar citizens; public limited liability company by Myanmar citizens; foreign company; branch or representative office of a foreign company; joint venture company with the government of Myanmar; or an association/non-profit organisation.

439. As of the end of September 2017, there were 67,633 registered companies in Myanmar. According to statistics provided by DICA, 10,469 companies registered in Myanmar in 2016-2017. Of these, 9,095 were domestic private companies; 52 were domestic public companies; and 1,322 were foreign companies or branches of a foreign company.

Public availability of information on the creation and types of legal persons and arrangements

440. The Directorate of Investment and Company Administration (DICA), part of the Ministry of Finance, is responsible for the registration of companies in Myanmar. All information about registration of companies, including copies of the legal framework and guides in both English and the Myanmar language, and relevant forms are available on DICA's website (www.dica.gov.mm).

441. DICA has a central data repository with basic ownership information of legal persons. The DICA website has a public-facing company search function that lists: the company's name,

[56] On December 6, 2017, a new version of the Myanmar Companies Act was signed into law. The Myanmar government is currently taking steps to implement its provisions, which will enter into force on August 1, 2018.

registration number, legal form, status, and address of the registered office. Some of these records contain lists of directors and their identification numbers.

Identification, assessment and understanding of ML/TF risks and vulnerabilities of legal entities

442. Due to unique contextual factors of the Myanmar economy, including its extended isolation from the international economy and longstanding cultural practice of relying upon familial ties in business matters to reduce formal direct ownership linkages (resulting in obscured beneficial ownership), incorporation is a less common practice than would otherwise be expected from a jurisdiction of Myanmar's size. These factors are likely significant contributors to the fact that Myanmar is not a regional centre for company formation. There has been a marked increase in the volumes of incorporation in the previous three years, reflecting an opening up of the Myanmar economy to trade and investment and associated increased levels of economic growth.

443. In its draft National Risk Assessment, Myanmar has analysed the AML/CFT risks arising from legal persons to a limited extent, and acknowledges that legal persons in their country can be misused for ML/TF, thereby presenting a significant risk. However, the risk assessment does not analyse the risk vis-à-vis Myanmar's geopolitical context, nor against the contextual factors described in paragraph 442.

444. The risks associated with legal persons do not appear to be well understood by competent authorities or domestic FIs. Local branches of foreign FIs appear to have a strong understanding of the general risks associated with legal persons.

445. Myanmar does not have a separate sector of company service providers, either for formation or services to domestic or foreign legal persons. It is apparent that law firms in Myanmar may provide relatively limited advisory services for company formation, but they do not generally serve as company secretaries, and lawyers or other persons/businesses cannot serve as nominee directors.

446. The Myanmar Trusts Act (1884) governs the formation of trusts in Myanmar. The law predates independence from Britain and all Myanmar interlocutors indicate that the law is not in use. However, the law has not been repealed and remains available to be used. Thus, as a practical matter, Myanmar does not recognise domestic trusts. Myanmar has not assessed the risk from foreign trusts, which will become an increasing issue as Myanmar continues to open its economy to foreign investment. Based on discussions with the financial sector during the onsite visit, it is apparent that there are currently very few trustees of foreign trusts active in the Myanmar economy. Neither local branches of foreign financial institutions nor domestic financial institutions have to date encountered foreign trusts being used as a vehicle to enter the Myanmar financial system.

447. As the economy increasingly opens up to foreign investment (a trend that is likely to accelerate with the recent enactment of MCA II, one of the stated purposes of which is to facilitate foreign investment in Myanmar), the risk of foreign trusts and more complex company structures will increase significantly.

Mitigating measures to prevent the misuse of legal persons and arrangements

448. Myanmar relies on CDD undertaken by FIs and DNFBPs to enable authorities to 'lift the corporate veil' to obtain information on beneficial ownership and control of legal persons and

arrangements. However, there are gaps regarding the extent to which information on the ultimate beneficial owner is collected. There is no statutory requirement for beneficial ownership to be disclosed or recorded at the DICA registry, or otherwise held by the company. This approach was not included in the new version of the Myanmar Companies Act, nor has Myanmar pursued requiring companies to hold and/or disclose their beneficial ownership information in circumstances outside of CDD undertaken by FIs and DNFBPs.

449. The process to prepare the NRA did not identify the use of bearer shares or nominees as significant practices and risks in Myanmar, despite their availability under company law. Bearer shares remain a feature of the company registration framework in Myanmar. The new version of the Myanmar Companies Act prohibits issuance of bearer shares once it enters into force on August 1, 2018, and provides for a phase-out mechanism for existing shares. Because the new Myanmar Companies Act was not in effect by the end of the onsite visit, this is not taken into account in this report. Authorities had not prepared any implementing guidance for companies on the incoming measures to phase out bearer shares. Authorities have not issued any instructions or guidance to mitigate the risks from nominee shareholders or directors.

450. Financial institutions are obliged to conduct CDD to identify the beneficial ownership and control of legal persons and arrangements, including ongoing CDD. However, this is not well implemented by domestic FIs, resulting in this information not being readily available to LEAs and other competent authorities on request. In practice, domestic FIs conflate the concepts of legal ownership and beneficial ownership, and as a result, rely entirely upon DICA records of legal ownership. These FIs additionally do not conduct additional inquiry into beneficial ownership. CDD records are only updated periodically under ongoing CDD requirements, while BO arrangements may have changed in the interim.

451. Although Myanmar as a practical matter does not recognise domestic trusts, financial institutions are nevertheless obliged to conduct CDD to identify, among others, trustees at the commencement of a business relationship and when conducting a transaction. However, this requirement is not well-understood by domestic financial institutions, and these institutions have not yet encountered a foreign trust.

452. There do not appear to be any provisions in Myanmar tax law to reveal beneficial ownership information. Furthermore, there does not appear to be awareness on the part of the IRD of the opportunity for AML/CFT measures to contribute to its efforts to improve transparency.

Timely access to adequate, accurate and current basic and beneficial ownership information

453. Levels of compliance with legal requirements to keep registration requirements up-to-date are low. This results in lower quality and out-of-date information on corporate ownership and structures. However, based on failure to keep such records up-to-date, DICA has recently removed thousands of companies from its registry.

454. DICA does not properly verify submitted documents and has minimal enforcement powers. There is little capacity to ensure that any initial information is kept up-to-date.

455. Competent authorities have adequate powers to seek ownership information from DICA. However, for the reasons articulated above, there are doubts as to the quality of this information. Furthermore, it does not appear that competent authorities exercise this authority with any regularity in furtherance of financial investigations.

456. The MFIU and LEAs have power to obtain CDD information collected from banks and other FIs or DNFBPs in order to understand the beneficial ownership or control of a legal person or arrangement. Authorities may have difficulty identifying which FI or DNFBP has a particular legal person as a customer. As outlined in IO.3 & IO.4, there are significant failings with the implementation of CDD obligations by banks and no checking of such implementation by other FIs or DNFBPs. Supervision of CDD has not resulted in increased rates of compliance by banks and other FIs.

457. It is not apparent that CDD information on legal persons is regularly obtained during the course of development of financial intelligence by the FIU or financial investigation by any LEA. Law enforcement lacks standard operating procedures on how to obtain beneficial ownership information in the course of financial investigations.

458. Because domestic trusts have not been recognised as a practical matter after independence, there is no modern framework or mechanism for the systematic collection or retention of beneficial ownership information on legal arrangements. To the extent that such information exists on foreign legal arrangements, it would be held by financial institutions, collected as a part of their customer due diligence obligations. To date, financial institutions in Myanmar have not encountered foreign trusts.

459. As with legal persons, LEAs do not have standard operating procedures to guide investigators on obtaining control information in the course of financial investigations that may involve parties to a foreign trust or similar legal arrangement. Authorities may have difficulty identifying which FI has a particular trustee of a foreign trust as a customer. To date, LEAs have not experienced investigations which involved parties to a foreign trust.

Effectiveness, proportionality and dissuasiveness of sanctions

460. DICA's implementation of powers to strike off companies and other legal persons that fail to file updated registration information is a positive. The statutory financial penalties for failure to keep ownership information up-to-date with DICA appear to be minimal, and have not been updated to account for the change in Myanmar's currency, and accordingly are not dissuasive or effective.

461. As outlined in IO.3, there are significant failings with the implementation of CDD obligations by banks and no checking of such implementation by other FIs or DNFBPs. CBM and other supervisors have not applied sanctions in cases of failures to undertake proper CDD or provide such material to competent authorities.

Overall conclusions on Immediate Outcome 5

462. While there appear to be relatively minor risks from misuse of legal persons and arrangements, Myanmar's assessment of the risks was not comprehensive. Information on the types of legal persons in Myanmar is publicly available. DICA holds a registry of legal persons, and their basic information, however, this information is not adequately verified and little has been done to ensure it is kept up to date. Beneficial ownership information is not centrally held or collected by companies, and authorities rely on beneficial ownership information collected by banks and FIs during the CDD process. However, competent authorities lack mechanisms to make regular use of such CDD information and CDD measures are poorly implemented overall.

463. **Myanmar has a low level of effectiveness for Immediate Outcome 5.**

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CHAPTER 8. INTERNATIONAL COOPERATION

Key Findings and Recommended Actions

Key Findings

International Cooperation (Immediate Outcome 2)

- Myanmar rarely uses its legal framework to obtain foreign evidence through MLA to support domestic ML/TF investigations and prosecutions. Efforts have largely focused on domestic predicate offences (mostly drug offences) rather than ML investigation and prosecution with transnational dimensions in keeping with the assessed risks.
- There is a lack of clear high-level commitment and direction to pursue MLA to support domestic investigations.
- LEA and UAGO do not provide MLA without undue delay and there is a lack of specialist skills to formally request international cooperation and lack of special investigative techniques under domestic law to support domestic investigations to respond to MLA requests.
- Myanmar lacks a case management system to manage MLA matters (including extradition), standard operating procedures or written guidelines for processing incoming and outgoing MLA requests in a timely manner.
- Informally, Myanmar authorities share and receive some intelligence with neighbouring countries, especially Thailand and China regarding criminal activities along their shared borders. International cooperation with other jurisdictions that share risks with Myanmar is not well developed.
- There is a lack of high-level commitment and prioritisation to pursue suspects fleeing Myanmar territory to escape criminal charges.
- Myanmar has never extradited a national to face criminal charges. Authorities rely heavily on deportation under immigration laws to surrender foreigners who reside in Myanmar to face criminal charges in a foreign jurisdiction.
- MFIU and other authorities do not proactively share information with foreign counterparts in relation to risk, beneficial ownership of legal entities and arrangements.
- Supervisors have not pursued international cooperation with foreign counterparts on key risks, (market entry fit and proper, supervisory findings and enforcement actions).

Recommended Actions

- Urgently develop procedures and mechanisms to coordinate and implement MLA requests.
  - Prepare manuals and guidelines for LEAs on MLA and extradition processes, including case management systems.
  - At the highest level, prioritise and pursue formal and informal international cooperation (possible agency level directives) to support domestic ML/TF investigations, particularly for high risk crime types.

- The MLA secretariat in DATC should be sufficiently resourced to prioritise support for making and managing MLA requests
- LEAs, including Customs, should operationally prioritise a "follow the money" approach that extends beyond Myanmar's borders and make routine international requests for information and evidence from foreign jurisdictions in keeping with the risk profile.
  - Prioritise cooperation with the governments of Thailand and China to address shared ML risks from ceasefire zones along Myanmar's borders, in particular in relation to large-scale casinos and the movement of funds through other businesses and trade.
- Pursue international cooperation to share information related to risk assessments, including sharing the finalised NRA and seeking information related to thematic or sectoral assessments.
- Provide further education and guidance to LEAs concerning the importance of pursuing international cooperation at both enquiry and investigation stages and its interplay with AML/CFT issues to support AML/TF investigations and prosecution.
- MFIU and CBM should seek, maintain and proactively share information with foreign counterparts in relation to risk, beneficial ownership of legal entities and arrangements, sanctions and sharing other supervisory information, etc.
- Supervisors should pursue international cooperation with foreign counterparts targeting key risks, particularly in relation to market entry fit and proper, supervisory findings and enforcement actions.

464. The relevant Immediate Outcome considered and assessed in this chapter is IO.2. The recommendations relevant for the assessment of effectiveness under this section are R.36-40.

Immediate Outcome 2 (International Cooperation)

Background and context

465. Myanmar has a legal framework and mechanisms for international cooperation both through formal and informal channels. Myanmar's assessments of ML and TF risks have not sufficiently considered the main geographic and transnational risk to inform priorities for international cooperation (see IO.1). National and agency-level policies insufficiently focus on priority threats and shared risks with foreign counterparts. This is equally true of criminal justice and financial regulatory areas.

466. An important contextual issue is that few jurisdictions have law enforcement attachés or liaison officers stationed in Myanmar to support cooperation with Myanmar authorities. This may decrease the opportunities for timely direct engagement with foreign counterparts.

Providing constructive and timely MLA and extradition

467. Myanmar does not provide constructive and timely assistance in response to the limited MLA requests it has received, and has never formally extradited a fugitive. This is due to a lack of clear policy and guidance to LEAs to prioritise international cooperation to support foreign ML/TF investigations on the basis of risks with neighbouring and other jurisdictions in

the areas of drug manufacture and trafficking, environmental crimes, gold smuggling, gems smuggling (especially jade), hundi, border casinos and human trafficking.

468. Myanmar has demonstrated formal cooperation with neighbouring Thailand and China in a small number of successful prosecutions. Assistance was provided to China in a case where Myanmar witnesses travelled to testify in a trial which resulted in a successful conviction.

Table 23: MLA Incoming & Outgoing Requests, Including Formal Extradition, 2012 – 2017

Year	Incoming MLA Requests			Outgoing MLA Requests		
	Incoming Requests	Details	Status	Outgoing Requests	Details	Status
2012	1 - China	Testify in criminal trial	Fulfilled	1 - China	Extradition request	unfulfilled
2013	0			0		
2014	0			0		
2015	0			0		
2016	1 - Singapore	Banking documents	In process	1 - Thailand	Documents re drug case	Fulfilled
2017	1 - Poland	Take action re company	In process			
	1 - India	Violent incidents along border	In process			
Total	**4**			**2**		

469. Myanmar cited four incoming MLA cases between 2012 and 2017. Cases related to cheating and dishonestly inducing delivery of property contrary to s.420 of the Penal Code. Assistance was provided in the 2012 case where Myanmar nationals travelled to China to meet their request for a witness (who was serving a jail sentence in Myanmar) to give evidence in court. Sections 28 & 29 of the MACM Law permits the Central Authority to transfer a person resident, including a person held in custody in Myanmar, to travel to the requesting state to give testimony, statement or expert opinion. The one incoming request of 2016 and two in 2017 are pending execution. The slow response to the requests since 2016 demonstrates inefficiency to provide MLA in a timely manner.

470. Myanmar only made one outgoing MLA request in 2016. This was for documentary evidence relating to a drug case. MLA has been provided to Myanmar in that case by the requested State.

471. Myanmar has had the ability to extradite in cases of ML since 2015 and TF since 2016. LEAs have very limited experience in sending out a formal extradition request and executing a formal incoming request. This appears to be a gap in both policy prioritisation to use MLA (including extradition) and practical guidance and awareness of the role of formal international cooperation to support domestic investigations and prosecutions.

472. Myanmar made one request to China for extradition of a fugitive, which was not fulfilled. The lack of use of extradition was unaltered following Myanmar's withdrawal of its reservations on extradition provisions of the Vienna and Palermo Conventions in September 2012 and after the passage of enabling legislation in 2015.

473. Myanmar will generally not extradite its citizens, and there is no clear guideline and experience to prosecute domestically in lieu of extradition. There is also no legal requirement to

prosecute without undue delay and no mechanisms in place to mitigate this. There is no real effort to pursue extradition of Myanmar nationals who flee the country following criminal investigations and this has resulted in domestic investigations coming to a halt.

Table 24: Immigration Deportation in Lieu of Extradition

Year	Country to		Country from	
2012			China	2
2013	Thailand	1	China Thailand	4 1
2014				
2015				
2016	China	2		
2017	Thailand	1	Indonesia	7
Totals	**4**		**14**	

474. The MPF occasionally uses deportation procedures under immigration laws to surrender fugitives to neighbouring countries. This occurs in lieu of extradition as outlined in the table above. The total of 14 outgoing deportations in response to requests since 2012 is not consistent with risks identified in the draft NRA, including in relation to illegal activities along the border areas.

Seeking timely legal assistance to pursue domestic ML, associated predicate and TF cases with transnational elements

475. Myanmar does not actively pursue MLA to support domestic ML, associated predicate and TF cases with transnational elements. This is due to a lack of high level commitment and gaps with policy to follow the money trail, lack of technical skills and guidance to LEAs.

476. Myanmar shared cases of ML investigations following financial trails outside of Myanmar, but formal legal assistance was not sought, either to obtain foreign evidence for use in domestic proceedings, or to seize assets or to support investigations of related criminal networks by foreign authorities. Given the transnational nature of many of Myanmar's key risks, this is a fundamental weakness.

477. The significant proceeds of crime and ML risks associated with ceasefire zones along Myanmar's borders and related illegal economic activities including large-scale casinos have not been a focus of international cooperation between LEAs and FIUs. A single outgoing MLA request over a period of 9 years is inconsistent with Myanmar's risks identified in the draft NRA.

Seeking other forms of international cooperation for AML/CFT purposes

478. Myanmar does not systematically or proactively seek other forms of international cooperation to respond to priority risks.

479. Myanmar has had very strong cooperation with Thailand and China through police to police channels, and liaison officers, especially in border areas. This was particularly noted in the areas of drug trafficking and human trafficking. Myanmar has had some cooperation with

Bangladesh and BIMSTEC[57] members in counter terrorism matters. The recent attempts to share information on the 1373 designated terrorist group Arakan Rohingya Salvation Army (ARSA), follows Myanmar's risk profile, but the cooperation was not well supported with sharing sufficient information and close follow up. There has been only one drug case where DED sought information through informal channels from the Thai Office of Narcotics Control Board for the purpose of asset recovery. There was no MLA request in this case.

480. Myanmar Customs has established contact points with Customs authorities in the region, including with members of ASEAN. It shares customs intelligence, and information on detention/seizure of illegal trading and customs smuggling are distributed to WCO members by using Customs Enforcement Network (CEN). It actively engages with neighbouring ASEAN customs agencies primarily in relation to customs matters; however, there has been a major successful case with ML elements which was not followed up by police. Myanmar Customs has not demonstrated that it prioritises or regularly seeks international cooperation to focus in relation to the highest risk smuggling categories of gems (China), gold (India), illegal timber (China & Thailand), wildlife (China), etc.

Providing other forms international cooperation for AML/CFT purposes

481. Myanmar did demonstrate some cases of responding to foreign requests of police to police, FIU to FIU and Customs to Customs, in particular with immediate neighbours, but this is largely on a case by case basis.

482. Customs has established contact points with Customs authorities in the region, including with members of ASEAN and is sharing customs intelligence, detaining and seizing illegal goods and intelligence is distributed to WCO members by using Customs Enforcement Network (CEN).

483. There were three projects that Customs worked on together with WCO to prevent and monitor some specific matters related to import and export control. Customs also was a part of an INTERPOL operation in this region that focused on combating illicit drugs and counterfeit medicines.

484. Myanmar did not demonstrate that it has supported international exchange of basic and beneficial ownership information of legal persons and arrangements with foreign jurisdictions.

485. The MFIU made several requests to foreign counterparts for the purpose of asset tracing and also responded to requesting foreign counterparts but did not receive sufficient feedback. MFIU has not taken sufficient proactive steps to ensure cooperation with counterparts in those jurisdictions representing the greatest risks.

Overall conclusions on Immediate Outcome 2

486. Myanmar does not pursue international cooperation as a priority or in a way that is in keeping with its risk profile. At the highest levels there is no clear direction and commitment to pursue MLA. Myanmar makes some use of informal cooperation, especially with China and Thailand along shared borders. In practice, Myanmar rarely uses MLA to receive foreign evidence for domestic cases, and does not tend to pursue nationals who have fled overseas to

[57] Bay of Bengal Initiative for Multi-Sectoral Technical and Economic Cooperation – includes Bangladesh, Bhutan, India, Myanmar, Nepal, Sri Lanka and Thailand

escape criminal charges. Myanmar does not respond to foreign MLA requests in a timely manner and has not demonstrated effective or timely responses to foreign requests.

487. **Myanmar demonstrates a low level of effectiveness for Immediate Outcome 2.**

TECHNICAL COMPLIANCE ANNEX

1. This annex provides detailed analysis of the level of compliance with the FATF 40 Recommendations of Myanmar in their numerical order. It does not include descriptive text on the country situation or risks, and is limited to the analysis of technical criteria for each Recommendation. It should be read in conjunction with the Mutual Evaluation Report.

2. Where both the FATF requirements and national laws or regulations remain the same, this report refers to analysis conducted as part of the previous Mutual Evaluation adopted in 2008. The 2008 MER is available from www.apgml.org.

Recommendation 1 - Assessing Risks and applying a Risk-Based Approach

3. These requirements were added to the FATF Recommendations in 2012 and, therefore, were not assessed during Myanmar's first mutual evaluation in 2008.

4. *Criterion 1.1* - Myanmar's first ML/TF national risk assessment (NRA) commenced in 2015 and was near to completion at the time of this report. The draft NRA indicates that Myanmar had identified and assessed a significant range of its ML/TF risks. Myanmar has not provided any details of other stand-alone risk assessments it has undertaken of particular crime types or vulnerabilities. Myanmar authorities identify various other ML/TF risks through joint agency processes including the Anti Money Laundering Central Body (AMLCB) and the Central Committee for Counter Terrorism (CCCT). At an agency level there have been some projects to understand specific risks, but this is under-developed.

5. *Criterion 1.2* - The AML Law assigns the AMLCB with responsibility for designating the NRA Committee as the co-ordinating point for conducting an ML/TF NRA. AMLCB Order 5/2015 mandated the formation of the NRA Committee to conduct the assessment. Mechanisms for coordinating the NRA work between government and private sector agencies have been operational since 2015. CCCT is responsible for Myanmar's CT work overall, including identifying terrorism and TF risks. MPF, DED and BSI have some responsibilities for assessing risks of particular crime types.

6. *Criterion 1.3* - Section 8(a) of the AML Law requires that the ML/TF risk assessment be updated annually. Myanmar has demonstrated that the CCCT has ongoing processes to update their findings on terrorism and related TF risks. Myanmar did not demonstrate that authorities have updated previously conducted threat or risk assessments.

7. *Criterion 1.4* - The NRA process has included 34 government and private sector agencies, which contributed views on risk and received interim and final results from the NRA. The AMLCB has responsibility to disseminate NRA information to all relevant competent authorities, including private sector bodies. The AMLCB and the CCCT are key forums to share information on identified risks between government stakeholders. The MFIU, CBM and MOPF have mechanisms for outreach to self-regulatory bodies, which includes sharing information on risk assessments.

8. *Criterion 1.5* - The AML Law (S.7(c)) requires that the AMLCB use a risk-based approach, in cooperation with the relevant government and public sector and private sector stakeholders, to combat ML/TF. While these statutory obligations are in place, Myanmar has not demonstrated how, based on its understanding of its risks, a risk-based approach has been applied to allocating resources and implementing measures to prevent or mitigate ML/TF.

9. *Criterion 1.6* - Myanmar applies all of the statutory AML/CFT obligations to all categories of FIs/DNFBPs and does not exclude any category on the basis of proven low risk.

10. *Criterion 1.7* - The AML Law and AML Rules provide for enhanced measures to be implemented by ROs, and for the AMLCB to give instructions for enhanced measures when Myanmar's ML/TF assessments identify high risks(S.7(c) of the AML Law). However the AMLCB has not given any directives requiring enhanced risk-based measures. Myanmar has not required ROs to incorporate findings of the NRA or other risk assessments by competent authorities into enterprise risk assessments.

11. *Criterion 1.8* - The AML Law (s.19(a)(ii)) allows ROs to apply simplified CDD measures in situations where the risk is identified as low. All ROs are required to conduct enterprise-level risk assessments under s.18 of the AML Law. While some information has been provided by authorities on certain low-risk sectors, regulators have not set requirements that ROs may only allow simplified measures provided that the enterprise assessment of lower risks has been consistent with Myanmar's assessment of its ML/TF risks.

12. *Criterion 1.9* - Rule 60 of the AML Rules outlines that competent authorities shall supervise ROs' conduct of identifying risks and carrying out enterprise risk assessments, as well as taking risk mitigation measures. CBM has taken steps (offsite and onsite supervision) to ensure that banks conduct enterprise-level risk assessments and to risk rate categories of customers to support a risk-based approach to CDD and monitoring. Other regulators have not yet taken equivalent steps with other categories of FIs or DNFBPs.

13. *Criterion 1.10* - The AML Law (S.18) obliges all ROs to carry out an ML/TF risk assessment, keep a written record of the assessment and underlying information and ensure that the material is readily available to relevant authorities. Section 25 obliges ROs to assess ML/TF risks of new products, services, business and technologies and take appropriate measures to mitigate those risks, which contributes to the enterprise assessment.

14. *Criterion 1.11* - Section 28 of the AML Law requires that all ROs have effective internal programs, policies, procedures and controls to manage and mitigate identified risks in relation to ML/TF. They are also required to monitor these policies and enhance them if necessary. The AML Rules contain provisions that call for enhanced measures in situations where a higher risk has been identified.

15. *Criterion 1.12* - Section 19(a) of the AML Law requires ROs to undertake preventative measures in relation to assessed ML/TF risks. Subsection (ii) allows for simplified CDD measures where that risk has been assesses as low, and subsection (iii) requires that these simplified measures be terminated in cases where there is a suspicion of ML/TF.

Weighting and Conclusion

16. The process to produce Myanmar's first NRA commenced in 2015 and is expected to be completed in early 2018. There are few assessments of risk outside of the new NRA. Myanmar has not yet applied a risk-based approach to allocating resources, and implementing AML/CFT measures and controls over high and low risks scenarios are not adequately guided by the findings of the NRA. **Recommendation 1 is rated partially compliant.**

Recommendation 2 - National Cooperation and Coordination

17. In its 2008 MER, Myanmar was rated partially compliant with former R.31. The main deficiencies related to: structural issues related to effective AML/CFT implementation, Customs not taking a lead role in AML activities and insufficient involvement of the DNFBP sector.

18. *Criterion 2.1* - At the time of the onsite visit Myanmar did not have a national AML/CFT policy informed by the risks identified in assessments. However, Myanmar had commenced a process to draft a five year National AML/CFT Strategy following the completion of the NRA.

19. *Criterion 2.2* - The AML Law designates the AMLCB as responsible for Myanmar's national AML policies, and the CT law designates the CCCT as responsible for national CT, including CFT, policies. The AMLCB, comprising 15 members and headed by the Minister for Home Affairs, was formed in August 2014 (order No. 56/2014) and includes non-political heads of agencies covering national security, LEAs and supervisors, with the MPF as the Secretary.

20. *Criterion 2.3* - Myanmar has various policy and operational level coordination bodies for AML/CFT. The chief mechanisms for coordination established by the AML Law are the AMLCB for AML and the CCCT for CFT. There are policy and operational sub-committees under both the AMLCB and the CCCT. There are various and very regular joint agency coordination structures for operational level AML/CFT activities. These include joint agency scrutiny boards and investigation bodies for every ML or TF case.

21. *Criterion 2.4* - Myanmar demonstrated that the CCCT operates to cooperate and, where appropriate, coordinate Myanmar's efforts to combat the financing of proliferation of WMD. This is supported by a reference in the CT Law to the CCCT having responsibility to coordinate and adopt measures relating to combating WMD.

Weighting and Conclusion

22. Myanmar has well-structured and functioning national cooperation and coordination mechanisms which include all competent authorities and other government and private sector stakeholders. Myanmar will adopt its first national AML/CFT strategy following the adoption of the NRA and MER. **Recommendation 2 is rated largely compliant.**

Recommendation 3 - Money laundering offence

23. Myanmar was rated PC in the 2008 evaluation. The ML offence was inconsistent with the Vienna and Palermo conventions, the definition of property did not include all types of property, not all designated categories of offences were included and ancillary offences were limited to financial offences.

24. The AML Law (2014) - No.11 of 2014 - repealed the Control of Money Laundering Law of 2002 (CML Law 2002). Section 43 of the AML Law criminalises the offence of money laundering (ML), and it is now largely consistent with international standards.

25. *Criterion 3.1* - Elements of the ML offence contained in the definitions provision in section 3(n) of the AML Law are wide and consistent with the standards and include participation in, association with, aiding, abetting, facilitating, managing, counselling and being a member of an organised group, commission of an offence by any other means by action or omission, to commit, attempts to commit or conspiracy to commit any of the prescribed offences.

26. The term 'proceeds of crime' as an element of the ML offence is not defined in the AML Law. Section 3(q) defines 'money and property obtained by illegal means' to mean money and property obtained directly or indirectly by committing any offence applicable to the AML Law or act or omission of committing any such offence. This terminology however does not form part of and is not an element of the ML offence. The Interpretation of Expressions Law 1973 permits interpretation of any law in their ordinary and daily context and makes the provision workable.

27. *Criterion 3.2* - Section 5 of the AML Law and the Union Government Order No.24/2015 (issued on 30 March 2015) list the main types of predicate offences for ML consistent with international standards.

28. *Criterion 3.3* - Section 5 of the AML Law lists the types of predicate offences for ML and includes any offence punishable with imprisonment for a minimum term of one year and above under any existing law of Myanmar.

29. *Criterion 3.4* - The ML offence extends to all types of property that are obtained directly or indirectly from the commission of any offence applicable under the AML Law regardless of the value. Property is defined in section 3 as 'moveable or immovable property in any kind whether cooperated or incorporeal, tangible or intangible'. Following detailed comparisons and consideration the team were satisfied that the translated word 'cooperated' is a typographical or translation error for 'corporeal'. Title documents to such assets, interests, rights, dividend, title and other incomes obtained by using electronic means are also included.

30. *Criterion 3.5* - Section 61(a) of the AML Law confirms that in the prosecution of ML, it is not required to prove the commission of the offence that generates the money and property.

31. *Criterion 3.6* - Section 2 of the AML Law clearly permits its application to (a) any person who commits any offence punishable under the AML Law in the territory of the Union of Myanmar, or on board a vessel or an aircraft registered under Myanmar law, and (b) a Myanmar citizen or any person residing permanently in Myanmar who commits the said offence outside the country. Section 188 of the Criminal Procedure Code (CrPC) also permits criminal liability of Myanmar nationals for criminal conduct outside Myanmar as if the conduct occurred within Myanmar territory, subject to the rule of double jeopardy.

32. *Criterion 3.7* - Section 235 of the CrPC permits a single trial for every offence against a person who commits more than one offence in a series of closely linked acts. A self-launderer can be prosecuted for the predicate offence and ML offence.

33. *Criterion 3.8* - Section 61 (c) of the AML law permits proof of knowledge, intent or purpose of the offender as the elements of the predicate offence, to be inferred from objective factual circumstances.

34. *Criterion 3.9* - The penalty for ML under section 43 for a natural person is imprisonment for up to ten years or a fine (the amount is not prescribed), or both. The maximum penalty of 10 years imprisonment may be considered proportionate and dissuasive. However, some predicate offences attract higher penalties (e.g. corruption and trafficking in persons), and the 10 year sentence for ML may discourage law enforcement from charging ML, focusing instead on predicate offences that attract higher penalties. In addition, the fine for a natural person is not prescribed. Authorities say that the fine depends on the court's discretion and referred to section 63 Penal Code which provides that where the amount of a fine is not prescribed, the fine is unlimited, but shall not be excessive. Myanmar has not provided any guidelines to assist the courts in imposing appropriate fines (for example on an escalating scale

relative to the amount of proceeds generated from crime) to promote consistency, fairness and justice.

35. *Criterion 3.10* - Criminal liability and sanctions apply to legal persons under section 43 of the AML Law. The penalty is a fine of up to five hundred million kyats (approx. USD 370,000) for a legal entity and the beneficial owner shall be punished with imprisonment for up to seven years. The definition of a person under section 3 of the AML Law applies to legal persons. Section 156 of the Financial Institution Law No.20 of 2016 permits criminal and civil action against financial institutions and natural persons holding various positions within the institution in addition to administrative penalties and section 88 of Myanmar Investment Law No.14 of 2016 permits criminal and civil action under any law of an investor (Myanmar citizen investor and foreign investor) if required.

36. *Criterion 3.11* - Sections 3(n)(iv) and 5(k) of the AML Law criminalise the ancillary offences of participating, abetting, supporting, providing, managing, advising, association, attempting and conspiring to commit ML.

Weighting and Conclusion

37. **Recommendation 3 is rated compliant.**

Recommendation 4 - Confiscation and provisional measures

38. Myanmar has legislative measures that enable confiscation of proceeds of ML predicate offences, property laundered and property that is proceeds of, used in or intended or allocated for use in TF, terrorist acts or terrorist organisations.

39. *Criterion 4.1* - Section 52(a) of AML Law (2014) allows the Court to pass a confiscation order or administrative order in accordance with the AML Law. The burden of proof lies on the accused to prove that money and property were not obtained by illegal means (section 60). The Law for Taking Action Against Owning and Marketing Properties obtained by Unlawful Means (No.3 of 1986) applies to 'property obtained by income of economic enterprise not permitted under law or income derived in contravention of law or income concealed by evading payment of taxes under law.' 'Property' is widely defined and covers moveable and immovable property. The Council of Ministers established under this law has power to appoint a body to investigate ownership and marketing of properties obtained by unlawful means. On finding that a person has acquired property by unlawful means, it shall pass an order to forfeit the property. Only the person under investigation can apply to the Council to review its decision or the Council in its discretion can review the decision to forfeit. The decision of the Council is final. It is not clear if the Courts have jurisdiction to review the Council's administrative decision to forfeit property. The AML Law makes no reference to the 1986 Law and so it is not clear how it should operate in relation to the AML Law in terms of confiscation.

40. Section 52(a) AML Law empowers authorities to confiscate property laundered, proceeds of crime or instrumentalities used or intended for use in ML offences. This provision also applies to property held by third parties. The provision is in very general terms, and 'confiscation order' has not been defined in the AML Law. Authorities advised that 'exhibit' means proceeds and instrumentalities of crime including property that is derived partly or indirectly from the commission of the offence and property in a subsequently converted form. 'Instrumentality' is defined in section 3(s) as property used or intended to be used in order to commit ML or associated predicate offence, or TF offence. This is consistent with the definition of 'money and property obtained by illegal means' in section 3 of the AML Law.

41. A confiscation order flows from a conviction and there is no legal basis for a civil confiscation. The application of section 3(q) (i.e. the definition of money and property obtained by illegal means) to offences outside the AML Law seems questionable. However section 5 (titled "offences applicable to this law") of the AML Law lists offences that are effectively predicate offences for ML, capturing offences outside the AML Law. This brings the offences within the ambit of section 52(a) for purposes of confiscation. Proceeds of a predicate offence can be administratively forfeited by administrative decision of the Council of Ministers under the Law for Taking Action Against Owning and Marketing Properties obtained by Unlawful Means 1986, but not instrumentalities and property of corresponding value.

42. The 1986 Confiscation Law empowers the Council of Ministers to pass an order to cause payment for the value of property destroyed to be made by a person who destroys any property whilst undergoing investigation (s.8(c)). This provision is limited to wilful destruction of property and does not cover pecuniary penalty in cases where the benefit of the offence has dissipated over time.

43. Property can be confiscated administratively under tax and customs legislation. However, civil confiscation is not possible for strict criminal matters without a customs and tax nexus. For proceeds of corruption, administrative confiscation can be ordered by the ACC under s.53 (a) Anti-Corruption Law against currency and property. Confiscation is limited to assets of public officials and specifically to proceeds of corruption offences. The confiscation process is initiated by the Preliminary Scrutiny Body appointed by the ACC on a case by case basis. The scrutiny body can summon and examine witnesses and the official under scrutiny has a right to be heard (ss.17 (h), 20). The person under scrutiny bears the onus of proof to prove that their asset was legitimately obtained, and must do so with credible evidence (s.64). The result of the investigation is passed on to the ACC which, if satisfied on the findings, can order confiscation of currency and property of the public official. All proceeds of corruption offences are to be confiscated under the Anti-Corruption Law only (s.68). It appears that instruments of corruption offences can be confiscated under the AML law (2014), as there is no explicit provision in the AML Law preventing this approach.

44. Sections 87 to 89 of the CrPC allow for confiscation where a person facing criminal charges absconds or dies. This is a general provision that requires no criminal trial. The intent, it seems, is to force a person who is alive to appear before the Courts and face the law. Its application to a dead person is not clear, especially if the person has left a will (if permitted under law) in terms of precedence. However, there is still a gap where the criminal uses all the proceeds of crime, disposes of the instruments, and decides to face the law and get convicted. His legitimate assets will still be safe as there is no legal basis for a pecuniary penalty.

45. Section 56 of the CT Law empowers the Court to pass an order for confiscation or of money and assets seized as exhibit. Section 6(l) empowers the CCCT to issue freeze orders over funds and assets owned by a terrorist or terrorist group after declaration of the person or group. The confiscation provision does not refer to properties under a freeze order but to 'money and assets seized as exhibits'. It is therefore not specifically clear if funds and assets subject to a freeze order can be confiscated after a guilty finding for TF. Although the CT Law does not specifically refer to freezing and confiscation of property intended to be used for TF, terrorist acts or terrorist organisations, the reference to funds and assets owned by a terrorist or terrorist organisation is wide enough to cover all terrorist property including those intended to be used for TF, terrorist acts and terrorist organisations.

46. There is no general legal basis for confiscation of property of corresponding value. Confiscation of property of corresponding value is only available for tax offences, for which the

IRD may, on an administrative basis, issue a pecuniary penalty order in tax evasion cases. The AML Law, 1986 Confiscation Law and the Criminal Procedure Code are silent on this issue. Although the 1986 Confiscation Law empowers the Council of Ministers pass an order to cause payment for the value of property destroyed to be made by a person who destroys any property whilst undergoing investigation (s.8(c)), this provision is limited to wilful destruction of property by persons undergoing criminal investigations.

47. The ACC has power under section 53 of the Anti-Corruption Law (2013) to order confiscation of money and property obtained by corruption. This power is limited to proceeds of corruption offences and only applies where the actual proceeds still exist. There is no ability for the Commission to order property of corresponding value to be paid in cases where proceeds of corruption have dissipated over time. It is not clear if the Courts have the power to review a confiscation order done administratively by the Commission.

48. *Criterion 4.2* - Section 8 of the AML Law allows the AMLCB to issue orders for provisional measures such as freezing and seizing and preventing dealing, which are implemented by a Scrutiny Board (a joint-agency investigation team) under section 14 of the AML Law. The Scrutiny Board can trace, freeze and seize money and properties as exhibits, void transactions, and seize as exhibits building and land derived from money and properties obtained illegally.

49. Section 46 of the CT Law empowers the CCCT to issue, prohibition orders and sealed orders to prevent conversion, transfer, obliteration and concealment of assets seized as exhibits in respect of a TF offence and any subsequent revocation. The CCCT can make an order directing responsible officers of a bank and FI to allow search, inspection, copying of relevant records and seizure of money, assets and benefits deposited with the bank and financial institution.

50. Myanmar officials advise that there is no time limit for freezing of funds and assets.

51. *Criterion 4.3* - Section 62 of the AML Law safeguards the rights of bona fide third parties and section 65 of the CT Law similarly protects the rights of a person who is not under investigation in respect of money and assets in connection with an offence of terrorist act or TF if they can prove that such asset was obtained for consideration in good faith.

52. *Criterion 4.4* - Sections 516A to 525 of the CrPC provide mechanisms for managing and disposing of frozen, seized and confiscated property. The CFT Rules (Notification No.1202/2015) set out the procedures for managing and disposing of frozen and seized assets (rules 51 – 62).

Weighting and Conclusion

53. Myanmar's conviction-based confiscation regime covers ML, TF and all predicates. There is no legal basis to confiscate property of corresponding value, except in tax evasion cases. The administrative confiscation orders that can be made under specific legislation are limited to offences under the specific legislation. **Recommendation 4 is rated largely compliant**.

Recommendation 5 - Terrorist financing offence

54. Myanmar was rated non-compliant with SR.II in the 2008 MER as there was no law specifically criminalising TF as required under the TF Convention. Myanmar enacted its Counter Terrorism Law (CT Law) on 4 June 2014 and issued related CFT Rules on 11 September 2015.

55. *Criterion 5.1* - Sections 41, 42, 43(a) and 44 of the CT Law (2014) and the CFT rules (2015) define the 'financing of terrorism offence'. These provisions comprehensively criminalise TF and extend to attempting, abetting, instigating, organising, providing and directing others to commit a TF offence. Section 41 criminalises TF as:

(i) collecting, receiving, supporting, sending or transferring unlawfully the funds by any means with the intention that they be used or in the knowledge that they should be used or are to be used, in full or in part, directly or indirectly (gained lawfully or unlawfully or both), by any terrorist group or terrorist;

(ii) using or possession unlawfully of money, assets or service by any means with the intention that they be used or in the knowledge that they should be used or are to be used, in full or in part, directly or indirectly, by any terrorist or terrorist group;

(iii) concealing, moving abroad or transferring to other's name the asset knowingly or with reasons to know that it is stored or maintained or controlled by a terrorist group or a terrorist or any person on behalf of them;

(iv) attempt, abetment, instigation, organising, providing, directing others to commit any offence or participation as an accomplice in committing any such offence above.

56. Section 42 extends the TF offence to include:

(i) transaction or transfer in any means, directly or indirectly, of an asset owned by any terrorist group or any terrorist;

(ii) involving in or facilitating, directly or indirectly, any transaction of an asset owned by a terrorist group or a terrorist;

(iii) providing financial service or other related services involving an asset of a terrorist group or terrorist, for the benefit of or under the direction of a terrorist group

(iv) possessing or keeping knowingly an asset which is owned by a terrorist group or a terrorist under his control

(v) failing to reveal information without proper reasons to the Central Committee for Counter Terrorism (CCCT) and relevant working committee in respect of transaction and transfer in any other means of an asset owned by a terrorist group and a terrorist;

(vi) failing to report the existence of a terrorist and money and assets owned by a terrorist group.

57. Section 43(a) criminalises transactions or transfers by any means or attempts to transfer an asset owned by a terrorist group or a terrorist or failure to reveal the information in respect of such act without proper reason to the CCCT and relevant working committee.

58. 'Terrorist' is defined in section 3 to mean any person who commits or attempts to commit unlawfully any act of terrorism by any means directly or indirectly, or participates as an accomplice in an act of terrorism or intentionally contributes to commit an act of terrorism. 'Terrorist group' means two or more persons taking a period of time to commit an act of terrorism and adopts the declaration under UNSCR on terrorist group as adopted by the Central Body.

59. Section 44 sets out that a TF offence is deemed to have been committed under the CT Law even where the financed act of terrorism has not occurred or been attempted, or where the collected funds have not actually been used in committing an act of terrorism.

60. The offences and definitions in the CT Law are consistent with Article 2 of the UN Convention for the Suppression of the Financing of Terrorism. Article 3(b) (i)-(xviii) of the CT Law defines an 'act of terrorism' as 'an act or omission to act any of the following offences with

the intent to commit an act of terrorism' and lists all categories of offences that constitute an offence as defined in the nine conventions and protocols listed in the Annex to the TF Convention. The CT law criminalises the underlying conduct from those nine CT conventions. In addition Article 3(b) (xiii) follows the requirements of Article 2.1(b) of the TF Convention and specifies

> "acts which cause death or serious injury to civilian or any other person not participating at hostilities in the situation of armed conflict with the intent to cause fear in the public, to force Government or any internal and international organisation to do unlawful act or to refrain from doing lawful act, and other acts".

61. Section 3(z) of the CT Law comprehensively defines "fund" to include all categories of 'funds' defined in the TF Convention. In addition, "assets owned by a terrorist group" covers profits, money and assets specifically obtained through the commission of a terrorist act; used or presumed to be used in the commission of an act; used, presumed to be used, possessed or controlled by a terrorist or terrorist group; or collected with the intent to provide to a terrorist group or fund an act of terrorism.

62. *Criterion 5.2* - The term 'fund' in the CT Law, as defined above, is broad in scope. The sole potential exception is the reference to 'business resources' in the CT Law definition, which is undefined but could be more narrowly interpreted than economic resources in the FATF definition (e.g. in relation to oil and other natural resources).

63. The chapeau to section 41 states that "any person, in committing or to commit an act of terrorism, acts any of the following to support or to facilitate such offence, amounts to an offence of financing to terrorism". The collection or provision of funds to individual terrorists or terrorist groups is therefore an offence where the conduct is tied to a terrorist act. However, the chapeau also introduces some ambiguity as to whether the TF offence in section 41(a) is available where there is no link to a specific terrorist act.

64. The Myanmar authorities contend that the collection or provision of funds to a terrorist or terrorist organisation, without a link to a specific terrorist act or the intention of a terrorist act, is covered by the CT Law. The Attorney General's Office (AGO) has provided a legal opinion to this effect indicating that section 44 of the CT Law, as set out in *criterion 5.1* above, removes the condition in the chapeau of section 41 that requires the collection or provision of funds to a terrorist or terrorist organisation to be linked to a specific terrorist act in order to be covered by the TF offence. The assessment team requested examples of other legislation in Myanmar that uses a similar construction. However, the examples provided by the authorities were not completely analogous and provided little guidance in demonstrating how courts would interpret these provisions.

65. The legal opinion appears to be a reasonable interpretation of how the provisions would be interpreted in practice and, as such, the potential ambiguity in how sections 41(a) and 44 operate together appears to be only a minor deficiency from a technical compliance standpoint. However, as the AGO interpretation is not legally binding on the courts, the potential ambiguity in the TF offences will remain until tested in the courts, which may undermine the effectiveness of the TF offence (see IO.9).

66. *Criterion 5.2bis* - The TF offences in sections 41-43 of the CT Law do not expressly cover financing the travel of individuals to another State for the purpose of perpetrating, planning, preparing, or participating in, terrorist acts or providing or receiving terrorist training. However, per the chapeau to section 41, the TF offences in sections 41(a)-(d) are applicable to "any person, in committing or to commit an act of terrorism, acts any of the followings to

support or to facilitate such an offence…". Section 3(b)(xviii) of the definition of 'act of terrorism' covers "acts of giving permission to use, to assemble in, to hold meeting in any building and place, to train on an act of terrorism or to arrange transportation to a terrorist or member of any terrorist group".

67. The jurisdictional provisions of the CT Law covers terrorist acts committed both in and outside Myanmar and, as such, it appears that the TF offence would extend to financing the transportation of a terrorist or member of a terrorist group to another State to perpetrate or participate in a terrorist act or to train on an act of terrorism. Given the aforementioned ambiguity surrounding the operation of sections 41 and 44, however, it is unclear whether the TF offences would apply where travel was undertaken to provide or receive terrorist training where there was no link to a specific terrorist act.

68. *Criterion 5.3* -.As noted above, the definition of "fund" in the CT Law covers 'any funds or other assets' with potential exception of 'economic resources (including oil and other natural resources)'. The CT Law translation uses the term 'business resources', which could be read more narrowly than 'economic resources', but given the otherwise comprehensive nature of the definition the scope of this potential gap is minor. The TF offence in section 41(a) covers the provision or collection of funds obtained lawfully or unlawfully or both.

69. *Criterion 5.4* - As per the analysis of criterion 5.2 above, the chapeau to section 41 introduces some ambiguity as to whether the TF offence is section 41(a) is available where there is no link to a specific terrorist act. The legal interpretation from the AGO that section 44 acts to remove the condition that the collection or provision of funds to a terrorist or terrorist organisation be linked to a specific terrorist act in order to be covered by the TF offence appears reasonable, but is not legally binding on the courts. Thus, the ambiguity of how sections 41(a) and 44 operate in practice will remain until tested in the courts.

70. *Criterion 5.5* - There are no provisions in the CT Law that explicitly provide that the intent and knowledge required to prove the TF offences is possible to be inferred from objective factual circumstances. However, section 61 of the AML Law does provide that the prosecuting body, in the prosecution of money and property obtained by illegal means, to the extent that knowledge, intent or purpose of offender are the elements of the predicate offences, may be inferred from objective factual circumstances in offences of ML and TF. It is unclear if the Courts will simply accept the prosecution view as the provision does not expressly permit the Court to convict by inferring knowledge, intent and purpose from objective factual circumstances. Moreover, it is unclear how this provision would be applied and interpreted in the context of a stand-alone TF offence as these offences and their penalty provisions are set out in the CT Law rather than the AML Law, whose the scope of application extends only to offences punishable under that Law (i.e. the ML offence) per its jurisdictional provision in section 2.

71. *Criterion 5.6* - Section 50 of the CT Law provides a penalty from ten years to life imprisonment and the imposition of a fine for the TF offences in sections 41 and 42(a)-(d). A penalty of three to seven years imprisonment and the imposition of a fine is also available for the TF offences in sections 42(e)-(f) and 43(a). No maximum fine amounts are specified and the term 'fine' is not defined in the CT Law or Interpretation of Expressions Law. However, section 61 of the Penal Code provides that "where no sum is expressed to which a fine may extend, the amount to a fine to which the offender is liable is unlimited, but shall not be excessive".

72. The penalties for offences in sections 41 and 42(a)-(d) are on par with most of the terrorism offences in the CT Law (some terrorism offences carry a maximum penalty of a death sentence). The lesser penalties for the TF offences in sections 42(e)-(f) and 43(a) are

appropriate given that those offences relate specifically to failures to report or reveal information concerning inter alia transactions involving assets of a terrorist or a terrorist group to the appropriate authorities. As such, the criminal sanctions applicable to natural persons convicted of a TF offence are dissuasive.

73. *Criterion 5.7* - Section 2 of the CT Law provides that

> "this law shall have jurisdiction upon persons who commit, attempt to commit, abet or, instigate or participate as accomplices the following acts of terrorism: (d) financing amounted to abetment of any terrorist or any terrorist group who commits or is likely to commit an act of terrorism". Further, the TF offences in sections 41-43 and the penalty provisions in sections 50-51 apply to 'any person'. While the term 'person' or 'persons' is not defined in the CT Law, section 5(24) of the Interpretation of Expressions Law (1973) establishes that "the expressions 'person', 'anyone', 'individual' includes any company, association or body of individuals".

74. On this basis, legal persons can be held criminally liable and be subject to criminal sanctions for violations of the TF offences.

75. *Criterion 5.8* - Section 41(d) of the CT Law makes it an offence for a person to attempt, abet, instigate, organise, provide, or direct others to commit any offence, or participate as an accomplice in committing any offence, in sections 41(a)-(c). While attempting to commit a TF offence is clearly covered, there is a minor ambiguity whether (i) participation as an accomplice and (ii) organising or directing others to commit a TF offence are covered in cases of attempted offences.

76. *Criterion 5.9* - Myanmar uses both a threshold and list approach to define predicate offences to ML. Any offence punishable by imprisonment for a minimum term of one year and above constitutes a predicate offence. The TF offences in the CT Law all carry a minimum sentence of either three or ten years imprisonment. Notification 24 issued on 30 March 2015 prescribes a list of offences as predicate offences under the AML Law, including "terrorism including financing of terrorism". As such, TF is a predicate offence to ML.

77. *Criterion 5.10* - The jurisdictional provisions of the CT Law covers terrorist acts committed both in and outside Myanmar and the definition of 'terrorist acts' in section 3 includes the TF offences in sections 41-43.

Weighting and Conclusion

78. Myanmar's TF offence contains a number of minor technical deficiencies. Most notably, there is potential ambiguity as to whether the TF offence in section 41(a) is available where there is no link to a specific terrorist act. The legal opinion provided by the authorities appears to be a reasonable interpretation of the provisions and the potential ambiguity is only a minor deficiency. There is a further minor ambiguity as to whether the offence extends to participation as an accomplice or organising or directing others to commit an attempted TF offence. There are no express provisions applicable to the CT Law that indicate that it is possible for the intent and knowledge required to prove the TF offences to be inferred from objective factual circumstances.

79. **Recommendation 5 is rated largely compliant.**

Recommendation 6 - Targeted financial sanctions related to terrorism and terrorist financing

80. Myanmar was rated non-compliant with SR.III in the 2008 MER. Myanmar lacked a mechanism to give effect to UNSCRs 1267 and 1373. Myanmar has enacted the CT Law and the CFT Rules, which provide a legal framework to implement targeted financial sanctions (TFS) related to terrorism and TF.

81. *Criterion 6.1(a)* Section 6(e) of the CT Law designates the Central Committee for Counter Terrorism (CCCT) as the responsible authority for proposing designations to the UN pursuant to 1267 through the MFA.

82. *Criterion 6.1(b)* Rule 17(a) of the CFT Rules allow for the Working Committee to 'scrutinise and identify' persons or entities who may be targets for UN designation. In doing so, it is required under CFT Rule 18 to consult and seek assistance from other public agencies, including the Ministry of Foreign Affairs and the AGO, to determine whether there is sufficient evidence to support the criteria required for designation by the UNSCR Committees. Any other person or entity that has relevant information is also required per Rule 19, to provide the information to the CCCT, Working Committee or an LEA.

83. *Criterion 6.1(c)* The evidentiary standard of proof for the Working Committee to propose a designation to a UNSCR Committee is on 'reasonable grounds'. The Myanmar authorities confirmed that there is no requirement that proposals for designations be predicated on the existence of a criminal proceeding.

84. *Criterion 6.1(d)* The CCCT, in proposing names to the UNSCR Committee, is required in Rule 22(a) to follow the procedures, including standard forms for listing, as adopted by the relevant Committee.

85. *Criterion 6.1(e)* Rule 22(b) requires the CCCT to provide as much relevant information as possible on the name proposed for designation, including 'sufficient identifying information and such other relevant information as may be required under the applicable UNSCR'. Rule 22(c) provides that the CCCT 'specify the situations of the State if necessary, to be known by the relevant UNSCR Committee'. The drafting of this provision is somewhat ambiguous, but may have been intended to provide for the CCCT, in proposing a name for designation, to specify whether Myanmar's status as the designating state may be made known, as required per the procedures to propose names to the 1267/1989 Committee.

86. *Criterion 6.2(a)* The CCCT is identified in Rule 3 of the CFT rules as the competent authority responsible for designating persons and entities pursuant to UNSCR 1373. Designations may be pursued both on Myanmar's own motion: (i) where there is a request to the CCCT from the Working Committee, FIU, or any other relevant government department (Rule 3(a)), or, (ii) where there is an immediate danger to the state and people of Myanmar (Rule 3(c)); and, at the request of a foreign sovereign state or territory (Rule 3(b)).

87. *Criterion 6.2(b)* The CCCT must submit designation requests and obtain approval from the Union Government to designate an entity, organisation or group as a 'terrorist group' or a natural person as a 'terrorist'. Per Rule 6 of the CFT Rules, the CCCT must submit a designation request where it has information that is consistent with the designation criteria in UNSCR 1373, which are outlined in Rules 6(a)-(d).

88. The mechanisms for identifying designation targets largely track those available for the relevant UNSCRs. The discussion in c.6.1(b) of Rules 17(a), 18, 19, 21, 23 equally applies to

domestic designations under Rule 6. An additional provision in Rule 20 requires Government departments and organisations to provide the CCCT all information, including intelligence material, required to support a domestic designation.

89. *Criterion 6.2(c)* Foreign requests to designate a terrorist or terrorist group under Rule 3(b) must be made to the CCCT through the Ministry of Foreign Affairs by diplomatic channels. The request may be submitted in either the Myanmar or English language and must include the following information per Rule 5: identification documents by which the subject of the request is to be designated, additional identification and background information, the rationale for the request, the actions already taken on the subject of the request, and point of contact information from the requesting State.

90. The CCCT is required under Rule 3 to follow the same process for foreign requests as for those made on its own motion. In particular, the CCCT must make designation requests to the Union Government where it has 'reasonable grounds to believe' that the submitted information is consistent with the designation criteria in UNSCR 1373.

91. *Criterion 6.2(d)* The evidentiary standard of proof for the CCCT to propose a designation to the Union Government under Rule 6 is on 'reasonable grounds to believe'.

92. *Criterion 6.2(e)* Once the CCCT has received the approval of the Union Government to designate a terrorist or terrorist group, it is required to publish its designation order and the related freeze order issued by the Working Committee in the Official Gazette and on the website of the CCCT and the Myanmar Police Force as per Rule 9(c). Requests to foreign states to give effect to freezing actions taken may be made by the CCCT under Rule 9(d) by providing the designation and freeze order to the relevant authority of the requested foreign state through the Ministry of Foreign Affairs. Further to Rule 12, the designation and freeze order must contain the following information: cause of designation as a terrorist or terrorist group, a description of the effects of the designation, delisting procedures, and provisions regarding possible exemptions for access to frozen funds.

93. *Criterion 6.3(a)* As set out under c.6(1)(b) and c.6(2)(b), CFT Rule 18 allows the CCCT to consult and seek assistance from relevant public sector agencies to determine whether, on reasonable grounds, there is sufficient evidence to support a domestic designation under Rule 6 (pursuant to UNSCR 1373) or a designation by the relevant UNSCR Committees. CFT Rules 19, 20 (for UNSCR 1373) and 21 provide scope for the CCCT to collect any information from any person, entity or government agency that may be relevant to meet the criteria for designation.

94. *Criterion 6.3(b)* There are no provisions in the CT Law, CFT Rules or other procedures that specify whether the CCCT may operate ex parte against a person or entity whose proposal for designation is being considered. Equally, there are no provisions presuming prior notice under any statute. In practice, the CCCT and Working Committee have been able to operate ex parte against the Arakan Rohingya Salvation Army (ARSA) and the 57 individuals in their designation pursuant to UNSCR 1373.

95. *Criterion 6.4* - Chapter 4 of the CFT Rules provides that the Ministry of Foreign Affairs must notify the CCCT of any changes to the UNSC designations related to terrorism, including those under the UNSCR 1267 sanctions regime, as soon as the Ministry receives notification from the relevant UNSCR Committee. The CCCT is then required to issue a freeze order without delay or prior notice to all persons, including all ROs. In response to concerns that some updates by the relevant UNSCR Committees had been missed by the authorities resulting in gaps in the freeze orders, the CCCT issued Standing Order 3/2016 on 19 May 2016. The Standing Order requires the freezing of assets of all persons and entities designated under UNSCR 1267 without

the need for a separate freezing order following each update. This process allows Myanmar to implement TFS in respect of UNSCR 1267 without delay by giving immediate legal effect to all future 1267 designations. It also eliminates the possibility of the authorities missing future updates or possible delays in the time it takes for the Ministry of Foreign Affairs to notify the CCCT of changes to the UN SC designations related to terrorism.

96. For 1373 designations, the CCCT must first receive the approval of the Union Government to designate a terrorist or terrorist group. The designation order has immediate legal effect throughout Myanmar upon signature by the appropriate Union Government representative. Upon approval, the CCCT is required under CFT Rule 9(a) to direct the Working Committee to issue a freeze order, without delay and prior notice, to all natural and legal persons, including all ROs. The CCCT is also required under Rule 9(c) to publish the designations and freeze orders in the Official Gazette. As drafted, nothing in the CFT Rules preclude Myanmar from implementing TFS pursuant to UNSCR 1373 without delay. In the one instance that Myanmar has used this mechanism, it was able to issue and receive Union Government approval of its designation order for ARSA on the same day that a significant terrorist attack occurred. However, the Working Committee was significantly delayed (i.e. several weeks) before it issued the freeze order against ARSA and related individuals (see IO.10).

97. *Criterion 6.5(a)* Regarding UNSCR 1373, the CCCT, upon receiving approval of the Union Government to designate a person or entity as a terrorist group, is required under CFT Rule 8 to direct the Working Committee to issue a freeze order, without delay and prior notice, to all natural and legal persons, including all ROs. In practice, Working Committee Order 1/2017, which contains the freeze order for ARSA and related individuals, was only circulated to ROs. While the Order prohibits any national of Myanmar, or any person or entity within Myanmar from making any funds or other assets, economic resources, or financial or other related services available to a designated person or entity, the obligation to freeze in Article 2 of the Order only requires those persons who received the Order to search for, freeze and report back regarding assets of a designated person.

98. Regarding UNSCR 1267, 1989 and successor resolutions, Standing Order 3/2016 requires natural and legal persons and entities, including ROs, to freeze without delay and without prior notice all funds and other assets owned, controlled or associated with any terrorist or terrorist group.

99. *Criterion 6.5(b)* For UNSCR 1373, Working Committee Order 1/2017, while slightly ambiguous in its drafting, requires ROs to freeze the assets of all listed individuals and entities. For UNSCR 1267, Article 5 of Standing Order 3/2016 requires 'all natural and legal persons and entities to freeze without delay and without prior notice all funds and other assets owned, controlled or associated with any terrorist or terrorist group, as specified in Rule 10'. CFT Rule 10(a)-(d) mirrors the standard at 6.5(b)(i-iv) and clarifies that a freeze order made pursuant to either UNSCR 1267 and 1373 extends to every type of fund or other assets of designated persons required by this criterion.

100. *Criterion 6.5(c)* Article 4 of Working Committee Order 1/2017 and Article 8 of Standing Order 3/2016 prohibit any national of Myanmar, or any person or entity within Myanmar, from making any of the funds or other assets, economic resources, or services, available, directly or indirectly, wholly or jointly, for the benefit of designated persons and entities, or entities controlled by or acting on behalf of them, unless licensed or authorised by the CCCT (in respect of designations pursuant to UNSCR 1373) or otherwise notified in accordance with the relevant UNSCRs.

101. *Criterion 6.5(d)* CFT Rule 8 requires the Working Committee to issue freeze orders without delay and prior notice, to all natural and legal persons, including all ROs. Rule 9(c) also requires that designations and freeze orders be published in the Official Gazette, the website of the CCCT and the Myanmar police force. Standing Order 3/2016, in respect of UNSCR 1267, and Working Committee Order 1/2017, in respect of UNSCR 1373, are addressed to and have been distributed by competent authorities to ROs, including banks, other FIs and DNFBPs, with the exception of securities companies, which do not appear to receive lists from the SEC.

102. CFT Rule 35(b) provides that Supervisory Authorities in collaboration with the Working Committee are to issue rules and guidance and other necessary information to ensure the effective implementation of the Rules. During the onsite visit, the authorities indicated that they were developing general guidance to assist ROs in implementing TFS, but were unable to share a draft version with the assessment team. Myanmar did provide an example of written guidance provided to one FI that sought direction from the authorities after encountering a number of partial matches while screening Working Committee Order 1/2017 (1373 designation of ARSA and 57 related individuals) against its customer lists.

103. *Criterion 6.5(e)* Both Standing Order 3/2016 and Working Committee Order 1/2017 require ROs to search for funds and other assets of designated persons and organisations in their possession and report their findings to the CCCT within three working days. ROs are also required to provide lists of frozen assets and report actions taken to the CCCT as early as possible. Neither provision includes a specific obligation to report on actions taken in respect of attempted transactions.

104. *Criterion 6.5(f)* CFT Rules 54-60 provide comprehensive measures for the protection of bona fide third parties. In respect of UNSCR 1373, any bona fide third party acting in good faith who is aggrieved as a result of a freeze order issued against a designated person may submit an application to the CCCT to cancel the order. An investigative body will review the application and report its findings to the Working Committee. The obligation is on the third party to demonstrate that assets and funds were obtained with consideration and in good faith.

105. Where the third party has an interest in property jointly owned with a designated party, the CCCT may issue an order to permit the sale of the frozen property, pay the third party a sum of money equal to the value of the third party's interest in the net proceeds of the sale, and leave the balance of the proceeds of the sale, representing the interest of the designated person, subject to the operation of the freeze order. The CCCT is required under Rule 56 to immediately cancel the freeze order, unfreeze the funds of the bona fide third party and publish this order in the Official Gazette.

106. In respect of UNSCR 1267, CFT Rule 57 allows any bona fide third party whose assets or funds have been frozen to either submit an application to the relevant UNSCR Committee through the CCCT or submit the application directly to the UNSC Committee through the UN Focal Point with a copy of the application to the CCCT. The onus is on the third party to submit all necessary documents and evidence to support the application submitted per Rule 57.

107. *Criterion 6.6(a)* The CFT Rules do not provide any procedures to submit de-listing requests to the relevant UN sanctions committee in the case of persons and entities designated pursuant to the UN sanctions regimes. Standing Order 3/2016 only provides that the freeze order in Article 5 of the Standing Order will remain in place until such time that the relevant UNSC Committee revokes the designation of the terrorist or terrorist group subject to the order.

108. *Criterion 6.6(b)* CFT Rules 38-42 establish procedures to submit de-listing requests for persons and entities designated pursuant to UNSCR 1373. Any designated person or entity may

submit an application for de-listing to the CCCT. The CCCT is obliged to submit and seek approval for a de-listing request from the Union Government if it finds, through its own analysis or through a de-listing application, that a designated person or entity no longer meets the criteria for designation under Rule 6. Upon approval, the CCCT is required to de-list the person or entity and issue a cancellation of the freeze order, both of which must be published in the Official Gazette, and the websites of the CCCT and Myanmar Police Force. Pursuant to Rule 41, the CCCT may also submit a de-listing request for approval where a foreign State or territory had initially requested a person or entity to be listed and was subsequently seeking their de-listing.

109. *Criterion 6.6(c)* Neither the CFT rules nor CCCT Order 1/2017 provide for an explicit right of review of a designation decision before a court or other independent competent authority. However, the Application of the Writ Law (2014) provides that a writ could be applied to the Supreme Court in order to review a decision or an order of a Court or a quasi-judicial decision of a Competent Authority. Myanmar confirmed that this right of review is available for designation orders issued by the CCCT.

110. *Criterion 6.6(d)* The are no procedures under the CFT Rules or Standing Order 3/2016 to facilitate the review of designations by the Sanctions Committee pursuant to UNSCR 1988.

111. *Criterion 6.6(e)* The CCCT, in issuing a freeze order pursuant to a UNSCR designation, is required, by virtue of CFT Rule 15(b), to publish the freeze order and designation in the Official Gazette and the websites of the CCCT and MPF under Rule 9(c). Rule 12 states that freeze orders published under Rule 9(c) must include 'procedures for considering de-listing requests, including, where applicable, the possibility of submitting such a request to the Office of the Ombudsperson of the United Nations'. However, Standing Order 3/2016, which applies inter alia to UNSCRs 1267, 1989 and their successor resolutions, does not include such procedures.

112. *Criterion 6.6(f)* Chapter 10 of the CFT Rules provide detailed procedures for the unfreezing of wrongly frozen assets. Any person or entity whose assets or funds have been frozen on the grounds of mistaken identity may apply in writing to the CCCT, with relevant documentation to support the claim, for the cancellation of the freeze order. The CCCT may seek additional information from the applicant, a public sector agency or any person that may have information relevant to the application. Where the CCCT determines that assets or funds were wrongly frozen, it may direct any person under Rule 47 to immediately unfreeze the funds of the affected party. Rule 50 specifies that, notwithstanding the unfreezing of funds pursuant to Rule 47, the original freeze order will remain in force against the designated person.

113. *Criterion 6.6(g)* In respect of designations pursuant to UNSCR 1373, the CCCT must communicate de-listings and unfreezing via publication of a notice of de-listing and cancellation of the freeze order in the Official Gazette and relevant websites. All natural and legal persons, including ROs, are required to immediately unfreeze all funds and other assets when a cancellation order of a designation has been received.

114. For UNSCR 1267 and successor resolutions, Standing Order 3/2016 only provides that the freeze order under Article 5 will remain in place until such time that the UNSC or its relevant committee revoke the designation of a terrorist or terrorist group. The onus is therefore placed on ROs to monitor for changes, including de-listings, to the relevant lists. No guidance has been provided to ROs on their obligations to respect a de-listing or unfreezing action.

115. *Criterion 6.7* - Chapter 11 of the CFT Rules provides authorisation for access to frozen funds. Under Rule 51, a designated person or entity, or a person seeking to make funds available to a designated person, may apply in writing to the CCCT. The CCCT will authorise dealings

where it is satisfied that the proposed dealing, payment or benefit is necessary basic expenses, payment of certain fees, expenses and service charges and extraordinary expenses in line with UNSCRs 1452 and 1735. However, an apparent drafting error in Rule 52(1)(b) suggests that a decision by the CCCT to authorise access to frozen funds is conditional on a decision being 'not approved by the UNSCR Committee' (rather than 'in the absence of a negative decision by the Committee' as set out in UNSCR 1452). Notwithstanding this apparent error, it is clear that the intent of Rule 52(1) is to establish procedures for accessing frozen funds in line with the relevant UNSCRs.

Weighting and Conclusion

116. There are minor shortcomings in respect of Myanmar's framework for implementing TFS related to terrorism and TF, including the absence of overall guidance to assist ROs meet their obligations, some practical challenges implementing UNSCR 1373 without delay, and the lack of public de-listing procedures. However, these are minor in relation to overall compliance with the standards.

117. **Recommendation 6 is rated largely compliant.**

Recommendation 7 – Targeted Financial sanctions related to proliferation

118. These requirements were added to the FATF Recommendations in 2012 and, therefore, were not assessed during Myanmar's first mutual evaluation in 2008.

119. *Criterion 7.1* - Section 6(d) of the CT Law sets out that the CCCT's functions and duties include adopting measures for the prevention, removal and destruction of weapons of mass destruction. On the basis of this provision, the CCCT issued Order 1/2017 on February 22, 2017, which established a freeze order in respect of persons and entities listed under UNSCR 2270 and successor resolutions. In contrast to section 6(l) of the CT Law, which specifically provides scope for the CCCT to issue freeze orders to implement TFS in relation to terrorism financing, section 6(d) is a generic provision in relation to WMD proliferation that does not provide a clear legal basis for issuing a freeze order in relation to proliferation financing. Moreover, the freeze order contained in Order 1/2017 does not apply in respect of UNSCR 2231, nor does it apply in respect of UNSCR 1718 and its successor resolutions issued prior to UNSCR 2270, significantly limiting its scope of application.

120. *Criterion 7.2(a)* The freeze order contained in Article 1 of Order 1/2017 states that the CCCT 'directs to freeze, without delay, money and assets directly or indirectly owned or controlled by or related to the individuals and entities listed under UNSCR 2270 and successor Resolutions'. Article 1 of Order 1/2017 does not specifically state who is required to comply with the freeze order and Article 2 only requires ROs to freeze such assets without delay, if found. While the English drafting of the freeze order is ambiguous, ROs broadly appear to understand that they are required to implement the freezing obligations set out in the Order. However, the freeze order does not extend to all natural and legal persons within the country and there is no obligation to freeze 'without prior notice'.

121. *Criterion 7.2(b)* The freezing obligation in Article 1 applies to the money and assets directly or indirectly owned or controlled by, or related to persons and entities listed pursuant to UNSCR 2270 and successor resolutions. It does not extend to the full range of funds and assets required to be frozen pursuant to c.7.2(b), including funds and assets jointly owned or controlled by a designated person or entity; funds or other assets derived or generated from

funds or other assets of a designated person or entity; or, funds or other assets of persons acting on behalf of or at the direction of a designated person or entity.

122. *Criterion 7.2(c)* The obligation to freeze without delay in Article 1 of Order 1/2017 does not extend to preventing funds or other assets from being made available to a designated person or entity unless licensed, authorised or otherwise notified in accordance with the relevant UNSCR.

123. *Criterion 7.2(d)* Order 1/2017 is addressed to and has been distributed by competent authorities to ROs, including banks, other financial institutions and DNFBPs, with the exception of securities companies, which do not appear to receive lists from the SEC. The Myanmar authorities have adopted a good practice of communicating additional designations pursuant to successor resolutions via letters issued by the Chair of the CCCT to all ROs, although this has not been done on a timely enough basis that it would assist in the implementation of TFS without delay. No guidance has been issued to ROs to clarify their obligations in taking action under freezing mechanisms.

124. *Criterion 7.2(e)* ROs are required to search for funds and assets of designated persons and report their findings to the CCCT within three business days. ROs are also required to report the list of funds frozen and any actions taken to the CCCT 'as early as possible'. There is no obligation on ROs to report attempted transactions.

125. *Criterion 7.2(f)* There are no provisions in place to protect the rights of bone fide third parties acting in good faith when implementing the obligations under Recommendation 7.

126. *Criterion 7.3* - Only those ROs regulated by CBM are supervised for their compliance with freezing obligations in relation to proliferation financing. However, the CBM's enforcement powers are unavailable in respect of violations on Order 1/2017 as it was not issued pursuant to the Financial Institutions Law. While there are criminal sanctions available for violations of prohibitions of rules issued pursuant to the CT Law found in s. 53, it is unclear how these sanctions could be enforced in respect of Order 1/2017, which was issued without a clear legal basis under the CT Law.

127. *Criterion 7.4(a)* There is no instrument indicating that listed persons and entities are able to petition a request for de-listing at the Focal Point or informing designated persons or entities to petition the Focal Point directly.

128. *Criterion 7.4(b)* There are no publicly known procedures to unfreeze the funds or other assets of persons or entities inadvertently affected by a freezing mechanism (false positives) related to proliferation.

129. *Criterion 7.4(c)* There are no publicly known procedures that would permit authorising access to funds or other assets where there was a determination that the exemption conditions set out in UNSCR 1718 or 2231 are met.

130. *Criterion 7.4(d)* There are no mechanisms for communicating de-listings and unfreezing actions to ROs or guidance provided to inform them of their obligations to respect a de-listing or unfreezing action.

131. *Criterion 7.5(a)* Order 1/2017 does not provide scope to permit the addition to accounts frozen pursuant to UNSCR 1718 or 2231 of interest or other earnings due on those accounts that arose prior to those accounts becoming subject to the provisions of the resolution.

132. *Criterion 7.5(b)* Order 1/2017 does not apply in respect of freezing actions taken pursuant to UNSCR 1737 and continued by UNSCR 2231, or taken pursuant to UNSCR 2231.

Weighting and Conclusion

133. There are major shortcomings in Myanmar's regime to implement TFS related to WMD proliferation. There is no clear legal basis in the CT Law for comprehensive freeze orders to be issued to implement TFS against WMD proliferation. Moreover, the freeze order 1/2017 only applies in respect to UNSCR 2270 and successor Resolutions and the obligation to freeze does not extend to all natural and legal persons in Myanmar. There are a number of gaps in the scope of funds and other assets ordered frozen. There are also no mechanisms to communicate designations to ROs or any clearly applicable provisions for sanctioning non-compliance with the obligations. Provisions related to unfreezing, access to funds, and delisting requests are also absent. **Recommendation 7 is rated non-compliant.**

Recommendation 8 – Non-profit organisations

134. In its 2008 MER, Myanmar was rated partially compliant with SR.VIII. The report found that there had been no review of the NPO sector and its laws and regulations to check TF vulnerabilities, and there had been no comprehensive outreach to the sector.

135. There are nearly 646 registered NPOs operating in Myanmar, and are likely to be many thousands of unregistered NPOs.

136. Myanmar has legislation governing the registration of NPOs, namely the Law Relating to Registration of Associations (Law 31/2014) and Tax Law. This legislation requires NPOs to provide specific information in order to be registered and able to conduct their activities. INGOs are required to register annually and provide audited financial statements to the Registration Board as part of the registration process, with GAD monitoring these statements. There is no mandatory registration for smaller NPOs, and a lack of incentives for registration. Additionally there is a lack of oversight of small NPOs operating in the ceasefire area.

137. *Criterion 8.1(a)* In its broader consideration of TF risks, the draft NRA only included very basic assessments of elements of the NPO sector operating in Myanmar and any TF vulnerabilities. There was no differentiation amongst the types or features of NPOs within the sector or identification of categories of NPOs at possible risk of TF abuse. Overall, the draft NRA assessed NPOs to be at low risk of TF abuse, noting that there are many unregistered NPOs, and that these are not considered in the draft NRA.

138. *Criterion 8.1(b)* In Myanmar's draft NRA, overall the TF risk of NPOs was considered low. Myanmar has not identified the nature of threats posed by TF to at risk NPOs, or how/whether terrorist actors abuse those NPOs.

139. *Criterion 8.1(c)* Myanmar has not identified high-risk NPOs and has not reviewed the adequacy of laws and regulations relating to NPOs in order to be able to take proportionate and effective actions to address the risks identified. There are, however strong controls on INGOs, with a recent increase in GAD scrutiny of INGO financial records.

140. *Criterion 8.1(d)* The recent draft NRA process considered the risk of the NPO sector. There is mandatory annual registration for International NGOs, which are also required to submit audited financial statements and annual reports. This information can be provided if any investigation unit requests the data, and can be provided to related organisations with an MoU if an investigation of INGO activity is needed.

141. *Criterion 8.2* - Myanmar has not demonstrated policies to promote accountability and integrity in NPO management and administration. Whilst Section 40(b) of the Law Relating to the Registration of Associations allow the Union Registration Board to issue notifications, orders, directives and procedures, Myanmar did not demonstrate that any such instructions have been issued in relation to TF risk mitigation related issues.

142. *Criterion 8.2(a)* Annual registration is mandatory for all INGOs. Registration is not mandatory for smaller NPOs, however NPOs require registration in order to operate a bank account in the NPO's name within Myanmar. If the association has no bank account, international and domestic donors will not provide funding assistance. The Law Relating to Registration of Associations (Law 31/2014) requires INGOs to provide the number of executive members, the name of the head of the association, the work to be conducted in Myanmar and the work plan. Smaller NPOs registering are required to provide their objective, work program, works performed, number of executives and members and a list of money and assets owned by the association.

143. *Criterion 8.2(b)* Some awareness-raising on the potential vulnerabilities of NPOs to TF abuse and risks has been undertaken, with most NPOs aware of the designation under UNSCR 1373 of 57 ARSA members. There does not appear to have been any outreach to the donor community about TF risks.

144. *Criterion 8.2(c)* There has not been any work with NPOs to develop and refine best practices to address TF risks and vulnerabilities. However, at the time of the onsite visit, a draft directive to NPOs was being finalised.

145. *Criterion 8.2(d)* Under Section 16 of the Law Relating to Registration of Associations (Law 31/2014) INGOs are required to submit to the Registration Board audited financial reports along with their annual registration renewal. If smaller NPOs choose to register, they are required to provide a list of money and assets owned by the organisation. There is no requirement for NPOs to use regulated financial channels.

146. *Criterion 8.3* - The Law Relating to Registration of Associations stipulates six different levels of Registration Board responsible for supervising the NPO sector depending on the scope of work being undertaken by the NPO. Whilst registered NPOs are required to provide information relating to their make up, objectives, and for domestic NPOs their assets, Myanmar did not demonstrate a risk-based approach to supervision or monitoring has occurred. At a local level, GAD conducts monitoring of INGO projects.

147. *Criterion 8.4* - As outlined above there is no evidence that risk-based measures are being applied by Myanmar. There is an ongoing provision under Section 20 that domestic Associations submit annual reports including a bank statement, and a requirement to re-apply for registration every five years, but registration by local associations is not mandatory, and other monitoring mechanisms appear to be limited .

148. The only sanction available in the Law Relating to Registration of Associations is the refusing or cancelling the association's registration which would lead to that association not receiving assistance and protection from the State, nor being able to receive aid from the State or International Government or Non-government International Association, or collect donations. Any TF sanctions would be required to be investigated and prosecuted within the ML Law and Rules, and CFT Laws and Rules.

149. *Criterion 8.5(a)* – There are six different levels of registration boards under the Law Relating to Registration of Associations. Each NPO's scope of operation determines which level

Board they must register with. These Boards are subject to supervision from the Ministry of Home Affairs. There are no provisions within the Law which stipulate a requirement for information sharing between Registration Boards. Data held by Registration Boards can be made available upon request by an investigation unit.

150. *Criterion 8.5(b)* – All TF investigations are conducted under the direction of the Counter Terrorism Central Board. There is no specific mention of any agency specifically tasked with investigating NPOs.

151. *Criterion 8.5(c)* – Section 26 (f) of the CFT Rules empowers the TF Investigation Body to call for and examine required documents from any person or government department or organisation.

152. *Criterion 8.5(d)* – There is a legislative mechanism to enable sharing of information, but no mechanisms have been established to ensure that in the event of misuse of an NPO, relevant information is promptly shared with competent authorities in order to take preventive or investigative action. There has been no evidence provided that suggests any assessment of NPOs for involvement in TF takes place.

153. *Criterion 8.6* - The CFT Working Committee, under Section 13(a) of the CFT Rules, is able to cooperate and exchange information with other government organisations, including the FIU. The AML Law has as one of its objectives to cooperate with international organisations in relation to the investigation of ML and TF matters, and there is legislation allowing the AML Central Body to do so, specifically Section 53 of that Law.

Weighting and Conclusion

154. The draft NRA reasonably assesses the risk of abuse of NPOs for TF as low. There are some gaps in the regulatory framework governing NPOs including registration for smaller NPOs not being compulsory. There is a lack of guidance from the Regulator on preventing abuse of NPOs for TF. **Recommendation 8 is rated partially compliant.**

Recommendation 9 – Financial institution secrecy laws

155. In the 2008 MER, Myanmar was rated partially compliant with former R.4, which has not subsequently changed under the current FATF standards. Myanmar has made statutory amendments to address the gaps identified with section 19(b) of the Control of Money Laundering Law (2002), the sharing of CDD information between banks, and potential obstacles to information sharing on TF.

156. *Criterion 9.1* - The enactment of the AML Law (2014) and amendments to the Financial Institutions Law (FI Law 2016) address the concerns raised in the 2008 MER that all secrecy provisions had not been explicitly overridden. Section 59 of the AML Law provides that:

> (a) no prosecution and taking action by criminal, civil, disciplinary or administrative means on ROs or their directors, officers or staff who submit reports or provide information in good faith in accordance with the provisions of the AML Law for the breach of the provisions of banking, professional secrecy and agreement, and
>
> (b) the provisions of the AML Law shall prevail the provisions of financial and professional secrecy and confidentiality to be followed by the ROs or their directors, officials or staff.

157. Section 82(14) of the FI Law (2016) also provides an exemption to the duty to maintain secrecy where the disclosure of customer information is made under the AML Law or CT Law.

158. Provisions for sharing of information between FIs are in line with the FATF standards in relation to correspondent banking (R.13), wire transfers (R.16), and reliance on third parties (R.17) through the exemption contained in section 82(14) of the FI Law (2016) and the following provisions of the AML Law:

Section 26 –FIs must take additional measures in establishing correspondent banking relationships, including collecting sufficient information from the respondent;

Section 27 –FIs must include and maintain accurate information on the originator and beneficiary in conducting wire transfers; and

Section 24 – FIs may rely on third parties in their CDD process provided that identification data is available in a timely manner from third parties that are regulated and supervised appropriately.

Weighting and Conclusion

159. **Recommendation 9 is rated compliant.**

Recommendation 10 – Customer due diligence

160. In the 2008 MER, Myanmar was rated NC for the former R.5, due to major shortcomings identified.

161. *Criterion 10.1* - There are no clear prohibitions on anonymous accounts in the AML Law or AML Rules. Article 9 of the CDD Directive, which is an enforceable means, prohibits banks and FIs from maintaining or opening accounts or business relationships with an unknown identity or in fictitious names. However, this clear prohibition only applies to banks and financial institutions licensed and supervised by CBM and not to securities, microfinance and insurance businesses. In the context of Myanmar, these sectors are relatively minor.

162. *Criterion 10.2* - Section 19 (b) of the AML Law specifies the circumstances when CDD is required: (i) before carrying out a transaction or opening an account for a customer; (ii) before carrying out a transaction for a customer who is not in an established business relationship with the RO, when the transaction involves an amount which equals to or exceeds an amount defined by the Central Body, whether conducted as a single transaction or several transactions appear to be linked; (iii) before carrying out a domestic or international wire or electronic transaction for a customer; (iv) whenever doubts exist about the veracity or adequacy of previously obtained customer identification data; and (v) whenever there is a suspicion of ML and TF. With regard to item (ii), the CCB order 1/2004 sets the threshold amount of MMK 100 million (approximately USD74,000) for banks and FIs, which is above FATF's designated threshold of USD/EUR15,000.

163. *Criterion 10.3* - Section 19(d)(i) of the AML Law requires ROs to identify the customer and verify their identity by using reliable and independent sources, documents, data or information. This section covers all natural persons and legal persons, but not explicitly customers who are legal arrangements, due to limited definition of "a person" in Section 3 (i). Similar requirements are contained in Article 11 (a) and (b) of CDD Directive, and also extend to legal arrangements, but the Directive is only applicable to banks and FIs regulated by the CBM.

164. *Criterion 10.4* - Section 19(d)(iv) of the AML Law requires ROs to verify whether the person acting on behalf of the customer is so authorised and his/her identity is to be verified.

165. *Criterion 10.5* - Section 19 (d)(iii) of the AML Law requires ROs to identify the beneficial owner and take reasonable measures to verify the identity of the beneficial owner, and understand and verify the ownership and control structure of the company. However, the definition of beneficial owner included at s. 3(j) of the AML Law does not extend to the natural person(s) who ultimately own or control a customer or on whose behalf a transaction occurs. The AML Law definition allows ROs to just identify the company that 'principally owns' or 'effectively controls' a customer. Article 24 and 25 of CDD Directive, which only covers CBM regulated banks and FIs reiterates the s.19(d)(ii) obligation to verify and identify the beneficial owner by using relevant information and data obtained from reliable sources.

166. *Criterion 10.6* - Section 19 (d)(ii) of the AML Law requires ROs to collect information and understand the purpose and intended nature of the business relationship.

167. *Criterion 10.7* - Section 20 of the AML Law provides that ROs are required to exercise ongoing customer due diligence measures with respect to each business relationship by closely examining transactions to ensure that they are consistent with the knowledge of the customer, commercial activities and risk profile and if necessary, source of funds. Section 19 (g) of the AML Law requires ROs to keep documents, data or information collected during the CDD process including on high risk customers and business relationships updated and relevant.

Specific CDD measures required for legal persons and legal arrangements

168. *Criterion 10.8* - Section 19(d)(iii) of the AML Law requires the ROs to understand and verify the ownership and control structure of the company or legal arrangement. This is further complemented by Article 28 of CDD Directive where the banks and financial institutions under CBM are required to take adequate measures to understand the ownership and control structure of legal persons and legal arrangements. The AML law does not explicitly require ROs to understand the nature of the customer's business.

169. *Criterion 10.9* - Rule 30 of the AML Rules and Article 11 (b) of the CDD Directive specify 12 points of identification that are required to be obtained from legal persons and legal arrangements to satisfy the FATF Standards. These include name, company registration, articles/memorandum of association, and resolutions and authorisations from the Board of Directors for such business relationships. Similar specifications appear in Article 11 (b) of CDD Directive which is applicable to banks and FIs regulated by the CBM. In relation to understanding the beneficial ownership and controls of NGOs, both regulations (AML Rules and CDD Directive) specify information that needs to be obtained during the CDD process and the requirements are consistent with the FATF Standards. The rule and article require the collection of details of the NGO's board of directors but do not specify a requirement to have the information regarding persons in senior management positions. It is also unclear whether there is a requirement for ROs to obtain the registered address, if it is different to the principal place of business (or in this case the head office).

170. *Criterion 10.10* - Section 19 (d)(iii) of the AML Law, as analysed under 10.5 above applies here. Rule 41 of the AML Rules and Articles 24 and 25 of the CDD Directive require the identification of the beneficial owner through the collection of information prescribed in Rules 30 and 31 of AML Rules and Schedule 1 of the CDD Directive. This requirement is insufficient as the information obtained might not be able to identify the natural person that: (i) has an ultimate controlling interest; (ii) exercises control through other means; and (iii) holding position of senior management official.

171. *Criterion 10.11* - Rule 41 of AML Rules requires ROs to identify the BOs and relevant natural person related to the legal arrangement based on information required in Rule 30 (b) of AML Rules. Rule 42 (b) requires ROs to take adequate action to understand the ownership and control structure of legal arrangements, including identification of liquidators, trustees, protectors, beneficiaries and other persons with similar positions. Similarly, Article 29 (b) of CDD Directive requires ROs to identify the settlor, trustee, protector, beneficiary or persons in similar positions and any other person exercising ultimate effective control including through a chain of control/ownership.

CDD for Beneficiaries of Life Insurance Policies

172. *Criterion 10.12* - AML Rule 32 requires identification and verification of the beneficiary at the time of pay-out, but not identification to be done as soon the beneficiary is identified / designated.

173. *Criterion 10.13* - Rule 40 of the AML Rules describes that when the ROs find that the actual beneficiary of a life insurance policy is an exposed person or higher risk person, there is a need to perform the CDD measures specified in AML Rules. The provision does not specify a requirement for ROs to take reasonable measures to identify and verify the identity of the beneficial owner of the beneficiary, if the ROs determine that a beneficiary who is a legal person or a legal arrangement presents a higher risk.

Timing of verification

174. *Criterion 10.14* - Rules 35 of the AML Rules make reference to enhanced CDD requirements (Articles 39 and 40), but allows for delayed EDD on customer (instead of delayed verification), which is not in keeping with the standards for all FIs. Article 14 of CDD Directive, which applies only to banks and FIs regulated by the CBM, species the requirements in keeping with the standard on delayed verification.

175. *Criterion 10.15* - Rule 36 of AML Rules allows ROs to provide services to the customers before completing the CDD (instead of delayed verification) by defining and implementing minimum requirements such as limiting quantity, types and amount to be transacted. Article 15 of the CDD Directive also includes these requirements, however the CDD Directive only applies to banks and FIs licensed and supervised by the CBM.

Existing customers

176. *Criterion 10.16* - Section 19 (a) of the AML Law requires ROs to carry out CDD, at an appropriate time, on accounts and existing customers prior to implementation of the AML Law based on product, service and risk.

177. *Criterion 10.17* - Section 19(a)(i) of the AML Law requires ROs to take enhanced CDD measures when the risk of money laundering is identified as high. Rule 37 of the AML Rules provides a minimum requirement or expectation on conducting enhanced due diligence by the ROs. For banks and financial institutions under CBM, Article 8 (c) of the CDD Directive requires the application of enhanced customer due diligence to high-risk customers. Article 17 of the CDD Directive outlines what measures banks and FIs should include in enhanced CDD for higher risk customers.

178. *Criterion 10.18* - Section 19(a)(ii) of the AML Law provides that ROs may, when the risk of ML is identified as being low according to a risk assessment, conduct simplified CDD measures consistent with the identified risk. Additionally, subsection (a)(iii) states that

simplified customer due diligence measures should be aborted if it is suspected that the matter relates to ML or TF or is high risk. Article 16 (b) of CDD Directive allows banks and FIs to apply simplified CDD procedures to customers that have been identified as low risk through a documented risk assessment, and that the risk assessment should be kept up to date. However, the CDD Directive does not have a requirement that simplified CDD measures be terminated if there is a suspicion of ML or TF, or if specific higher risk scenarios apply.

Failure to satisfactorily complete CDD

179. *Criterion 10.19* - Section 19 (e) of the AML Law requires ROs to terminate an account or transaction and report this situation to the Financial Intelligence Unit if it is unable to comply with obligations contained in subsection 19 (d) on obtaining required CDD information. Article 12 of CDD Directive requires that if CDD requirements set out in Articles 9 to 11 are unable to be met, the relationship should be terminated and the bank or financial institution should consider submitting an STR to the FIU. This is applicable to banks and financial institutions under CBM.

CDD and Tipping off

180. *Criterion 10.20* - There is no reference in the AML Rules, the CDD Directive or the AML Law to the requirement that in cases where there is a "reasonable belief that performing the CDD process will tip off the customer" then the financial institution should be permitted not to pursue the CDD, and instead be required to file an STR.

Weighting and Conclusion

181. There are a number of technical gaps in the CDD measures in the AML Law especially on the identification of natural persons who ultimately exercise beneficial ownership or control a customer. **Recommendation 10 is rated partially compliant.**

Recommendation 11 – Record-keeping

182. In the 2008 MER, Myanmar was rated partially compliant with former R.10 as there was no specification that required all designated ROs to maintain information on customer records and business correspondence for five years following the termination of account or business relationship and the effectiveness of the implementation of new requirements was not demonstrated, as the regulation was issued nearing the on-site.

183. *Criterion 11.1* - Section 23 (b) of AML Law requires ROs to maintain records of domestic and international transactions, including those attempted, for five years after they have been carried out. Article 58 of CDD Directive complements this by requiring banks and FIs regulated by the CBM to maintain such records sufficiently for reconstruction.

184. *Criterion 11.2* - Section 23 (a) of AML Law requires ROs to maintain documents and records obtained through the CDD process, analysis on customer account, details of the BOs and business correspondence for minimum period of five years after the termination of business relationship or occasional transaction has been carried out. Article 58 of CDD requires banks and financial institutions under CBM to maintain copies of records obtained through CDD (but does not specify for how long) and requires account files and business correspondence to be maintained for at least five years after the business relationship has ended or occasional transactions have been carried out.

185. *Criterion 11.3* - ROs are required under Section 23 of AML Law and Article 58 of the CDD Directive to maintain the type of records required under criterion 11.1 and 11.2 sufficient for reconstruction of individual transactions. It does not explicitly mention that such records should be sufficient to provide, if necessary, evidence for prosecution of criminal activity.

186. *Criterion 11.4* - Section 23 of the AML Law requires the ROs to maintain information required under criterion 11.1 and 11.2 and ensure it is readily available to the FIU and competent authorities.

Weighting and Conclusion

187. **Recommendation 11 is rated compliant.**

Recommendation 12 – Politically exposed persons

188. In the 2008 MER, Myanmar was rated non-compliant with former R.6 as there was no law, regulation or guidance for applying PEP requirements.

189. *Criterion 12.1* - Section 22 of AML Law requires ROs to have appropriate risk management systems to determine if a customer or their BO is a foreign PEP. Section 19(d)(v) of the AML Law requires ROs to conduct enhanced CDD whenever the RO has reasonable grounds to believe the customer is a foreign PEP, but s.19 does not elaborate the nature of the EDD measures. Section 22(b) indicates for foreign PEPs assessed as higher risk by the RO, obligations extend to (i) obtain senior management approval before establishing or continuing business relationship, (ii) take reasonable measures to identify source of wealth and funds; and (iii) apply enhanced on-going CDD measures and monitoring the relationship. This does not meet the standard, which requires the enhanced measures listed above to be applied to foreign PEPs regardless of their risk.

190. Articles 4(e), 7(a) and 8 of the CDD Directive provides more clarity to banks and those financial institutions regulated by CBM, as it is clearly states that PEPs are high-risk and EDD should be applied. Article 20 also states that banks and FIs should establish appropriate risk-management systems to determine whether a customer or BO is a PEP and apply the EDD measures set out in Section 22 of the AML Law.

191. *Criterion 12.2* - Similarly to foreign PEPs, all ROs are required to have appropriate risk management systems to determine if the customer or their BO is a domestic PEP or a person who has been entrusted with a prominent function by an international organisation. The measures outlined in Section 22(b) apply to persons who have been entrusted with a prominent function by an international organisation, and apply to domestic PEPs when the customer or the BO is assessed as higher risk. Articles 4(e), 7(a), 8 and 20 of the CDD directive, as outlined above, apply to all PEPs.

192. *Criterion 12.3* - The definition of PEPs in Section 3 (l) and (m) of the AML Law includes family members and close associates of such persons.

193. *Criterion 12.4* - Rule 40 of AML Rules requires that when the ROs identify the beneficiary of life insurance as an exposed person or higher risk person, it shall perform CDD and inform senior management before paying money; enhance CDD on insurer; consider the drawing money as suspicious transaction and report to the FIU. There are significant gaps to these requirements: (i) there is no requirement to take reasonable measures to determine whether the beneficiary or BO of the beneficiary are PEPs; (ii) the timing is not specified for identification of beneficiary; (iii) consideration for STR reporting is confined to when there is

drawing of money; and (iv) most prominently, EDD is imposed on the insurer (insurance company that issues a particular insurance policy to an insured person).

Weighting and Conclusion

194. Application of enhanced measures to foreign PEPs is only required on a risk-sensitive basis. There are technical gaps with measures applicable to beneficiaries of life insurance products. **Recommendation 12 is rated partially compliant.**

Recommendation 13 – Correspondent banking

195. In its 2008 MER, Myanmar was rated non-compliant with former R.7 as there were no obligations in laws, regulations or guidelines regarding correspondent banking.

196. *Criterion 13.1* - The 2014 AML Law and the 2015 Directive for CDD Measures set out requirements on FIs that are in keeping with the FATF requirements, albeit with some gaps in relation to the respondent's controls. The AML Law s.26 obliges FIs to 'Collect and attempt to know the business of the respondent institution, its reputation…' It appears that the standard "attempt to know" is less rigorous than the requirement to "fully understand" the nature of the respondent's business as laid out in 13.1(a). The CDD directive is not specific about determining the reputation of the institution and quality of supervision from publicly available information.

197. *Criterion 13.2* - The 2015 CDD Directive includes a definition of payable through accounts, but does not set out specific controls on such accounts. The CDD Directive does not contain an express requirement for FIs to satisfy themselves that their respondents have performed CDD on customers with direct access to the accounts, nor to provide relevant CDD information upon request.

198. *Criterion 13.3* - Section 30 of the AML Law prohibits FIs from commencing or continuing business with shell banks, or in countries where shell banks are situated. It also prohibits FIs from allowing their respondent banks to commence or operate business relationships with shell banks. Article 35 of the CDD Directive similarly prohibits FIs from entering into or continuing a correspondent or business relationship with a shell bank, or with a correspondent FI in a foreign country that allows shell banks. The prohibitions on business with FIs located in countries that permit shell banks meet the requirement that FIs satisfy themselves that their respondents do not permit their accounts to be used by shell banks.

Weighting and Conclusion

199. There are moderate shortcomings in relation to applying controls to correspondent banking and no controls applicable to payable through accounts. **Recommendation 13 is rated partially compliant.**

Recommendation 14 – Money or value transfer services

200. In the 2008 MER, Myanmar was rated non-compliant with SR.VI as there was no binding requirement for licensing or registration of informal money remitters other than as FIs and an inadequate AML framework for regulated providers.

201. The Myanmar authorities indicated that the government intends to place unregulated MVTS businesses (hundi), into the formal registration process during 2018. However, as of the time of the onsite visit, no such regulatory requirement was in place.

202. *Criterion 14.1* - Any company that seeks to provide MVTS services must apply to CBM for a registration certificate (FI Law s.20(a)). Companies that were already providing such services before the effective date of the FI Law were required to apply for a certificate within 6 months of the effective date. *Id.* § 20(b). Only banks are registered to provide MVTS services.

203. *Criterion 14.2* - Myanmar did not demonstrate that it has taken action to identify natural or legal persons that carry out MVTS without permission. Myanmar authorities indicate that they are unable to obtain information about the scope and scale of remittances conducted in the hundi system. Myanmar did not demonstrate that sanctions have been applied to those persons and entities providing MVTS without a license. Considering the significant role that this underground remittance network plays in the Myanmar economy, this is a major gap.

204. *Criterion 14.3* - Myanmar did not provide any evidence of a regulatory framework for MVTS conducted through bank or non-bank channels. Banks are the currently the only licensed MVTS providers, but the FI Law neither authorises nor mandates supervision of MVTS providers for AML/CFT requirements. There are very limited controls on MVTS through the Regulation on Mobile Financial Services, which applies to the provision of payments through the use of mobile technology infrastructure. Under this Regulation, the CBM "may examine" and "may access" the books and records of such providers to supervise mobile financial service providers for compliance with the AML/CFT requirements set out in the Regulation (Regulation art. 20); however, the Regulation does not mandate that the CBM conduct such supervision.

205. *Criterion 14.4* - There is no binding obligation on agents of MVTS providers that partner with banks in Myanmar to be licensed or registered, nor on the MVTS or the partner banks to maintain a current list of agents. Myanmar cited the Regulation on Mobile Financial Services which obliges mobile financial service providers to provide information about their agents to the CBM, which then authorises those agents to provide mobile financial services (Regulation arts. 8 & 9). The Regulation requires mobile financial service providers to provide information on their agents to the CBM, as well as to update the CBM with any changes to that information within two weeks (*Id.* art. 8). However, the Regulation does not appear to apply to international MVTS providers that partner with banks in Myanmar, or to those banks.

206. *Criterion 14.5* - Myanmar's Regulation on Mobile Financial Services applies to payments through mobile technology and requires mobile financial service providers to ensure their agents' compliance with the AML/CFT obligations imposed by the CBM (Regulation art. 17). However, the obligation does not appear to apply to international MVTS providers partnered with banks in Myanmar, nor to those banks. There is no statutory basis for such requirements on the agents of international MVTS providers, nor upon the agents of banks in Myanmar registered as MVTS providers.

Weighting and Conclusion

207. There is a lack of tailored licensing or registration requirements for MVTS providers and their agents, nor powers for AML/CFT supervision of such providers and their agents. These represent major shortcomings. **Recommendation 14 is rated non- compliant.**

Recommendation 15 – New technologies

208. In the 2008 MER Myanmar was rated compliant with former R.8 as Myanmar did not, at that time, permit electronic or internet banking, ATM, or any form of non face-to-face customers.

209. *Criterion 15.1* - Under Section 25 of the AML Law, FIs are obliged to identify and assess the AML/CFT risks that may arise in relation to new products, services, business, or technology, and to take appropriate measures to manage and mitigate such risks. Section 37 of the CDD Directive further requires financial institutions to assess these risks in relation to both new delivery mechanisms for products and services, as well as new or developing technologies for both new and pre-existing products. There is no provision in the AML Law or CDD Directive relating to the Myanmar government's assessment of such risks.

210. *Criterion 15.2* - The provisions of the AML Law and CDD Directive require FIs to conduct risk assessments and take appropriate measures to mitigate AML/CFT risks associated with new technologies. The provisions do not specify that the risk assessments should be undertaken before the launch or use of such products, practices and technologies as required by 15.2(a).

Weighting and Conclusion

211. There are minor gaps in relation to supervisors assessing risks of new products and business practices and the timing of FIs' risk mitigation measures for new technologies. **Recommendation 15 is rated largely compliant.**

Recommendation 16 – Wire transfers

212. In its 2008 MER, Myanmar was rated non-compliant with SR.VII. Deficiencies included a lack of detailed instructions to the banks in relation to domestic and cross-border transfers and no binding requirement for beneficiary FIs to adopt effective risk-based procedures for identifying and handling wire transfer without complete originator information. There was no sanction mechanism related to the implementation of SR.VII.

213. *Criterion 16.1* - The obligations on wire transfers in the AML Law and CDD Directive apply to all cross-border wire transfers, regardless of the amount. Article 38 of the CDD Directive requires FIs to include accurate originator and recipient information with all cross-border wires. This information must include the full name of the originator, the originator's account number when used to process the transaction, and the originator's address, or customer identification, or date and place of birth. Financial institutions must include the name of the recipient and the recipient's account number, where his account is used to process the transaction. The obligation to collect a unique reference number if an account is not used to effect a cross-border wire transfer is contained in Section 27(a) of the AML Law.

214. *Criterion 16.2* - Article 40 of the CDD Directive requires that bundled batch-file transfers from a single originator include the originator's account number or unique transaction reference number which permits traceability of the transaction, and also contain required and accurate originator information, and full beneficiary information, that is fully traceable within the beneficiary country.

215. *Criterion 16.3* - As noted in the narrative for Criterion 16.1, Myanmar does not apply a de minimis threshold for cross-border wire transfers.

216. *Criterion 16.4* - The Myanmar authorities have cited the obligation to report suspicious transactions to satisfy this criterion. The obligation to include accurate information applies to all cross-border wire transfers regardless of amount.

217. *Criterion 16.5* - Article 41 of the CDD Directive covers domestic wire transfers and requires such transactions to include the originator information required for cross-border wire

transfers, unless such information can be made available to the beneficiary institution and competent authorities through other means.

218. *Criterion 16.6* - Under Article 41 of the CDD Directive, where beneficiary information can be made available to the beneficiary institution and competent authorities through other means, the ordering FI need only include the originator's account number or a unique transaction or reference number that allows the transaction to be traced back to the originator or beneficiary. Article 42 of the CDD Directive requires the ordering bank to make information on wire transfers available to the beneficiary bank or the FIU on request within three business days. No provision of law or regulation was cited to support the requirement that law enforcement authorities should be able to compel immediate production of such information.

219. *Criterion 16.7* - Under Section 23 of the AML Law, FIs are required to keep records for all domestic and international transactions (attempted or executed) for five years. This would include all of the information identified in Criterion 16.1.

220. *Criterion 16.8* - Section 27(c) of the AML Law and Article 39 of the CDD Directive prohibit FIs from executing wire transfers that do not contain required information on the originator and beneficiary.

221. *Criterion 16.9* - Under Section 27(d) of the AML Law, FIs processing or receiving a cross-border wire transfer are required to maintain the originator and beneficiary information transmitted with the wire with the transaction. Article 43 of the CDD Directive specifies that intermediary institutions in a cross-border wire transfer chain are required to keep all originator and beneficiary information with the transaction.

222. *Criterion 16.10* - Section 23 of the AML Law requires the maintenance of all transaction records (executed or attempted) for five years. Under Section 27(e) of the AML Law, where technical limitations prevent originator or beneficiary information from remaining with a domestic wire transfer, FIs "should" retain these records, but a period of time is not specified. Article 44 of the CDD Directive further specifies that FIs are required to maintain records for at least five years in these circumstances.

223. *Criterion 16.11* - Under Section 27(d) of the AML Law, financial institutions are required to take reasonable action to identify wires or electronic transfers which do not comply with the originator and beneficiary identification requirements of s.27(a) (as further specified in the CDD Directive).

224. *Criterion 16.12* - Under Article 45 of the CDD Directive, FIs "should" have effective risk-based preventative procedures for determining when to execute, reject, or suspend a wire transfer lacking required originator or beneficiary information, as well as for when to report such transfers to the FIU, and for the appropriate follow-up in such circumstances (which may include restriction or termination of business relationships).

225. *Criterion 16.13* - Under Article 45 of the CDD Directive, FIs should have effective risk-based preventative procedures for determining when to execute, reject, or suspend a wire transfer lacking required originator or beneficiary information, as well as for when to report such transfers to the FIU, and for the appropriate follow-up in such circumstances (which may include restriction or termination of business relationships). Section 27(d) of the AML Law requires FIs to take reasonable action to identify wires which do not comply with the originator and beneficiary identification requirements of s.27(a) (as further specified in the CDD Directive).

226. *Criterion 16.14* - The general obligations for cross-border wires contained in Article 38 of the CDD Directive seem to apply regardless of whether an FI is an originating or beneficiary institution. While this provision contains a requirement for the FI to include accurate originator and beneficiary information, it is silent as to any obligation to verify beneficiary information for received wires if such information has not previously been verified.

227. *Criterion 16.15* - See Criterion 16.12.

228. *Criterion 16.16* - All FIs are required to abide by the above obligations regarding wire transfers.

229. *Criterion 16.17* - In Myanmar, international MVTS providers have partnership agreements with domestic banks, which serve as agents for their services, principally for the purpose of converting remitted foreign currency into kyat for payment to the beneficiary, and vice versa in the case of transfers originating in Myanmar. These domestic banks therefore only control one end of the wire transfer, making this criterion non-applicable.

230. *Criterion 16.18* - The CCCT Order 3/2016 , in respect of UNSCR 1267, and Working Committee Order 1/2017, in respect of UNSCR 1373, prohibits all nationals of Myanmar, and all persons or entities within Myanmar, from making any funds or other assets, economic resources, or financial or other related eservices available to designated persons and entities. All natural and legal persons (including FIs supervised by the CBM) are ordered to freeze without delay and without prior notice all funds and other assets owned, controlled, or associated with such designated persons or groups. Supervised FIs are also obliged to monitor the relevant UN lists to meet these obligations. The legal obligations, updated lists and some guidance have been provided to banks to implement the TFS. CBM has conducted targeted onsite supervision to ensure that TFS are implemented in the processing of wire transfers.

Weighting and Conclusion

231. Myanmar did not demonstrate that LEAs are able to compel immediate production of beneficiary information. **Recommendation 16 is rated largely compliant.**

Recommendation 17 – Reliance on third parties

232. In 2008, Myanmar was rated partially compliant with former R.9. The main deficiency was no explicit regulatory requirements and guidance issued on third party introducers.

233. *Criterion 17.1* - Under Section 24 of the AML Law, FIs may rely upon on third parties to conduct customer due diligence, so long as the third party can (a) obtain without delay all information used (i) to identify and verify the customer's identity; (ii) to understand the purpose and intended nature of the business relationship; (iii) to identify and verify the identity of the beneficial owner and the ownership and control structure of the company or legal arrangement (where relevant); and (iv) to verify the authority and identity of a person acting on behalf of a company (where relevant); (b) make available identification information and other relevant customer due diligence information without delay, as requested, and (c) demonstrate that it is regulated and supervised for compliance with customer due diligence and recordkeeping obligations.

234. *Criterion 17.2* - Under Article 33 of the CDD Directive, before entering into a relationship with a third party upon which the financial institution seeks to rely, a FI should have regard to the ML/TF risk associated with the country in which the third party is based.

235. *Criterion 17.3* - Pursuant to s.28(d) of the AML Law, third parties that are part of the same financial group are subject to all the same policies and controls, and such groups are required to have information sharing procedures for the purpose of carrying out customer due diligence obligations and managing AML/CFT risks. To satisfy the requirements of Article 33 of the CDD Directive, such groups would have to have in place policies and procedures to take into account the ML/TF risk associated with the country in which the third party is based. Such groups would be supervised for compliance with all of these obligations under s.36(a) of the AML Law.

Weighting and Conclusion

236. **Recommendation 17 is rated compliant**.

Recommendation 18 – Internal controls and foreign branches and subsidiaries

237. In its 2008 MER Myanmar was rated non-compliant with former R.15 and not applicable for R.22. R.15 had a number of deficiencies relating to a lack of mandatory requirements and guidance. R.22 was deemed not applicable as Myanmar had no FI operating overseas and did not allow foreign banks to set up branches in Myanmar.

238. *Criterion 18.1* - Under Section 28(a) of the AML Law, ROs are required to adopt, develop, and implement internal policies and procedures that include CDD and other AML/CFT obligations, procedures to ensure a high standard of integrity of employees, ongoing training programs for AML/CFT, know-your-customer procedures, and suspicious transaction reporting, and an independent audit function. Section 28(b) requires the designation of a compliance officer at the senior management level. Under Section 28(c), in developing their internal controls, financial institutions are required to take into account the size of their business, customers, transactions, products, services, delivery channel and scope, geographic and country coverage, and AML/CFT risk.

239. *Criterion 18.2* - AML Law Section 28(d) requires the imposition of all of the policies and procedures articulated in Section 28(a) on a group-wide basis. It also mandates information sharing procedures within the group for the purpose of carrying out customer due diligence and managing AML/CFT risks. These information sharing procedures must include procedures to safeguard the information. Section 29 vests the compliance officer with the authority to access any documents, records, registers and accounts necessary for the performance of his duties, as well as power to access any information from any employee of the group.

240. *Criterion 18.3* - While some banks have representative offices, there were no foreign branches or subsidiaries of domestic financial institutions outside of Myanmar at the time of the onsite visit.

Weighting and Conclusion

241. **Recommendation 18 is rated compliant.**

Recommendation 19 – Higher-risk countries

242. In the 2008 MER, Myanmar was rated non-compliant with former R.21. There was a lack of guidance from authorities in dealing with countries which have not sufficiently applied the FATF Recommendations and the lack of specific measures for higher risk countries.

243. *Criterion 19.1* - ROs are required under section 21 of the AML Law to monitor any business relation or transaction with a person from a country which does not apply sufficient measures to prevent ML/TF and, where there is a high risk of ML/TF, to apply enhanced CDD measures. Article 7(b) of the CBM CDD Directive sets out high-risk situations where banks and FIs should apply enhanced CDD measures, including two relevant country risk factors: countries classified by credible sources, such as mutual evaluation reports or published follow-up reports, as not having adequate AML/CFT systems; and, countries identified by the Central Board, FIU or CBM as high risk. Article 23 of the CDD Directive also prohibits banks and FIs from applying simplified CDD when the customer has a business relationship with or in countries listed by the FATF or identified by the FIU as being high risk. However, none of these provisions establish an obligation on financial institutions to apply enhanced due diligence proportionate to the risk in relation to countries for which this is specifically called for by the FATF.

244. *Criterion 19.2* - Section 31 of the AML Law creates a requirement for the FIU to identify countries that do not sufficiently apply AML/CFT measures and to issue directives to be applied in relation to such countries. ROs are required to comply with the directives. However, it is unclear what measures may be included in these FIU directives and whether these would be proportionate to the risks as no directives had been issued under this authority in response to a call to apply countermeasures by the FATF or independently of such a call.

245. *Criterion 19.3* - The FIU is required under section 31(a) of the AML Law to identify countries that do not sufficiently apply AML/CFT measures and to issue directives to ROs in relation to such countries. The Central Board, FIU and CBM also have the ability under the CDD Directive to identify countries as high-risk, which triggers a requirement for banks and financial institutions to apply enhanced CDD measures. However, it does not appear that any countries have been identified as high-risk under the CDD directive and the only guidance issued by the FIU pursuant to s. 31(a) was issued after the on-site visit and only appears to provide some high-level guidance to ROs to follow the AML Law in respect of high-risk jurisdictions.

Weighting and Conclusion

246. While the AML Law and CDD Directives address some controls related to high-risk countries, Myanmar has not established clear obligations for enhanced CDD or countermeasures in respect of countries for which these actions are called for by the FATF. The range and proportionality of countermeasures available to be applied to high-risk countries is unclear given the absence of FIU directives issued to date. These are major shortcomings. **Recommendation 19 is rated non- compliant.**

Recommendation 20 – Reporting of suspicious transaction

247. In its 2008 MER, Myanmar was rated partially compliant with former R.13 and non-compliant with SR.IV. Attempted transactions were not covered. There were no obligations to file STR in relation to terrorism, terrorist acts, terrorist organisations or those who finance terrorism. STR reporting obligations did not cover all money changers.

248. *Criterion 20.1* - Under Section 32 of the AML law and rule 50 of the AML rules, ROs are required to report promptly to the FIU if they suspect or have reasonable grounds to suspect that funds are the proceeds of a criminal activity or are related to ML or TF. ROs are required to report as soon as possible - within 24 hours if the reporting entity is situated in an urban centre or within three days if it is situated in a remote district. The obligation to report STRs includes the proceeds of criminal activity, so the coverage is wider than predicate offences.

249. *Criterion 20.2* - ROs are required by the AML Law and Rule 50 of the AML Rules to report attempted transactions. Section 48 of the CDD Directive clarifies that banks and FIs should report STRs regardless of the amount of the transactions.

Weighting and Conclusion

250. **Recommendation 20 is rated compliant.**

Recommendation 21 – Tipping-off and confidentiality

251. In the 2008 MER, Myanmar was rated PC for former R.14. It appeared that the tipping-off provision did not apply to an investigation officer, attorney, notary public, legal professional, accountant or any other person in discharging his duty in conformity with law. In addition, there was a lack of clear protection for directors as well as for a reporting institution itself if they report a STR in good faith.

252. *Criterion 21.1* - Section 59 of AML Law and section 51 CDD directive establish that no criminal, civil, disciplinary or administrative proceedings for breach of banking or professional secrecy or contract shall lie against the reporting organisation or their directors or officers or staff who provide or given information including submit STR report that has been made in good faith.

253. Criterion 21.2 - ROs are prohibited by section 66 of AML Law and article 50 of the CDD Directive from disclosing information and are required to keep secret any information received including STR report within their duty period until the termination of duty, i.e. until the person finishes serving in their agency. However, tipping-off prohibitions appear to extend beyond a person's finalisation of services, as section 66 goes on to stipulate that persons may only disseminate information obtained in the circumstance of a court order and as required by the AML Law.

Weighting and Conclusion

254. It is not clear that the obligation on confidentiality extends beyond the termination of employment with an RO. **Recommendation 21 is rated largely compliant.**

Recommendation 22 – DNFBPs: Customer due diligence

255. In the 2008 MER, Myanmar was rated NC with the former R.24 as DNFBPs were not subjected to AML/CFT laws and regulations.

256. Section 3(e) of AML Law, defines ROs to include all the categories of DNFBPs covered in the standards.

257. Casinos are included as ROs under AML Law. There are many casinos operating in Myanmar in areas which are high-risk for ML (border between Myanmar and Thailand), however none of them are licensed or implement AML/CFT controls. Weaknesses with casinos apply to each criterion under this recommendation.

258. *Criterion 22.1* - The DNFBPs sectors are subjected to CDD requirements in section 19 of the AML Law and relevant CDD requirements in AML Rules.

259. The CDD obligations apply without the application of thresholds for transactions. There are no clear prohibitions in the AML Law or AML Rules on DNFBP maintaining business

relationships of unknown identities or in fictitious names. The other CDD obligations relevant to DNFBPs follow the analysis in R.10.

260. *Criterion 22.2* - Section 23 of AML Law imposes similar requirement on DNFBPs with regards to record keeping requirement analysed in recommendation 11 above.

261. *Criterion 22.3* - DNFBPs are subjected to PEP requirements similar to FIs, as specified under Section 22 of AML Law. However, the gaps discussed in Recommendation 12 affect compliance with this criterion.

262. *Criterion 22.4* - Section 25 of AML Law reinforces the requirements in relation to new technologies.

263. *Criterion 22.5* - Section 24 of AML Law gives only general obligations covering reliance on a third party. Myanmar has not issued directives to DNFBPs to cover detailed requirements.

Weighting and Conclusion

264. The technical gaps on preventive measures in the AML Law affect compliance with this Recommendation. **Recommendation 22 is rated partially compliant.**

Recommendation 23 – DNFBPs: Other measures

265. In the 2008 MER, Myanmar was rated PC with former R.16 due to gaps in coverage of DNFBPs.

266. Casinos are included as ROs under AML Law. There are many casinos operating in Myanmar in areas which are high risk for ML (border between Myanmar and Thailand), however none of them are licensed or implement AML/CFT controls. Weaknesses with casinos apply to each criterion under this recommendation.

267. *Criterion 23.1* - Section 32 of the AML Law and Rule 50 of the AML Rules require DNFBPs to report STRs, including attempted transactions, in keeping with the standards. However, unlike with FIs, there is no instruction to give clarification that the obligation applies to DNFBPs regardless of the amount of the transactions. Casinos are considered illegal in Myanmar and cannot be licensed or regulated by any laws or authorities, including the requirement to submit STRs. However, Myanmar FIU is discussing with the Ministry of Hotels and Tourism the adoption of a control mechanism for illegal casinos that operate along the border area.

268. *Criterion 23.2* – The requirements in relation to internal controls are similarly applied to DNFBPs as specified in Section 28 of AML Law. Myanmar DNFBPs do not have any foreign branches or subsidiaries.

269. *Criterion 23.3* - Similar to financial institutions, the DNFBPs are subject to requirements on higher risk jurisdictions as specified in Section 21 of AML Law. The gaps discussed in Recommendation 19 affect the compliance with this criterion.

270. *Criterion 23.4* - Section 66 of AML Law prohibits ROs from disclosing information received except under the provision of the law. In the absence of further rules or directives, DNFBPs are not subject to further prohibitions on disclosing the fact that STRs have been lodged with the FIU.

Weighting and Conclusion

271. The technical gaps on relevant measures in the AML Law affect compliance with this Recommendation. **Recommendation 23 is rated partially compliant.**

Recommendation 24 – Transparency and beneficial ownership of legal persons

272. In the 2008 MER, Myanmar was rated PC with former R.33 due to lack of transparency, lack of beneficial ownership requirements and information, and lack of access to timely information by competent authorities on beneficial ownership and control information.

273. The Burma (Myanmar) Companies Act of 1914 (MCA I) was the basic legal framework for company formation in Myanmar.[58] The Special Companies Act of 1950 governs joint venture companies with the government of Myanmar. Part II of MCA I outlines the mechanisms and types of companies recognised in Myanmar. Myanmar recognises the following types of legal entities: partnerships, private limited liability company by Myanmar citizens; public limited liability company by Myanmar citizens; foreign company; branch or representative office of a foreign company; joint venture company with the government of Myanmar; or an association/non-profit organisation. Sections 31 and 32 of MCA I lay out the requirements for recording the membership and owners of shares in companies. Myanmar law does not provide for limited liability partnerships. Partnerships formed under the Partnership Act (1932) are not legal persons.

274. *Criterion 24.1* - The Directorate of Investment and Company Administration (DICA), part of the Ministry of Finance, is responsible for the registration of companies in Myanmar. All information about registration of companies and relevant forms are available on DICA's website (www.dica.gov.mm). The DICA website includes information on the different types, forms and basic features of legal persons and the processes for the creation of legal persons (both under the company law and investment laws) as well as updating and searching records of legal persons. The website includes draft model constitutions for private companies.

275. *Criterion 24.2* - The Myanmar authorities have completed a draft National Risk Assessment in November 2017, which will be finalised in 2018. The draft NRA identifies legal persons as having a high level of money laundering risk for Myanmar. The criteria cited for this determination include many of the deficiencies in the legal framework regarding transparency of legal persons. However, the draft NRA does not assess the vulnerabilities of various forms of legal persons or the ML/TF risks of legal persons vis-à-vis Myanmar's specific geopolitical context.

276. *Criterion 24.3* - The DICA website has a company search function that lists the company's name, registration number, legal form, status, and address of the registered office. Some of these records contain lists of directors and their identification numbers. The Myanmar authorities have not identified the specific provision of MCA I (or other law or regulation) that demonstrates that the company's basic regulating powers and list of directors is otherwise publicly available.

277. *Criterion 24.4* - Sections 30, 31, 31A, 32, 34A, 36, and 37 of MCA I outline companies' obligations to maintain a register of shareholders and members. The Myanmar authorities have not identified the specific provision of MCA I (or other law or regulation) that demonstrates companies' obligations to maintain a record of the categories of shares (including the nature of the associated voting rights), nor the information outlined in Criterion 24.3.

[58] On December 6, 2017, after the onsite visit, a new version of the Myanmar Companies Act (MCA II) was signed into law, and will go into effect on August 1, 2018.

278. *Criterion 24.5* - Under MCA I, companies are required to keep their registries of members and shareholders up to date, and are subject to monetary penalties for non-compliance. See, for example, Section 32(5) (maximum fifty rupee per day fine for non-compliance). Because most of the monetary penalties in MCA I have not been updated to reflect the change in currency following independence, these penalties are not sufficiently dissuasive.

279. Section 247 of MCA I provides a mechanism by which the DICA can remove defunct companies from the register when DICA has reasonable cause to believe that a company is not carrying on business. DICA has construed this provision to include companies that have not been submitting information to DICA for over a year and have failed to renew incorporation certificates. On this basis, DICA has struck 13,979 companies from the company registry.

280. *Criterion 24.6* - Myanmar does not place obligations on legal persons as envisaged in 24.6(a) or (b). Instead, following 24.6(c), Myanmar places CDD obligations on FIs requiring information on beneficial ownership (including customers who may beneficially own or control a legal person) and to make such CDD information available to competent authorities on request. CDD obligations have some key gaps in relation to FIs' obligations to identify and verify the identity of the natural person(s) who beneficially own or control a customer. CDD obligations do not cover the required detail of CDD obligations for DNFBPs (see R.10 and R.22). There are no mechanisms requiring legal persons to maintain a relationship with an FI or TCSP which would conduct CDD on the beneficial ownership and control of the legal persons.

281. *Criterion 24.7* - FIs are required to keep CDD information on customers' beneficial ownership up to date (but only to the extent articulated in 24.6), however this is limited as the requirement to periodically update CDD may result in an FI waiting a number of years to update CDD in the absence of some risk event. There is no obligation to update CDD whenever there is a significant change of beneficial ownership or control. At the time of the onsite visit CDD requirements did not extend to DNFBPs.

282. *Criterion 24.8* - The Myanmar authorities have not identified a provision of law or regulation requiring a resident authorised person to be accountable to competent authorities for providing all basic information and available beneficial ownership information, and for giving further assistance to the authorities.

283. *Criterion 24.9* - Section 242 of MCA I requires that documents of a company being liquidated be maintained for three years. It is not clear if this applies to all information that is required to be registered (shareholdings, directors, etc.). This rating is also affected adversely by the lack of demonstration that companies are obliged to maintain basic registration information.

284. *Criterion 24.10* - Competent authorities can request information on companies through DICA, but it is unclear whether this level of access is identical to the access given to the public, and whether competent authorities are required to obtain legal process to compel production of additional information. Section 249A of MCA I gives the DICA authority to compel a company to provide required information to DICA within 14 days of being notified; in the face of a company's failure to comply, DICA can obtain a court order. As for information on beneficial ownership held by ROs, as described at greater length in Criterion 31.1, the MOPF and the Scrutiny Board have authority to issue summons and request financial and other records from ROs, and natural and legal persons.

285. *Criterion 24.11* - Bearer shares are currently permitted under sections 43-48 of MCA I, and there are currently no legal obligations to mitigate this vulnerability. Sections 79 through

82 of MCA II provide a mechanism for the phase out of bearer shares, but this legislation was not in effect at the time of the onsite visit.

286. *Criterion 24.12* - There are no legal obligations that mitigate risks of nominee shareholders or directors in keeping with the specific requirements of this criterion.

287. *Criterion 24.13* - Section 87 of MCA I requires companies to update the DICA as to changes in their registry of directors, subject to fines of fifty rupees, or court order. Because this penalty not been updated to reflect the change in currency, the fine is not sufficiently proportionate or dissuasive. Furthermore, the Myanmar authorities have not identified any other provisions of law demonstrating compliance with this criterion.

288. *Criterion 24.14* - Some information on Myanmar companies is publicly available to foreign competent authorities via the DICA website. Otherwise, Myanmar has not identified other means of providing rapid international cooperation in relation to basic and beneficial ownership information. To the extent that foreign legal entities have established customer relationships with financial institutions and/or DNFBPs in Myanmar, information that these entities have collected would be available to competent authorities and could be exchanged with foreign counterparts to the extent outlined in Recommendations 37 and 40.

289. *Criterion 24.15* - There is no authority responsible for monitoring the quality of assistance received from other countries in response to requests for basic and beneficial ownership information or requests for assistance in locating beneficial owners residing abroad.

Weighting and Conclusion

290. Myanmar has assessed elements of risk for legal persons in the draft NRA, albeit to a limited extent. There are obligations for registration of basic ownership information for legal persons, with some gaps, and available sanctions are insufficient to ensure compliance with registration obligations. Beneficial ownership details are to be obtained by ROs when conducting CDD and can be obtained by authorities in those cases. Comprehensive CDD was not required to be done by DNFBPs at the time of the onsite, so information on customers who may be legal persons could not be obtained. Suitable controls were not in place on bearer shares at the time of the onsite. Myanmar is not a centre for formation or management of legal persons. **Recommendation 24 is rated non-compliant.**

Recommendation 25 – Transparency and beneficial ownership of legal arrangements

291. In the 2008 MER, former R.34 was not applicable, because there were no active laws regarding legal arrangements, and it was confirmed that legal arrangements do not operate.

292. Myanmar authorities advise that legal arrangements including trusts do not operate in Myanmar.

293. *Criterion 25.1* - Myanmar Trusts Act (1884) governs the formation of trusts in Myanmar. The law predates independence from Britain and all Myanmar interlocutors indicate that the law is not in use. However, the law has not been repealed and remains available to be used. There are no obligations to obtain and hold accurate information on the identity of the settlor, trustee(s), beneficiaries and other persons exercising effective control over a trust formed under the Trusts Act.

294. *Criterion 25.2* - There are no obligations to keep relevant information on domestic trusts up to date.

295. *Criterion 25.3* - There is no requirement for trustees of domestic or foreign trusts to disclose their status to financial institutions and DNFBPs when forming a business relationship or carrying out the occasional transaction above the threshold.

296. *Criterion 25.4* - There do not appear to be any domestic legal restrictions that would prohibit the trustee of a foreign legal arrangement from providing information about the trust to competent authorities or financial institutions.

297. *Criterion 25.5* - Competent authorities have powers under the AML Law to ensure timely access to CDD and other information from ROs. Section 19(d)(iii) of the AML Law requires ROs to identify the beneficial owner and understand and verify the ownership control structure of legal arrangements when establishing a customer relationship and carrying out a transaction. Section 29(b) of the CDD Directive also requires banks and financial institutions to identify the settlor, trustee, protector, beneficiary (as well as persons in similar positions and other persons exercising ultimate control of) legal arrangements. At the time of the onsite visit there was a gap in the coverage of CDD obligations on DNFBPs. However, the obligations do not require CDD to extend to the natural person(s) that ultimately control a trust (domestic or foreign).

298. *Criterion 25.6* - To the extent that foreign legal arrangements have established customer relationships with financial institutions and/or DNFBPs in Myanmar, information that these entities have collected would be available to competent authorities and could be exchanged with foreign counterparts to the extent outlined in Recommendations 37 and 40.

299. *Criterion 25.7* - Sanctions are not available for domestic trustees.

300. *Criterion 25.8* - Given the absence of obligations on domestic trusts, sanctions are not available for ensuring compliance by trustees. There is a gap with an absence of sanctions to implement 25.3, i.e. to ensure trustees of foreign trusts disclose their status to FIs/DNFBPs at the point of establishing a customer relationship or conducting occasional transactions.

Weighting and Conclusion

301. Myanmar does not have an active trust law, however pre-independence legislation remains in force, but does not meet international standards. The absence of measures to ensure that domestic or foreign trustees disclose their status to FIs and DNFBPs when forming a business relationship or carrying out an occasional transaction is given little weight, as it is clear that foreign trusts are not yet a regular feature in the Myanmar economy. However, the lack of powers to obtain information from DNFBPs is a gap. **Recommendation 25 is rated non-compliant.**

Recommendation 26 – Regulation and supervision of financial institutions

302. In the 2008 MER, Myanmar was rated partially compliant with former R.23 due to the absence of effective enforcement of licensing requirements on hundi operators and lack of overall effectiveness in regulation and supervision.

303. *Criterion 26.1* - Section 69 of the AML Law (2014) provides a statutory basis for the AMLCB, Ministry of Home Affairs, MFIU and competent authorities to issue binding regulations, rules, orders, by-laws, directives and procedures, including designating competent authorities

to implement the AML Law. Section 36 of the AML Law defines the roles and functions of designated competent authorities, including onsite and offsite AML/CFT supervision and establishing certain rules and criteria. AMLCB Order 4/2017 (August 2017) designated MOPF and CBM as the competent authorities responsible for AML/CFT regulation and supervision of their respective regulated entities. Section 70 of the AML law is a saving provision which clarifies that regulatory instruments issued under the 2002 Control of Money Laundering Law continue to apply if not in contradiction with the 2014 AML Law.

304. In parallel with the powers under the AML law, the FI Law (2016) empowers CBM to make regulations covering certain AML/CFT measures and to supervise their implementation. Section 68 allows CBM to make specific procedures or regulations including reporting requirements under AML Law, CT Law and other related Laws to banks and FIs regulated by the CBM as specified in Section 68 of FI Law in addition to general power specified in Section 5 of similar law and Section 40 of Central Bank of Myanmar Law. CBM has issued a CDD Directive to support the implementation of AML/CFT measures by its regulated entities. Section 70 allows the CBM to issue regulations on correspondent banking controls. SEC, as provided under section 11 (c) of SEL may issue directives to the securities company or the over-the-counter market or the stock exchange. Similarly, Section 68(b) of the Microfinance Business Law empowers the Supervisory committee and working committee to issue necessary orders and directives and Section 38 (b) of the Insurance Business Law (IB Law 1996) grants the MOPF power to issue orders and directives.

305. *Criterion 26.2* - Section 8 (a) of the FI Law prescribes that any person wishing to conduct banking business under the FI Law must apply to the CBM for a license. Section 9 of the FI Law requires foreign banks to submit an application to the CBM for the establishment of a subsidiary or branch in Myanmar. Section 20 (a) of the FI Law requires a company wishing to carry on NBFI business to apply to the CBM for a registration certificate. Licenses for non-bank money changing companies are issued under the Foreign Exchange Management Law. Mobile Financial Service providers are required to fulfil registration requirements specified in the Regulation on Mobile Financial Services before being granted a registration certificate by CBM.

306. Chapter V of The IB Law (1996) specifies the licensing requirements for the insurance sector while Chapter V of SE Law specifies the licensing requirement for the securities sector.

307. Section 30 of AML Law prohibits the operation of shell banks in Myanmar.

308. *Criterion 26.3* - Section 36(i) of AML Law provides power to the supervisory authorities to establish and apply fit and proper criteria for owning, controlling, or participating, directly or indirectly, in the administration, management or operation of the ROs. S.36(j) of the same law allows supervisory authorities to report to AML Central Body in order to suspend restrict or revoke licences and prohibit the continuation of business and professions for breaches of the fit and proper regulations. S. 36(i) appears to extend a basis for competent authorities to extend fit and proper controls to include those who beneficially own or control an FI as it applies to those 'directly or indirectly…controlling…the reporting organisations'. However, at the time of the onsite visit competent authorities had not issued fit and proper criteria under s.36(i).

309. Respective sectoral laws empower financial sector supervisors to establish fit and proper requirements. CBM issued a banking sector fit and proper directive in 2010 under the 1990 FI Act which applies to both bank directors and senior management at the point of their appointment or re-appointment. Under provisions of the FI Law (s.179) and the AML Law (s.70), the directive is deemed to have been issued under the earlier acts and is binding.

310. The AML Law, FI Law and related rules/instructions do not extend to apply fit and proper obligations to beneficial owners or those having a controlling interest. It is not clear that the extended fit and proper test for banks included in CBM Instruction 3/2010 applies to state-owned banks.

Table 25: Fit and Proper Requirements

Sector	Fit & Proper requirements
Banks	Section 8 (a)(10) of FI Law requires applicants for a banking license to submit an authorisation of the owners, directors and chief executive of the proposed bank, permitting the CBM to carry out financial, criminal and professional background checks on them and affiliated persons. Section 76 applies a fit and proper test to directors, chief executive or managers of a bank. The tests provides a basis for CBM to reject a person who is or has been subject to any investigation or inquiry in relation to fraud, deceit, dishonesty or 'any other improper conduct' by anybody established by Law within or outside Myanmar. The FI Law does not further define 'other improper conduct', but it is apparent that CBM does not require a criminal conviction. The section 76(b) disallows a person convicted in Myanmar or abroad for a crime committed in connection with financial management. In addition, with respect to acquisition of substantial interests in a bank (under section 42), the CBM is empowered to refuse an approval if the individuals, or one or more directors or chief executive (for company) are not fit and proper persons. CBM's Instruction 3/2010 further extends fit and proper requirements for the appointment of executive directors and senior management of a bank and forbids the appointment of those convicted of any illegal activities or contravention of financial sector rules/regulations.
NBFIs	There are no fit and proper requirements set out for NBFIs. Section 20 (a) of FI Law allows CBM to prescribe registration criteria, but this has not been done in relation to fit and proper.
Insurance	Chapter V of the Insurance Business Law provides that the Supervisory Board is to scrutinise applications before granting and refusing insurance license. S.38(b) of the Insurance Business Law & Chapter 5 of Insurance Business Rules set fit and proper requirements for Insurance Supervisory Board to scrutinise applications before granting and refusing insurance.
Securities	Section 24 of the Securities Exchange Law empowers the SEC to determine the necessary qualifications and conditions for securities licences. SEC has not issued fit and proper requirements. Section 34 allows the Commission to suspend or cancel a license if a licence-holder is convicted for cheating, misappropriation, theft breach of trust, or offences relating to morality, however these controls apply after the license has been issued.
Microfinance	The Microfinance Business Law (s.17(c)) requires applications for microfinance business (MFIs-01) to include the qualifications and skills of CEO and Board. FRD and MOPF check applicants for CEO or Board positions against Myanmar's 'Blacklist Clearance List'. Applicants for an MFI license must also provide an 'offence clearance certificate' to prove that they have no criminal record according to directive (4/2015) issued by the Microfinance Supervisory Committee s.68(b) of the Microfinance Business Law. No other fit and proper requirements apply.

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Sector	Fit & Proper requirements
Money Changer	In approving the license of a non-bank money changing business, the CBM provided a list of procedures including criminal checking with BSI on the applicants. Applicants must obtain clearance or a recommendation letter from township police confirming that they are free from any criminal record.
Remittance	There are no non-bank remittance service providers registered in Myanmar.

311. *Criterion 26.4* - The 2016 FI Law reflects some aspect of the core principles, including aspects of governance, internal control and risk management. Implementation and supervision of the new provisions in the FI Law is at a very early stage. Comparable regulatory reforms have not yet occurred with the securities or insurance sectors. Supervision of core principles institutions is not yet conducted in line with core principles. CBM applies rule-based supervision by using CAMELS framework to monitor, analyse and measure major risks faced by the banking institutions. The on-site AML/CFT supervision of the banks is embedded in the prudential supervision and this is complemented by off-site monitoring through submission of data and information to CBM on periodic basis (further details in next criterion). Despite the existence of significant domestic group holdings, consolidated group supervision on AML/CFT does not occur. This could be due to the separation of regulatory and supervisory power between CBM (bank), MOPF (insurance) and SEC (securities).

312. Non-bank money changers, NBFIs and mobile financial service providers are subject to regulation and supervision by CBM. However, supervision is limited to compliance with respective sectoral regulations only.

313. *Criterion 26.5* - In supervising the banking institutions, CBM conducts off-site AML/CFT data collection through risk management and CDD questionnaires. Based on the data and information, banks are classified according to their ML/TF risks. As this initiative just recently commenced, there is no evidence of differentiation of timing and intensity of the supervision of banks. As the current practice of embedding AML/CFT on-site supervision with prudential supervision, the frequency of on-site has not considered the level of ML/TF risk derived from off-site monitoring. There is no information provided to support the application of this activities by other supervisors (CBM –MFSP and non-bank money changers, MOPF and SEC).

314. *Criterion 26.6* - The analysis of data and information collected from the risk management questionnaire and data collection template provide the CBM with the information to assess the banks' ML/TF risk profile periodically and when there are major changes and development amongst the banks. Other supervisors do not take a similar approach. No information was provided to support the application of this activity by other supervisors (CBM – on MFSP and non-bank money changers, MOPF and SEC).

Weighting and Conclusion

315. There is a lack of measures to apply risk-based supervisory and monitoring in ensuring institutions' compliance to AML/CFT requirements. **Recommendation 26 is rated partially compliant.**

Recommendation 27 – Powers of supervisors of financial institutions

316. In the 2008 MER, Myanmar was rated partially compliant with former R.29 due to inadequate supervisory powers for the CBM to ensure compliance with AML/CFT requirements.

317. *Criterion 27.1* - In general, section 36 of AML Law provides a range of power to competent authorities (CBM and MOPF) to supervise FIs under their respective jurisdictions to comply with the provisions contained in the AML Law. Sectoral legislation for banks, insurance, securities firms, microfinance businesses and non-bank money changers provide additional powers to competent authorities to supervise and ensure compliance by respective sectors to relevant AML/CFT requirements. This includes s.68 of FI Law for CBM and s. 11 (d) of SEL for the SEC to supervise the securities business and carry out the inquiries and inspections from time to time. DNFBP supervisors rely on the AML Law s.36 powers to supervise or monitor and ensure compliance by financial institutions with AML/CFT requirements.

318. *Criterion 27.2* - Section 36 (c) of the AML Law provides the CBM and MOPF power to conduct on-site and off-site supervision on ROs. In addition, the FI Law empowers the CBM to conduct on-site examination at each bank at intervals not exceeding two years. Similarly, SE Law provides power to the SEC to carry out inquiries and inspections from time to time.

319. *Criterion 27.3* - Section 36 (d) of the AML Law provides the CBM and MOPF power to compel the production of a copy of any information or documents to monitor AML/CFT compliance by the financial institutions. CBM, as part of its supervision activities requires any director, officer, employee or auditor of a bank under examination to furnish all such information relating to the affairs of the bank, as such examiner may consider necessary as specified in s.91(c) of FI Law.

320. *Criterion 27.4* - Section 37 of the AML Law provides power to the competent authorities to impose a range of measures against ROs or their directors/executives for failure to comply with the AML/CFT preventive measures. Penalties that can be imposed for failures to comply with AML/CFT requirements are specified in Chapter XI of the AML Law. This power can only be discharged by the AMLCB. CBM is provided with the power to impose a range of disciplinary and financial sanctions provided under the FI Law which apply to CBM regulated banks and NBFIs.

Weighting and Conclusion

321. **Recommendation 27 is rated compliant.**

Recommendation 28 – Regulation and supervision of DNFBPs

322. Myanmar was rated non-compliant with former R.24 as AML/CFT requirements were not extended to DNFBPs and there was no supervision on casinos or gambling operations.

323. *Criterion 28.1* - The existence of casino operations in Myanmar 'ceasefire zones' is acknowledged and the AML Law includes requirements on casinos. However, the many casinos operating in Myanmar are unlicensed. There is no designated competent authority to license or supervise the casinos. A particular concern is that there are no measures imposed to prevent criminals and their associates from controlling casino operations.

324. *Criterion 28.2* - AMLCB through AMLCB Order 2/2017 designates certain self-regulatory bodies (SRB) and industry associations as competent authorities (regulators and supervisors) under the AML Law. The Myanmar Real Estate Services Association, Myanmar Gem Enterprise Association, Myanmar Gold Enterprise Association, Myanmar Bar Council and Myanmar Institutes of Certified Public Accounts were designated as supervisory authorities in ensuring the compliance with AML/CFT requirements by their respective sectors. The wording of the Order sets out supervisory responsibility for each sector going beyond the membership of the relevant association.

325. *Criterion 28.3* - DNFBPs are not subjected to systems for monitoring and ensuring compliance with their AML/CFT requirements.

326. *Criterion 28.4(a)* - With the designation through AMLCB Order 2/2017, the supervisory authorities have been granted the power of competent authorities, which include supervisory powers, collecting and compelling information from DNFBPs as specified in section 36 of AML Law. In addition, section 69 of AML Law provides the supervisory authorities a power to issue directives, procedures and regulations in relation to AML/CFT with the agreement of the Central Control Board on Money Laundering.

327. *Criterion 28.4(b)* - Section 36(i) of the AML Law provides power to the supervisory authorities to establish and apply fit and proper criteria for owning, controlling, or participating, directly or indirectly, in the administration, management or operation of the ROs. However no fit and proper criteria have been established by any competent authorities pursuant to this power. In addition, this is complemented by a provision under 36(j) of the same law where the supervisory authorities may report to AMLCB in order to suspend restrict or revoke licence and prohibit the continuation of business and professions.

328. Amongst DNFBPs, only lawyers and accountants have any elements of fit and proper, however the extent of those controls are not in keeping with the standards and do not appear to apply at the point of entry to the profession. Only the Myanmar Bar Council has power to enforce rules to ensure high ethical and moral standards of the members. None of the other DNFBP sectors have any fit and proper controls, including any such controls over those who may be serving in the capacity of competent authority within the sectoral SRB or associations.

Table 26: Regulation and Supervision of DNFBPs

DNFBPs	AML/CFT Supervisory authorities	Governing laws	Fit & proper requirements
Real estate agents	Myanmar Real Estate Services Association	Union Tax Law	No
Gem dealers	Myanmar Gem Enterprise Association	Union Tax Law	No
Precious metal dealers	Myanmar Gold Enterprise Association	Union Tax Law	No
Lawyers, notaries and legal professionals	Myanmar Bar Council	Legal Practitioners Act 1999	S. 12 & 13 of Legal Practitioners Act 1999 allows the Supreme Court to dismiss or suspend higher grade pleaders for certain disciplinary offences, including a criminal conviction; or acting in a fraudulent or "grossly improper" manner.
Accountants	Myanmar Institutes of Certified Public Accountants	Myanmar Accountancy Council Law 2016 (MAC)	MAC licenses certified public accountants under Myanmar Accountancy Council Law (2015) (MACL) Chapter IX. MAC can issue warnings, revoke, suspend and cancelling the license under

DNFBPs	AML/CFT Supervisory authorities	Governing laws	Fit & proper requirements
			Chapter XVII, MICPA plays an advisory role to MAC in cases where it identifies possible breaches of fit and proper.

329. *Criterion 28.4(c)* - Section 37 of the AML Law provides power to competent authorities to impose a range of measures to ROs or their directors/executives for failure to comply with AML/CFT preventive measures. Penalties that can be imposed for failure to comply with AML/CFT requirements specified in Chapter XI of the AML Law. This power however can only be discharged by the AMLCB.

330. *Criterion 28.5* - Supervision of DNFBP sectors has not commenced. This absence does not reflect a risk-based approach.

Weighting and Conclusion

331. Major shortcomings include the unlicensed casino businesses operating in Myanmar, absence of fit and proper requirements and an absence of AML/CFT supervision of the DNFBP sector. **Recommendation 28 is rated non-compliant.**

Recommendation 29 - Financial intelligence units

332. In its 2008 MER, Myanmar was rated partially compliant with former R.26. The role of the CCB undermined the independence of the MFIU. There was very limited guidance or feedback provided to ROs, gaps in the analysis process of STRs, and no analysis of CTRs and PTRs. A limited number of cases were referred to LEAs for investigation.

333. *Criterion 29.1* - MFIU was established in January 2004 under the Central Control Board on Money Laundering according to the Control of Money Laundering Law 2002. On 28 August 2014, according to chapter 5 of the AML Law 2014 and chapter 3 of the AML Rules, the AMLCB formed the FIU as the central agency with responsibility to receive, request and analyse reports and disseminate financial intelligence. The AFCD was designated as the FIU from 6 October 2016 by AMLCB Order No. 3/2016.

334. *Criterion 29.2* - Under Sections 9 and 32 of the AML Law and section 10 of the AML Rules, Myanmar FIU serves as the central agency with responsibility for the receipt of disclosures by financial institutions and DNFBPs. These disclosures include STRs, CTRs, threshold cash transaction reports, property transactions, wire transfers, cross-border movement of physical cash or bearer negotiable instruments (CBNI) and threshold reports related to particular sectors including gems and real estate.

335. *Criterion 29.3* - Section 10 (f) and (g) of AML Law, authorise Myanmar FIU to request additional information from the relevant ROs and access any report or information received and maintained by any ROs, implementing organisations and other government departments and organisations. The FIU's SOP provides further details on the range of information, including open or public sources, accessible to the FIU.

336. *Criterion 29.4(a)* Under Section 9 and 10(c) of AML Law and the FIU's SOP, Myanmar FIU is given responsibility for operational analysis. However, the MFIU has significant capacity constraints and lacks systems (analytical software) to ensure it uses available information to

follow the trail of particular activities or transactions, and to determine links between those targets and possible proceeds of crime, ML predicate offences or TF.

337. *Criterion 29.4(b)* Under Section 9 and 10(c) of the AML Law and the FIU's standard operating procedures, MFIU is also given responsibility for strategic analysis. However, at the time of the onsite visit the MFIU had not begun to conduct strategic analysis.

338. *Criterion 29.5* - Section 9 and 10(b) of the AML Law empower MFIU to receive, request and analyse the reports and other information related to ML, TF and predicate offences and to disseminate the result of analysis, and related information to relevant domestic or foreign agencies spontaneously or upon request. The channels and controls on disseminations and response are set out in section 12(a), section 66 of AML Law and the Official Secrets Act and described in SOP. MFIU and domestic LEAs sometimes cooperate through informal channels, however this raises concerns about how information is protected and secured. Myanmar is not yet a member of Egmont Group and cannot utilise the Egmont Secure Web system for sharing information with foreign counterparts, so MFIU cooperates with foreign FIUs through emails and fax.

339. *Criterion 29.6(a)* Section 12(a) and Section 66 of the AML Law confirm the requirement for confidentiality of information obtained in the course of a person's duties under the Act and confers a penalty under the Official Secrets Act for a breach of confidentiality in AML Law. The Official Secrets Act applies to all government agencies and includes clauses on the handling of classified information. In addition Myanmar FIU has detailed SOP in place for security and confidentiality of information received.

340. *Criterion 29.6(b)* MFIU organises mandatory training of its staff from the MPF on understanding their responsibilities in handling and disseminating sensitive and confidential information. MFIU has also developed SOP for security and confidentiality of information received.

341. *Criterion 29.6(c)* According to the SOP, a secure electronic web reporting system has been developed by the Myanmar FIU to receive reports/requests electronically from LEAs (not used by all agencies). A web reporting functionality has also been developed by the FIU for receiving CTRs from financial institutions and money service providers. Information security is maintained within FIU through its password protected database, with only MFIU employees working in related areas authorised to access the system. The MFIU database is only accessible from within the offices of the MFIU - there is no remote access.

342. *Criterion 29.7(a)* - The MFIU is established under the AML law. Sections 9 and 10 appear to give it authority to carry out its functions freely, including the autonomous decision to analyse, request and/or forward or disseminate specific information. However, section 11 appears to be contradictory and requires the FIU to obtain AMLCB approval before the MFIU can exchange information with domestic or foreign authorities. This brings into question the scope of its independence. At the same time, due to the structure of the MFIU with financial investigation teams within the AFCD, it is not clear if the MFIU has the capacity to carry out its functions freely, given many staff have joint FIU and investigation responsibilities.

343. *Criterion 29.7(b)* - Section 10(b) of the AML Law provides that the MFIU may, in urgent circumstances, provide information to domestic or foreign partners upon their request. Section 11 of the AML Law appears to require AMLCB approval before the MFIU can exchange information with domestic or foreign authorities. This brings into question the scope of its independence.

344. *Criterion 29.7(c)* - MFIU is a part of AFCD in the Myanmar Police Force. The AFCD includes both a financial investigation wing and the FIU wing. While it is located within the Myanmar Police Force AFCD, MFIU has its own distinct core functions and structure. At the same time, certain key staff have cross-over roles between both wings.

345. *Criterion 29.7(d)* - MFIU has its own distinct budget, allocated from the overall MPF budget. FIU receives resources and has some autonomy in deciding its deployment to carry out its functions. MFIU has limited autonomy in hiring staff other than from within the MPF.

346. *Criterion 29.8* - MFIU was not a member of Egmont Group at the time of the onsite visit. Myanmar applied to Egmont Group for membership in March 2017. Egmont has identified Thailand and Japan as Myanmar's co-sponsors to support MFIU to apply for Egmont membership. Both sponsoring FIUs visited MFIU for a pre-onsite visit in December 2016 as part of Egmont's membership process.

Weighting and Conclusion

347. There are a number of moderate shortcomings with a lack of analytical systems to ensure quality operational analysis, a lack of strategic analysis, concerns regarding information security, and shortcomings with sufficient operational independence. **Recommendation 29 is rated partially compliant.**

Recommendation 30 – Responsibilities of law enforcement and investigative authorities

348. In the 2008 MER Myanmar was rated largely compliant with former R.27. Myanmar did not have a dedicated team to investigate TF.

349. *Criterion 30.1* - Under the CrPC the MPF has the authority to initiate investigations into all listed predicate offences which are 'cognizable offences'. Customs officials are able to investigate relevant predicate offences, such as smuggling and tax crime, but are not authorised to investigate any associated ML/TF offences, unless included on a scrutiny board. BSI is also authorised to investigate corruption and bribery, counterfeit currency, and tax crime. ACC is authorised to investigate corruption and illicit enrichment offences. Beyond MPF, Myanmar could not cite powers to authorise any other specific bodies responsible for the investigation of the listed predicate offences such as intellectual property crimes, tax related crime, environmental crime, and market manipulation.

350. In relation to the investigation of ML/TF offences, Section 13 of the AML Law states that the FIU may form a Scrutiny Board as a result of reviewing reports and information received under the AML Law if they suspect an ML or other offence related to the AML Law has been committed. As a result of the finding of the Scrutiny Board, the FIU can form an Investigation Body to investigate the case relating to ML. The AMLCB issued Order 3/2016 which further designates the BSI to investigate ML and TF offences.

351. Regarding TF investigations, CFT Rule 25 stipulates that the CT Working Committee can only form an Investigation Body to investigate entities which have already been designated.

352. *Criterion 30.2* - LEAs, with the exception of DED, require authorisation from the AMLCB to investigate ML/TF offences in a parallel financial investigation with predicate cases. All law enforcement agencies must refer suspected ML/TF offences to the AMLCB for consideration of the formation of a Scrutiny Board.

353. *Criterion 30.3* - Under Section 14 of the AML Law the Scrutiny Board formed on the authority of the AMLCB may identify, search and trace money and property obtained by money laundering or assets of terrorists or financiers of terrorism and then provisionally freeze that money and property.

354. Myanmar has specific legislation that empowers the ACC to seize property and currency derived from corruption. This is specific to corruption-based offending and illicit enrichment and to any other ML/TF investigations (s.17 of the Anti-Corruption Law).

355. The Law for Taking Action Against Owning and Marketing of Properties Obtained by Unlawful Means empowers a body formed at the direction of the Council of Ministers to conduct an investigation on ownership and marketing of properties obtained by unlawful means. This body is authorised to call for necessary evidence, examine necessary witnesses and enter, examine and search relevant buildings or premises.

356. *Criterion 30.4* - The ACC has responsibility for conducting financial investigations in relation to corruption-based offending, however it is not authorised to conduct ML/TF investigations. As outlined above the ACC does have the power to identify, freeze and seize assets and currency suspected of being generated through corruption. However, the Commission is not designated to conduct any ML/TF investigations and any suspicion of ML/TF activity must be referred to the FIU for assessment and subsequent investigation.

357. *Criterion 30.5* – The ACC is not a designated authority able to separately investigate ML/TF. However as noted above the ACC does have powers to identify, trace and freeze property related to corruption offences and, when it is included on a Scrutiny Board to investigate ML cases, it is able to utilise all the powers set out in the AML Law and Rules.

Weighting and Conclusion

358. Whilst the MPF is able to investigate all predicate offences, only the BSI and the Investigation Bodies formed by the FIU and the CFT Working Committee are able to undertake investigations into ML/TF offences. Other agencies such as Customs and the ACC are only able to investigate relevant predicate offences and must refer any suspicions of ML/TF offences to the FIU for further investigation. **Recommendation 30 is rated largely compliant.**

Recommendation 31 - Powers of law enforcement and investigative authorities

359. In its 2008 MER Myanmar was rated largely compliant with former R.28.

360. *Criterion 31.1* - The MPF, BSI and the FIU, as the designated competent authorities have access to powers under the CrPC which enable them to obtain necessary documents and information for use in the investigation of predicate offending, ML and TF offences. The AML Law and CFT Law and associated Rules grant similar specific powers to Investigation Bodies formed to investigate ML and TF offences. Furthermore, the ACC is able to investigate any corruption-related ML matters, and is empowered under the Anti-Corruption Law and the Anti-Corruption Rules.

361. *Criterion 31.1(a)* – Section 94 of the CrPC gives the MPF (including all investigating departments or divisions) and the BSI the power to issue a summons for the production of documents which could be served on ROs, natural and legal persons. Section 14(d) and (e) of the AML Law empowers the Scrutiny Board to request financial and other records from ROs, and other documents from other persons or government departments. The Anti-Corruption Rules (2015) give the ACC compulsory measures for production of records, search of persons or

premises, taking statements and seizing evidence in relation to corruption predicate investigations.

362. *Criterion 31.1(b)* – The CrPC grants the MPF (including all investigating departments or divisions) and the BSI powers to search persons and places at Section 165. Section 96 also allows those LEAs to apply for the issue of a search warrant. There are a number of relevant search powers available to Customs Officials investigating relevant predicate offending. However, it should be noted that Customs Officials do not have access to any powers under the CrPC, nor are they able to investigate ML/TF offences. The Scrutiny Board formed under the AML Law has access to search powers under Section 14 of that Law. Section 72 of the AML Rules stipulates that the Scrutiny and Investigation Bodies will comply with the provisions of the CrPC in relation to the issuing of search warrants, searching, arresting, seizing exhibits and prosecuting ML offences. Section 14 of the AML Law outlines a number of powers of search for the Scrutiny Board, however there is no mention of the mechanisms available for use. The Anti-Corruption Rules (2015) give the ACC compulsory measures for search of persons or premises.

363. *Criterion 31.1(c)* – Sections 161 and 162 of the CrPC relate to the police powers to orally examine witnesses and take statements. These powers are applicable to all competent LEAs tasked with ML investigation. Section 20(b) of the Anti-Corruption Law empowers the Anti-Corruption Scrutiny Board to take statements in respect of currency and properties. Section 15 of the AML Rules empowers the Scrutiny Board to obtain statements in support of an investigation. There are no powers legislated under the Customs Act in relation to obtaining statements. The Anti-Corruption Rules (2015) give the ACC compulsory measures for taking statements and seizing evidence in relation to corruption predicate investigations.

364. *Criterion 31.1(d)* – CrPC Section 96 relating to search warrants, and Section 165 relating to the power to search person and places for evidence, allow for the seizing of evidence. There are a number of provisions under the Customs Laws which empower Customs Officers to seize evidence relevant to customs offences. Section 8(c) of the AML Law empowers the AMLCB to issue an order to banks and FIs allowing the search and seizure of money and property in those institutions as exhibits, and subsection (e) authorises the FIU to seize money or property obtained by ML as an exhibit. Section 17 of the AML Rules gives the Scrutiny Board the power to seize evidence in relation to ML investigations. Whilst the powers are legislated there is no mention of the mechanisms available to exercise these powers. The Anti-Corruption Rules (2015) give the ACC compulsory measures for seizing and obtaining evidence in relation to corruption predicate investigations.

365. *Criterion 31.2* - Special investigative techniques are authorised for a number of predicate offences and for terrorism and TF, but not for ML or the broader set of predicate offences. The AML Law and CrPC make no reference to special investigative techniques. The Trafficking in Persons Law Section 8(f) allows the Working Group on Prevention of Trafficking in Persons and Protection of Trafficked Victims to use controlled deliveries when exposing and investigating trafficking in persons. There is also provision for the use of controlled deliveries and undercover operations whilst investigating drug offences under the Narcotic Drugs and Psychotropic Substances Rules (1993).

366. CT Law Section 47(e) empowers the relevant Working Committee to cut, restrict or intercept the electronic communication of terrorist groups and terrorists if it is necessary to prevent acts of terrorism which cause a danger to the state and public suddenly. It is assessed that this power is not a general investigative power.

367. *Criterion 31.3* (a) Myanmar does not have a central register of banks or other accounts held by natural or legal persons. However, the AMLCB, CCCT and scrutiny boards provide a

mechanism for operational cooperation for competent authorities to use AML and CrPC powers to obtain information from ROs on whether natural or legal persons hold accounts.

368. The CrPC contains provisions to enable competent authorities to issue summonses for documents, apply for search warrants, and to conduct searches on people and premises in order to identify those persons, whether natural or legal, who hold and control accounts.

369. The AML Law at Section 14 gives the Scrutiny Board powers to request financial or other records from ROs, or other relevant documents from other people and government departments and organisations, as well as banks and financial institutions.

370. The CFT Rules Section 26 grants the same powers to the CFT Investigation Body in relation to TF investigations.

371. Section 17 of the Anti-Corruption Law grants the ACC Investigation Body the right to inspect financial records from banks and other FIs.

372. *Criterion 31.3* (b) AML Law Section 15 and related AML Rules, the CrPC and ACC Rules prohibit banks from giving prior notification to owners of accounts and assets regarding FIU or LEA enquiries.

373. *Criterion 31.4* - Section 9 of the AML Law outlines the duties of the FIU which include disseminating reports and other information related to ML/TF and predicate offences to relevant persons and organisations. Section 10 further details the duties of the FIU, with section 10(b) mentioning acting upon the request of domestic and foreign partners in cases of ML or any other offence applied to the AML Law. Agencies involved in the investigation of ML/TF and predicate offences are able to make requests to the FIU for relevant information.

Weighting and Conclusion

374. Special investigative techniques are not clearly supported for most crime types, including ML. The interception of communications is only available to urgent terrorism investigations. The absence of a centralised register of bank accounts in Myanmar is an additional minor gap. **Recommendation 31 is rated largely compliant.**

Recommendation 32 – Cash Couriers

375. In the 2008 MER, Myanmar was rated partially compliant for SR.IX. Deficiencies included a lack of effectiveness in implementing Myanmar's currency and valuable item control regime outside Yangon International Airport. Declarations received were not computerised and data was not made readily available to the FIU.

376. *Criterion 32.1* - Myanmar adopts a declaration system. Section 47 of the AML Law makes it an offence not to comply with Section 39 of that Law. Section 39 requires that any person entering or departing from Myanmar who takes currency or BNIs, precious stones or metal and which has a value in excess of the prescribed amount shall make a declaration. This provision also requires anyone who arranges for the transportation of these items via mail or any type of vehicle to make the same declaration. While the declaration system is binding across Myanmar, the system is unable to be implemented along significant sections of Myanmar's border, as those areas are not under the control of the central government (so-called 'ceasefire zones').

377. *Criterion 32.2* - Section 39 of the AML Law requires that person make a declaration in relation to the cross-border movement of currency, BNI, and precious metals and stones which exceed the designated threshold amount. Myanmar AMLCB issued Order 4/2004 and CBM Notification 7/2014 which prescribes the threshold amount to be equivalent to USD10,000.

378. *Criterion 32.3* - Myanmar has a declaration system.

379. *Criterion 32.4* - Section 41(b) of the AML Law authorises the Customs Department to request or obtain new information in relation the ownership of currency, BNIs, precious stones and metals in cases of a failure to declare, a false declaration or suspicion of ML/TF or any other offence under the AML Law.

380. *Criterion 32.5* - Section 47 of the AML Law states that a person convicted of failing to comply with the declaration provisions under Section 39 may be sentenced to a term of imprisonment up to three years and a fine (the amount of the fine is not specified). If the offender is a legal person then upon conviction a fine of up to three hundred million kyat (USD220,000) may be imposed.

381. Section 40 of the AML Law gives the Customs Department the power to seize some or all currency, BNI, precious stones or metals declared or falsely declared, which are suspected to be related to ML or other offences applicable to the AML Law.

382. *Criterion 32.6* - Section 42 of the AML Law states that information obtained by the Customs Department in relation to the Cross-border transportation of currency or BNI shall be provided to the FIU and the Foreign Exchange Management Department of the CBM.

383. *Criterion 32.7* - Myanmar Customs has the lead responsibility to police the borders of Myanmar and detect cross border cash couriers. There is a strong level of cooperation between Customs and MPF and the MFIU. All declared cross border threshold movements of cash are recorded by Customs and disseminated to MFIU on a monthly basis. Myanmar Customs has been coordinating with Immigration and other related authorities to set up a 'one stop shop' at the borders. Additionally, the AMLCB comprises various organisations including Customs and Immigration for effective cooperation on national AML/CFT issues.

384. Customs Officials are also seconded to the MFIU in order to effectively share information in a timely manner.

385. *Criterion 32.8* - Section 40 of the AML Law gives the Customs Department the power to seize some or all currency, BNI, precious stone or metal that have been either been declared or falsely declared and which are suspected to be related to ML or other offences applicable to the AML Law.

386. *Criterion 32.9* - Customs retains declarations of cross-border threshold transactions and shares these details with the MFIU. In instances of a false declaration where a prosecution action is taken this information is also retained. However, there is no indication that records of suspicion of ML/TF associated with cross-border cash movements are recorded or retained.

387. *Criterion 32.10* - Section 32 of the AML Law requires ROs, in this case Customs, to report all threshold transactions. This includes those cross-border movements in excess of the designated threshold of USD10,000 equivalent. Section 33 goes on to suitably restrict the disclosure of such reports.

388. *Criterion 32.11* - Section 47 of the AML Law sets out the specific offence provision in relation to failing to declare, or making a false declaration. Punishment for contravention of this

section can include a sentence of imprisonment for up to three years and may include a fine. For legal persons this punishment consists of a fine up to 300 million Myanmar Kyat (USD220,000). Section 40 of the AML Law empowers Customs Officials to seize currency, BNI, precious metals and stones that have been disclosed or falsely declared and are suspected to be related to ML or predicate offences.

Weighting and Conclusion

389. Myanmar's declaration system covers amounts of USD 10,000 or more and its equivalent, including BNI, and precious metals and stones. There are legislative safeguards for this information, records of any declaration are retained by the MFIU. Myanmar Customs have the primary responsibility of policing the cross border movement of cash, whilst MFIU's responsibility is to retain and analyse the data gathered through the declaration process. There is a significant risk and context issue of major cross border movements of cash and significant sections of Myanmar's border not being controlled by the central government (so-called 'ceasefire zones'). **Recommendation 32 is rated partially compliant.**

Recommendation 33 – Statistics

390. In the 2008 MER, Myanmar was rated PC in relation to former R.32 as statistics were not comprehensive.

391. *Criterion 33.1* - Myanmar lacks comprehensive statistics on STRs received; ML/TF investigations, prosecutions and convictions; property frozen, seized and confiscated; and mutual legal assistance or other international requests for cooperation made and received.

392. *Criterion 33.1(a)* Myanmar maintains statistics regarding STRs and has provided statistics dating back to 2008. However, statistics for STR dissemination appear in 2015 and 2016 only (MFIU was established in 2014) and there is no breakdown of information received and disseminated to different agencies.

393. *Criterion 33.1(b)* Myanmar captures and maintains statistics on ML/TF cases, investigations, prosecutions and convictions.

394. *Criterion 33.1(c)* Myanmar captures limited statistics in relation to confiscation. Related detailed data for property frozen or seized is not well maintained.

395. *Criterion 33.1(d)* Myanmar maintains statistics on incoming and outgoing MLA, however in the absence of a case management system statistics are not well maintained for responses to MLA requests. Statistics for agency to agency cooperation with foreign counterparts are not well kept.

Weighting and Conclusion

396. There are some weaknesses with collecting and maintaining data and statistics on provisional measures and on agency to agency cooperation with foreign counterparts. **Recommendation 33 is rated partially compliant.**

Recommendation 34 – Guidance and feedback

397. In the 2008 MER, Myanmar was rated non-compliant with former R.25, noting a major shortcoming with available guidance.

398. *Criterion 34.1* - Section 29 of the AML Rules allows the AMLCB to issue guidance as necessary. No such guidance has been shared with the assessors. MFIU and CBM have issued guidelines on a number of areas of AML/CFT, but there are very significant gaps in the scope of coverage of the current guidelines. The gaps relate particularly to risk mitigation, targeted financial sanctions, PEPs, STRs, NPO regulation, etc.

399. CBM and MFIU demonstrated that they have taken a number of steps to provide feedback and give verbal guidance to reporting parties and to seek feedback from LEAs on a range of ML/TF risks and AML/CFT obligations.

Weighting and Conclusion

400. There are a number of key areas requiring enhanced guidance and greater feedback. **Recommendation 34 is rated partially compliant.**

Recommendation 35 – Sanctions

401. In the 2008 MER, Myanmar was rated partially compliant for former R.17 owing to a lack of effective, proportionate and dissuasive sanctions and an absence of criminal sanctions for legal persons under the CMLL.

402. *Criterion 35.1* - The obligations of ROs for targeted financial sanctions related to terrorism (R.6) are set out in Chapter 8 of the CFT Rules issued pursuant to the CT Law. The CFT rules are able to be enforced through section 53 of the CT Law, which provides for a criminal penalty for a violation of any rules issued under the CT Law. The penalty, on conviction, is imprisonment for a term of one to three years and liability for a fine of an unspecified amount. Section 61 of the Penal Code provides that where no fine amount is indicated, the amount to which the offender is liable is unlimited, but shall not be excessive. Given the wording of the penalty provisions (see R.5), legal persons may also be subject to criminal sanctions for non-compliance. No civil or administrative sanctions are provided for in the CFT Rules or the CT Law. The range of available sanctions do not appear proportionate, as criminal proceedings would be required in order to apply sanctions in even the most minor instances of non-compliance; nor dissuasive given the relatively low maximum penalties available for even the most egregious contraventions.

403. The only sanctions available pertaining to NPOs (R.8) are set out in the Law Relating to Registration of Associations and relate to refusing or cancelling an association's registration which would lead to that association not receiving assistance and protection from the state, nor being able to receive aid from the state or foreign governments or non-government international associations, or collect donations. These sanctions are not available for non-compliance with AML/CFT-related obligations. No other proportionate or dissuasive administrative, or civil or criminal sanctions appear available in respect of AML/CFT obligations related to the NPO sector.

404. The FI Law (2016) covers licensing and prudential controls for FIs and includes a basis for issuing and enforcing comprehensive AML/CFT regulations (section 68) on financial institutions regulated by the CBM. Under this law, the CBM may impose a range of administrative penalties on financial institutions, directors, members, executive officers, shareholders, management and staff who violate any of the provisions of the law or its regulations, including: warnings, fines, orders (e.g. restricting the operation of financial institutions), and the suspension or termination of individuals from the enterprise. Section 156 of the law also provides that the use of these administrative penalties does not preclude the

taking of criminal or civil action. At the time of the onsite visit, CBM had not issued any AML/CFT regulations pursuant to the FI Law. The 2015 CBM CDD Rules, which further elaborate the obligations of the AML law, were issued prior to the FI Law entering into force and do not provide a basis for applying penalties available under the FI Law to breaches of AML/CFT preventive measures.

405. The provisions dealing with natural and legal persons that provide money or value transfer services (MVTS) are set out in the FI Law and the Regulation on Mobile Financial Services issued pursuant to that law (R.14). Currently, only banks may provide these services in Myanmar. Proportionate and dissuasive sanctions for violations of both the law and regulation are set out in the FI Law. No proportionate or dissuasive sanctions appear available where natural or legal persons carry out MVTS without a license or registration.

406. The sanctions for failing to comply with the requirements of R.10-13 and R.15-23 are primarily found in the AML Law at sections 41, 44 to 46 and 50. Section 41 sets out certain administrative sanctions to enforce compliance and sections 44 to 46 and 50 set out criminal sanctions for non-compliance.

407. Section 44 of the AML Law sets out that any responsible person from a reporting organisation that violates the provisions contained in sections 18 to 21 (R.10 and R.22); 22 (R.12); 23 (R.11); 24 (R.17); 25 (R.15); 28 and 29 (R.18 and R.23) or any responsible person from banks and financial institutions violates the provisions contained in sections 26 (R.13) and 27 (R.16) shall, on conviction, be sentenced to imprisonment for a term of up to three years and may also be liable to a fine. If the offender is a company or an organisation, a fine of up to 100 million kyats (USD74,000) can be imposed.

408. Section 45 of the AML Law establishes that whoever violates the provision contained in section 30(a) or any responsible person from a bank or FI that violates or attempts to commit section 30(b) or (c) (R.13 relating to shell banks) shall, on conviction, be sentenced to imprisonment for a term of up to seven years and may also be liable to a fine. Where the offender is a company or an organisation, a fine of up to 300 million kyats (USD220,000) may be applied.

409. Section 46 of the AML Law prescribes that any responsible person from a reporting organisation, in reporting to the FIU under section 32 (R.20 and R.23), presents false statement or conceals facts shall, on conviction, be punished with imprisonment from a minimum of three years to a maximum of seven years and may also be subject to a fine. If the offender is a company or an organisation, a fine of up to 300 million kyats (USD 220,000) can be imposed.

410. Section 50 of the AML Law sets out that any reporting organisation, government department and organisation, or a director, an official and staff thereof that violates section 33 (R.21) shall, on conviction, be punished by imprisonment for a term of up to three years or a fine or both.

411. Neither criminal nor civil sanctions appear available for natural or legal persons that fail to comply with a directive issued by the FIU under section 31(a) related to higher-risk countries (R.19).

412. Chapter IX of the AML Law contains the following administrative sanction powers that are available where ROs or directors, board of directors, executive officials or administrators of the reporting organisation fail to comply with the obligations of Chapter VIII:

(a) written warnings;

(b) compel by specific instructions;

(c) causing to submit reports in accordance with the stipulation in respect of measures on the identified violation; and,

(d) other appropriate measures.

413. The range of administrative sanction powers available to competent authorities under Chapter IX of the AML law is narrow. There is no process or practice in Myanmar of the criminal penalties (fines) available for breaches of the AML Law being applied on an administrative basis through 'settling'/deferred prosecutions or other mechanisms. Competent authorities cannot issue administrative monetary penalties for non-compliance with the AML Law. Financial penalties could only be levied following a lengthy criminal proceeding. A much wider range of administrative sanctions are potentially available under the FI Law, however in the absence of AML regulations issued under the law, they are not yet applicable to violations of the AML Law by ROs under CBM supervision.

414. Chapter IX also provides that the Competent Authority may report to the Central Body in order to suspend, restrict or revoke the license or prohibit the continuation of a DNFBP. It is unclear whether these powers can be used in situations where a DNFBP has failed to comply with an obligation in Chapter VIII.

415. *Criterion 35.2* - Sanctions set out in the CFT rules are applicable to both natural and legal persons, although it is unclear whether sanctions could be applied to directors and senior management where the violation was committed by a legal person. Sanctions under the FI Law may be imposed equally on financial institutions, directors, members, executive officers, shareholders, management or staff that violate any provision of the law. Similarly, sanctions found in Chapter VIII of the AML Law are applicable to any responsible person from a reporting organisation, bank or FI.

Weighting and Conclusion

416. There are a number of gaps in the range of sanctions available to deal with persons that fail to comply with the AML/CFT requirements of Recommendations 6, and 8 to 23. Most notable are the absence of administrative monetary penalties for non-compliance with the AML Law, the lack of proportionate and dissuasive sanctions for non-compliance with the CFT Rules (R.6), the absence of any sanctions available for contraventions of AML/CFT measures in the NPO sector (R.8), and the lack of proportionate and dissuasive sanctions available for persons that carry out MVTS without a license or registration (R.9). While there is a range of proportionate and dissuasive sanctions available for non-compliance with Chapter VIII of the AML Law that are applicable to financial institutions and DNFBPs, their directors and senior management, it appears that fines for non-compliance with Chapter VIII may not be dissuasive for larger ROs.

417. **Recommendation 35 is rated partially compliant.**

Recommendation 36 – International instruments

418. In the 2008 MER, Myanmar was rated PC for the old R.35 and NC for SR.I. Provisions of the NDPSL, CMLL and MACM Law were not fully compliant with the Vienna and Palermo Conventions. TF was not comprehensively criminalised.

419. *Criterion 36.1* - Myanmar acceded to the Vienna Convention in 1991, the Palermo Convention in 2004, the Terrorist Financing Convention in 2006, and the UNCAC in 2012.

Myanmar had earlier expressed reservations on Article 6 of the Vienna Convention relating to extradition of its nationals. Reservation was also made relating to Article 16 of the Palermo Convention which relates to extradition, Trafficking in Persons Protocol and Migrants Protocol. Myanmar withdrew its reservations to the extradition provisions in the Vienna and Palermo Conventions in September 2012.

420. *Criterion 36.2* - Myanmar enacted a number of statutes to give effect to the relevant provisions in the conventions: the Narcotic Drugs and Psychotropic Substances Law (1993), Control of Money Laundering Law (2002), MACM Law (2004), Trafficking in Persons Law in (2004), CT Law (2014), AML Law (2014) and CFT Rules (2015), Anti-Corruption Law (2013) and Extradition Law (2017). The Anti-Corruption Law criminalises bribery and embezzlement of property in both public and private sector, bribery of foreign public officials and members of public international organisations. The Extradition Law provides no simplified process for extradition such as the backing of warrants and does not impose an obligation on authorities to urgently prosecute a Myanmar national in lieu of extradition. Further, domestic laws do not enable LEAs to carry out undercover operations, intercepting communications and controlled delivery (special investigative techniques) which are crucial to support larger and complex domestic ML/TF investigations including cases with transnational dimensions.

Weighting and Conclusion

421. Myanmar has acceded to the Vienna Convention, Palermo Convention, UNCAC and Terrorist Financing Convention and has enacted domestic laws to implement most aspects of these Conventions. However, there remain key articles of the conventions that have not been implemented under domestic law. **Recommendation 36 is rated partially compliant**.

Recommendation 37 - Mutual legal assistance

422. In the 2008 MER, Myanmar was rated partially compliant with the former R.36. Myanmar was unable to provide the widest range of assistance and implementation had not commenced.

423. Myanmar has legal basis to provide MLA. The key legislation is the Mutual Assistance in Criminal Matters Law (MACM Law) 2004. A MLA request to Myanmar must relate to investigations, prosecutions and judicial proceedings in criminal matters. Criminal proceeding is not defined, however sections 25 to 27 specifically relate to MLA for search, seizure, control, restraining orders and confiscation of exhibits and property. Upon request by a foreign State, Myanmar can under section 28 allow a person resident, including a person held in custody in Myanmar, to travel to the requesting State to give testimony, statement or expert opinion. This is subject to the person's consent and the person may refuse to give testimony, statement or expert opinion if the person is precluded from doing so under existing Myanmar law.

424. *Criterion 37.1* - The MACM Law (2004) permits provision of assistance in criminal matters with a wide range of state parties, including assistance based on reciprocity. Section 13 allows for requests to be made orally or by electronic means in urgent cases and section 20(b) provides the basis for assistance to be rapidly provided, by requiring the relevant government agency to urgently respond to the request and report to the Central Authority. Section 21(b) requires the Central Authority to transmit the relevant assistance 'within the stipulated time'. The clear intent of the law is that the Central Authority can rapidly transmit the assistance to the foreign requesting country.

425. Myanmar can provide the widest possible range of assistance in relation to any offence attracting an imprisonment term of at least 12 months, provided there is no existing ground for refusal. The grounds for refusal are consistent with international norms.

426. *Criterion 37.2* - Myanmar's Central Authority comprises eleven senior officials, with the Minister of Home Affairs as the Chairman and the Deputy Minister as Vice Chairman. The functions of the Central Authority are prescribed in section 6 of MACM Law and in various other provisions. The MACM Law does not prescribe the timing and actual process and procedures for attending to a request after its receipt nor does it specify a need for a case management system to monitor progress of requests. However, section 13 allows a requesting State to make a request orally by telephone facsimile, electronic mail or other electronic means including computer network in urgent cases. The original letter must be sent to the Central Authority without delay. Section 20(b) requires the relevant government agency for purposes of assisting in the request to urgently submit to the Central Authority the condition of completion or the condition of being unable to perform, giving complete reasons.

427. *Criterion 37.3* - The MACM Law does not have unreasonable or restrictive conditions (see sections 17 and 18). Section 17 states that Myanmar may postpone the request in whole or in part in consultation with the requesting State where the Central Authority is of the opinion that granting the request would interfere with an ongoing investigation or proceeding in Myanmar. Section 18 provides grounds for refusal consistent with international practices.

428. *Criterion 37.4* - Section 18 of MACM Law states that the Central Authority shall not refuse a request on the grounds of bank and financial secrecy. Section 5(e) AML Law makes offences relating to tax evasion and other tax crimes predicate offences for ML and there is no restriction in MACM Law to provide assistance in fiscal matters. Legal professional privilege can be claimed under section 35 of the AML Law to a limited extent (no obligation to report information determining legal position including advice for prosecution or to avoid prosecution) however information arising from general reporting obligation to MFIU can be made available for incoming MLA requests.

429. *Criterion 37.5* - Section 24 of MACM Law requires the Central Authority and relevant government organisations to maintain confidentiality of information, testimony, document, records and supporting evidence provided by a requesting state unless there is an agreement to disseminate. Section 22(a) allows the Myanmar Central Authority to inform a requesting state to maintain confidentiality of MLA information provided by Myanmar.

430. *Criterion 37.6* - Dual criminality is required as per section 3(a). It defines offence as any offence – under Myanmar law and law of requesting country – that is punishable with imprisonment for one year and above. Section 11 of MACM Law is very broad and covers assistance to obtain relevant documents, original and certified copies of documents and records. It does not attach dual criminality as a condition and the term 'offence' is not used, but it uses 'criminal matter' (not defined). Despite this, there is no express provision prohibiting assistance where the exhibit or document sought in the MLA request is available in the public domain.

431. *Criterion 37.7* - Dual criminality is required as defined in section 3(a) MACM Law, and that the offence must be punishable with imprisonment for a term of one year and above under Myanmar law and under the law of the requesting state, regardless of terminology used in the offence.

432. *Criterion 37.8* - Section 42 of MACM Law permits the Central Authority and other government departments and organisations assigned by the Central Authority to use powers under existing Myanmar laws to conduct investigations, prosecutions and judicial proceedings

so as to provide assistance according to the request of a foreign state. It follows that domestic powers to produce, search and seize information, documents or evidence including financial records from FIs, natural or legal persons and taking of witness statements can be used. MACM Law's provisions to search, seize, control, issue restraining order or confiscate refer to 'the exhibit'. A definition of exhibit is not provided. Myanmar advised that 'exhibit' covers all criminal property. Domestic laws, however, do not provide an explicit basis for undercover operations, intercepting communications, accessing computer systems and controlled delivery (special investigative techniques).

Weighting and Conclusion

433. Myanmar does not have an MLA case management system. There is no legislative provision to allow for undercover operations, intercepting communications, accessing computer systems or controlled delivery for domestic LEAs to provide assistance pursuant to incoming MLA. These are moderate shortcomings. **Recommendation 37 is rated partially compliant**.

Recommendation 38 – Mutual legal assistance: freezing and confiscation

434. In the 2008 MER, Myanmar was rated partially compliant with R.38. There were gaps in provisional measures for certain predicate offences, no confiscation for property of corresponding value and no arrangements for coordinating seizure and confiscation.

435. *Criterion 38.1* - Chapter V (sections 25 – 27) of MACM Law (2004) empowers the Central Authority to take action in response to requests by foreign countries to identify, search, freeze, seize, control or confiscate property as exhibits. Section 13 permits a requesting State, in urgent circumstances, to make a request orally by telephone facsimile, electronic mail or other electronic means including computer network.

436. Sections 25 to 27 of MACM Law allow freezing, seizing, control or confiscation of laundered property and proceeds from ML, predicate offences or TF, and instruments used in and instrumentalities intended for use in TF. The term used in MACM Law is 'exhibit' not the specific terms used in the FATF standards, and a definition of exhibit is not provided. Myanmar officials advise that 'exhibit' covers all criminal property. This view seems consistent with the intent of chapter V. Domestic confiscation law does not permit seizure, restraint and confiscation of property of corresponding value.

437. *Criterion 38.2* - Myanmar does not have a non-conviction based confiscation regime in the AML Law and MACM Law makes no reference to non-conviction based confiscation proceedings. There is some ability to provide assistance for breaches under customs and tax legislation. Myanmar law allows for confiscation in cases where a foreign national already facing criminal investigation or trial absconds judgment or dies.

438. *Criterion 38.3* - Section 25 MACM Law empowers the Central Authority to instruct relevant government departments and organisations to search, seize, control, issue restraining orders and confiscate any exhibit if the Central Authority accepts a foreign State's request for MLA. Section 26(a) of MACM Law gives power to the Central Authority to administer property seized as exhibits, property controlled and property confiscated under the request of a foreign State in conformity with the bilateral agreement between Myanmar and the foreign State. Where no bilateral agreement exists, the confiscated property shall vest in the State of Myanmar. This provision does not set out in detail the mechanism for managing, disposing of property frozen, seized or confiscated. Section 517 of the CrPC confers power to the courts to order disposal by destruction, confiscation, or delivery to any person claiming to be entitled to

possession thereof, or otherwise, of any property or document produced before it or in its custody, or regarding which any offence appears to have been committed or which has been used for the commission of any offence. Myanmar does have the necessary legal framework, however, there are no written rules and guidelines to give practical effect to the existing law.

439. *Criterion 38.4* - Section 26 MACM Law is the legal basis for the Central Authority to share confiscated property with other countries. This provision is very general and sharing of confiscated property can only occur if it is included in a bilateral agreement. In the absence of a bilateral agreement the confiscated property will vest in the State, and the ability to share is not clear. The provision does not seem to cover sharing with a country indirectly involved through law enforcement in co-ordinating the confiscation. Myanmar has no legal basis to share confiscated property in the absence of a bilateral agreement.

Weighting and Conclusion

440. The MACM Law (2004) provides a framework for MLA relating to proceeds and instrumentalities of crime, including TF. However, there are shortcomings where the domestic law does not permit confiscation of property without a conviction and confiscation of property of corresponding value, which affects the ability to provide MLA. There are no clear and specific guidelines on managing or disposing of property (different asset types) frozen, seized or confiscated. In addition, without operational guidelines the ability to share confiscated property with foreign countries without a bilateral agreement is not clear. **Recommendation 38 is rated partially compliant**.

Recommendation 39 – Extradition

441. In the 2008 MER, Myanmar was rated non-compliant with R.39. There was no enforceable extradition legislation and Myanmar had made reservations to extradition-related provisions in relevant multilateral conventions.

442. *Criterion 39.1* - ML and TF were first covered as extraditable offences under Section 54 of AML Law and section 59 of the CT Law respectively. Myanmar's stand-alone Extradition Law No.16/2017 defines an extraditable offence at Section 3(d) as an offence under any Myanmar law or any law of the requesting State which attracts an imprisonment term of at least two years. Both ML and TF attract imprisonment terms in excess of two years and qualify as extradition offences. Myanmar does not place unreasonable or unduly restrictive conditions on the execution of requests. Section 41 Extradition Act states that notwithstanding any provisions under any other law, matters relating to extradition shall be executed under the Extradition Act. There is however no case management system in place and no clearly documented process (template/checklist/manual) for timely execution of extradition requests including prioritisation where necessary.

443. The Act provides grounds to refuse an extradition request and comprehensive procedures including time frames for extradition hearing (before an extradition tribunal) and detention of persons sought including the right to legal representation at hearing. There are no unduly restrictive conditions against execution of requests.

444. *Criterion 39.2* - Section 6(a) provides a discretionary ground of refusal where the person sought for extradition is a Myanmar national. Section 22 requires Myanmar authorities to prosecute in lieu where the Central Authority refuses to extradite a national to face criminal proceedings in a requesting State. However, there is no requirement to for the Central Authority to submit the case without undue delay to domestic LEA for investigation and prosecution.

445. *Criterion 39.3* - Section 3 defines extraditable offence as an offence under any existing law of Myanmar or any existing laws of the requesting State which attracts an imprisonment term of at least two years.

446. *Criterion 39.4* - Myanmar authorities have not provided any legally binding document including documented procedures/processes (manual/template) for simplified extradition procedures.

Weighting and Conclusion

447. The offences of ML and TF are extraditable offences under the Extradition Law (2017). There are no unduly restrictive conditions on execution of requests and refusal to extradite nationals is discretionary with the option to prosecute in lieu of extradition. However, there is no legal requirement for the case to be submitted to domestic authorities without undue delay and for the competent authorities to investigate and prosecute without undue delay. There is no case management system in place and no simplified extradition process. This would clearly impact on the overall ability to execute requests without undue delay. **Recommendation 39 is rated partially compliant**.

Recommendation 40 – Other forms of international cooperation

448. In the 2008 MER, Myanmar was rated partially compliant with R.40. There were gaps with an ability to cooperate on CFT and implementation had been very limited.

449. *Criterion 40.1* - Chapter 12 of the AML Law gives the Central Body the power to cooperate with international and regional counterpart organisations for the investigation of ML and TF. Sections 9, 10 and 11 of the AML Law enable MFIU to engage independently with other domestic competent authorities and foreign counterparts on the exchange of information. MFIU can share its analysis results or other relevant information with domestic and international counterparts spontaneously and upon request if it suspects that ML or any predicate offence has been committed and with the approval of the Central Body may exchange information or cooperate with internal or external organisations. Chapter 12 of the AML Law gives the Central Body power to cooperate with international and regional counterpart organisations. The FI Law provides a basis for the CBM to provide the widest range of AML/CFT regulatory and supervisory information both spontaneously and upon request.

450. *Criterion 40.2(a)* the AML Law gives MFIU a legislative basis for the exchange of information (sections 9, 10, 11, 12 and 19 (h) and (i)). MFIU may cooperate with relevant foreign counterparts to share the results of analysis, to request information and make agreements or arrangements with foreign counterparts.

451. *Criterion 40.2(b)* MFIU is able to use efficient means to cooperate as authorised by the AML Law. MFIU's SOP mentioned that information requests and responses with foreign FIUs relying on MOUs (12 countries) could result in limits or delays in the provision of assistance.

452. *Criterion 40.2(c)* MFIU can conduct information requests and respond to foreign FIU requests based on terms of MOUs. MFIU is not yet a member of the Egmont Group and cannot utilise the ESW system for exchange of information with foreign FIUs.

453. The MPF utilises INTERPOL and ASEANAPOL channels for international cooperation. MPF's Anti-Trafficking in Persons Division (ATIPD) has undertaken informal cooperation with both China and Thailand, and indicated that between 2015 and 2018 there have been 30 instances of information exchange by ATIPD with counterparts in those countries.

454. Myanmar Customs has established contact points with Customs authorities in the region, including with members of ASEAN and shares intelligence with WCO members by using the Customs Enforcement Network (CEN).

455. *Criterion 40.2(d)* – According to MFIU's SOP, the analyst responsible for the analytical case should monitor outstanding requests to external partners and conduct a follow-up within a week if a response is not received from the relevant competent authority for requests.

456. *Criterion 40.2(e)* - All authorities including MFIU, supervisory and regulatory authorities rely on secrecy and confidentiality provisions under the official Secrets Act and their respective legislation which imposes penalties on the unlawful disclosure of relevant information.

457. *Criterion 40.3* - Under the AML Law MFIU can negotiate and sign bilateral or multilateral agreements or arrangements to co-operate in a timely way. MFIU is entitled to make agreements or arrangements with external partners. It may engage in mutual cooperation based on the stipulations of the regulation in situations without an agreement.

458. The legal process for signing MOUs or bilateral agreements following negotiation with a foreign counterpart involves a process of over one month. The process is streamlined as the MFIU's MOU template follows the Egmont template for drafting MOUs.

459. *Criterion 40.4* - In keeping with its SOP, MFIU provides feedback in a timely manner to competent authorities from which it has received assistance, on the use and usefulness of the information obtained. However, there is insufficient information to assess performance of MFIU and other authorities. There were indicators that CBM provides some feedback on the usefulness of assistance. Similar information was not available from LEAs or Customs.

460. *Criterion 40.5* - There do not appear to be any unreasonable constraints on competent authorities in Myanmar to refuse a request for information exchange or assistance on the basis that it involves fiscal matters, secrecy provisions or ongoing domestic enquiries.

461. *Criterion 40.6* - Both the AML Law and the FI Law provide for establishing agreements to safeguard and govern the exchange of information, including on the use of information and prior authorisation on secondary disclosure.

462. *Criterion 40.7* - Confidentiality provisions contained in legislation prohibit disclosure of confidential information that a person acquires through the performance of their duty. These provisions can be found at the Official Secret Act and sections 11 and 66 of the AML Law.

463. *Criterion 40.8* - MFIU may receive the information based on a request for assistance received from the external partner and may take other measures to be enabled the request for assistance in accord with the powers conferred to internal affairs. MFIU is under MPF and also have investigative power.

Exchange of Information Between FIUs

464. *Criterion 40.9* - Section 10 (d), (h) and 11 (a) of the AML Law and rule 10(d) of the AML Rules gives MFIU an adequate legal basis for providing co-operation in matters related to ML, associated predicate offences and TF.

465. *Criterion 40.10* - According to MFIU's SOP, Myanmar FIU can provide feedback to their foreign counterparts, upon request and also require feedback from their foreign counterpart.

However, there is insufficient information to assess performance of MFIU in implementing its SOP.

466. *Criterion 40.11* - MFIU has the legal basis to exchange information obtainable directly or indirectly by the FIU. This satisfies both sub Criterion: (a) and (b).

Exchange of Information Between Financial Supervisors

467. *Criterion 40.12* - Under Section 7(a) and (c), 83 (b) of the FI Law and section 36 (f) of the AML law, CBM has powers to exchange information with counterparts. As the FIU is not designated as a competent authority for supervision, AML law information sharing provisions do not apply to purely regulatory or supervisory cooperation in the absence of a suspicion of ML or TF. The AML Law lacks enabling provisions for AML/CFT supervisors of DNFBP to provide cooperation with their foreign counterparts.

468. *Criterion 40.13* - The FI Law allows the CBM to exchange of information with foreign counterparts. The AML Law lacks enabling provisions for AML/CFT supervisors of DNFBP to provide cooperation with their foreign counterparts.

469. *Criterion 40.14* - the FI Law allows the CBM to exchange regulatory information, prudential information and AML/CFT information regarding entities under CBM's. There is no enabling legislation to allow other AML/CFT regulators and supervisors to share such information with their foreign counterparts.

470. *Criterion 40.15* - section 7 of the FI Law would allow CBM, on the basis of reciprocity or an MOU, to conduct inquiries on behalf of foreign supervisors and allow foreign supervisors to act in the country to ensure effective group supervision. There are no equivalent provisions covering other supervisors and sectors.

471. *Criterion 40.16* - section 7 of the FI Law governs CBM providing for the confidentiality of information received from foreign supervisors subject to MOUs and other arrangements. Other supervisors are not similarly governed.

Exchange of Information Between Law Enforcement Authorities

Criterion 40.17 - MPF can exchange available information with foreign counterparts for intelligence or investigative purposes via INTERPOL channels and the Police to Police network. In addition, the AML law provides a very wide basis for the AFCD (MPF) to share information with foreign counterparts. The Anti-Corruption Rules provide that the ACC may pursue international cooperation with foreign anti-corruption agencies. Rule 60(d) indicates that the ACC may to cooperate '…in disseminating knowledge relating to the anti-corruption'. It is not clear if this extends to exchanging information for intelligence or investigative purposes outside of MLA requests.

472. *Criterion 40.18* – MPF operates through INTERPOL and ASEANAPOL arrangements. MPF is able to exercise its domestic powers to obtain information which is then shared through INTERPOL and ASEANAPOL channels. Customs is able to use OCO and RILO channels for customs information.

473. *Criterion 40.19* - Section 23 and 20(a) of the MACM Law and rule 10(f) of AML Rules, LEAs are able to conduct cooperative investigation with foreign agencies. The AML Law, CT Law and Anti-Corruption Law provide support for such cooperation.

Exchange of Information Between Non-Counterparts

474. *Criterion 40.20* - Section 7(f) and (h) of AML Law, AMLCB and FIU can exchange information with non-counterparts. Section 7(f) allows the AMLCB to co-operate with State Parties of the United Nations conventions, international and regional organisations and neighbouring States in respect of exchange of information, investigation and taking legal action relating to ML. Myanmar officials say section 10(h) permits FIU to cooperate with the relevant internal and external organisations in relation to AML/CFT. The cited provision however seems to relate to direct sharing between the AMLCB and parties outlined above but not indirectly with other counterparts. Section 10 (h) does not even permit the FIU to share intelligence with a foreign FIU. Myanmar officials have not stated if MFIU has entered into MOU with a foreign counterpart or even the Central Bank with foreign counterparts to exchange information.

Weighting and Conclusion

475. Myanmar has deficiencies in international cooperation including that MFIU is currently not yet a member of Egmont Group so cannot cooperate through ESW channel. MFIU and MPF cooperate with their foreign counterparts through INTERPOL and informal channels. Other LEAs rely on MPF for international cooperation and sharing information with counterpart and non-counterpart foreign agencies. CBM has a clear legal framework for cooperation with foreign supervisors but there are no provisions to support international cooperation relating to the supervision of FIs not regulated by CBM, and no enabling provisions for DNFBP supervisors.

476. **Recommendation 40 is rated largely compliant.**

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Summary of Technical Compliance – Key Deficiencies

Compliance with FATF Recommendations		
Recommendation	**Rating**	**Factor(s) underlying the rating**
1. Assessing risks & applying a risk-based approach	PC	§ Myanmar has not completed assessments to identify and assess ML risks. § Myanmar has not yet applied a risk-based approach to allocating resources in keeping with identified risks. § AML/CFT measures and controls over high and low risks scenarios are not adequately guided by the findings of risk assessments. § Only banks have begun to implement enterprise risk assessments.
2. National cooperation and coordination	LC	§ Myanmar does not yet have national AML/CFT policies informed by the risks identified.
3. Money laundering offence	C	§ This recommendation is fully met
4. Confiscation and provisional measures	LC	§ Confiscation of property of corresponding value is limited to tax offences.
5. Terrorist financing offence	LC	§ There is some ambiguity as to whether the TF offence is available where there is no link to a specific terrorist act. § Unclear whether the offence extends to participation as an accomplice or organising or directing others to commit an attempted TF offence. § There are no provisions in the CT Law that explicitly allow for the intent and knowledge required to prove the TF offences to be inferred from objective factual circumstances.
6. Targeted financial sanctions related to terrorism & TF	LC	§ The CFT Rules do not provide any procedures to submit de-listing requests to the relevant UN sanctions Committee. § No procedures to facilitate the review of designations by the Sanctions Committee pursuant to UNSCR 1988. § No procedures for de-listing requests for freeze orders pursuant to a UNSCR designation. § Absence of guidance to assist ROs to meet their obligations.
7. Targeted financial sanctions related to proliferation	NC	§ No clear legal basis to regulate for TFS against WMD proliferation § Freeze order 1/2007 only applies in respect to UNSCR 2270 and successor Resolutions and not 2231 and the obligation to freeze does not extend to all natural and legal persons in the country. § There are a number of gaps in the scope of funds and other assets ordered frozen and the freezing obligation does not extend to financial and other related services. § There are no mechanisms to communicate designations to ROs or any clearly applicable provisions for sanctioning non-compliance with the obligations. § Provisions related to unfreezing, access to funds, and delisting requests are absent.
8. Non-profit organisations	PC	§ No evidence of promotion of accountability in NPO management and administration. § No risk assessment or risk based approach to supervision or

Compliance with FATF Recommendations		
Recommendation	**Rating**	**Factor(s) underlying the rating**
		monitoring, and limited sanctions. § Registration of smaller NPOs is not mandatory.
9. Financial institution secrecy laws	C	§ The recommendation is fully met.
10. Customer due diligence	PC	§ No clear prohibitions on anonymous accounts for securities, microfinance and insurance businesses. § Threshold amount for CDD on occasional customers is above the standard. § CDD requiring identification of customer and verification of identity does not explicitly cover customers who are legal arrangements. § AML Law does not require identification of natural persons who own or control a customer. § AML law does not explicitly require ROs to understand the nature of the customer's business. § No provision to permit CDD to cease in cases where an STR is filed (i.e. to avoid tipping off).
11. Record keeping	C	§ The recommendation is fully met.
12. Politically exposed persons	PC	§ Enhanced measures for PEPs are only required on a risk-sensitive basis. § No requirement to take reasonable measures to determine whether the beneficiary or BO of the beneficiary are PEPs. § Timing on identification of beneficiary is not specified. § Consideration for STR reporting confined to when there is the drawing of money.
13. Correspondent banking	PC	§ No specific controls on payable through accounts. § No express requirement for FIs to satisfy themselves that their respondents have performed CDD obligations on customers with direct access to the accounts, nor to provide relevant CDD information upon request.
14. Money or value transfer services	NC	§ No action taken to identify persons that carry out MVTS without permission. § No information about scope and scale of hundi, so unable to determine whether proportionate and dissuasive sanctions have been applied. § Not mandated that CBM undertake supervision of MVTS. § No requirement for international MVTS providers partnering with banks in Myanmar, or for those banks, to provide information on its agents to CBM.
15. New technologies	LC	§ No provision relating to competent authorities assessment of AML/CFT risks that may arise in relation to new products, services, business, or technology. § Provisions do not specify that risk assessments should be undertaken before the launch or use of new products, practices and technologies.
16. Wire transfers	LC	§ No obligation to verify beneficiary information for received wires if such information has not previously been verified. § No requirement that LEAs should be able to compel immediate production of information on wire transfers.

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Compliance with FATF Recommendations		
Recommendation	**Rating**	**Factor(s) underlying the rating**
17. Reliance on third parties	C	§ The recommendation is fully met.
18. Internal controls and foreign branches and subsidiaries	C	§ The recommendation is fully met.
19. Higher-risk countries	NC	§ No obligation on FIs to apply enhanced due diligence proportionate to the risk in relation to countries for which this is specifically called for by the FATF. § No provisions for Myanmar to apply countermeasures proportionate to the risks when specifically called upon to do so by the FATF. § No specific list of available countermeasures set out in statute or in guidance.
20. Reporting of suspicious transaction	C	§ This recommendation is fully met.
21. Tipping-off and confidentiality	LC	§ It is not clear that the obligation on confidentiality extends beyond the termination of employment with an RO.
22. DNFBPs: Customer due diligence	PC	§ No clear prohibitions in the AML Law or AML Rules on DNFBP maintaining business relationships of unknown identities or in fictitious names. § Technical gaps on preventive measures in the AML Law affect the compliance to this Recommendation.
23. DNFBPs: Other measures	PC	§ The technical gaps on relevant measures in the AML Law affect the compliance to this Recommendation.
24. Transparency and beneficial ownership of legal persons	NC	§ The Myanmar authorities have not identified a provision of law or regulation requiring a resident authorised person to be accountable to competent authorities for providing all basic information and available beneficial ownership information, and giving further assistance to the authorities. § Bearer shares are currently permitted, and there are currently no legal obligations to mitigate this vulnerability. § There are no legal obligations that mitigate risks of nominee shareholders or directors. § Myanmar has not identified other means of providing rapid international cooperation in relation to basic and beneficial ownership information. § There is no authority responsible for monitoring the quality of assistance received from other countries in response to requests for basic and beneficial ownership information or requests for assistance in locating beneficial owners residing abroad.
25. Transparency and beneficial ownership of legal arrangements	NC	§ There is no requirement for trustees of domestic or foreign trusts to disclose their status to FIs and DNFBPs when forming a business relationship or carrying out the occasional transaction above the threshold. § There is a gap with sanctions to ensure compliance with obligations on trustees
26. Regulation and supervision of financial institutions	PC	§ Consolidated group supervision on AML/CFT does not occur. § Supervision of core principles institutions is not yet conducted in line with core principles. § CBM supervision of non-bank money changers, NBFIs and mobile financial services is limited to compliance with

Compliance with FATF Recommendations		
Recommendation	**Rating**	**Factor(s) underlying the rating**
		prudential regulations. § A lack of measures to apply risk-based supervisory and monitoring measures in ensuring institutions' compliance to AML/CFT requirements.
27. Powers of supervisors	C	§ The recommendation is fully met.
28. Regulation and supervision of DNFBPs	NC	§ There is no designated competent authority to license or supervise the casinos operating in Myanmar. § There are no measures imposed to prevent criminals and their associates from controlling casino operations. § Amongst DNFBPs, only lawyers and accountants have any elements of fit and proper, however the extent of those controls are not in keeping with the standards and do not appear to apply at the point of entry to the profession. § Supervision of DNFBPs is not being conducted.
29. Financial intelligence units	PC	§ MFIU lacks systems for operational analysis and relies on overly manual systems. § Strategic analysis is not undertaken. § MFIU and domestic LEAs cooperate through informal channels at times, which raises information security concerns. § AFCD's dual role as FIU and financial investigation team leaves doubt about the FIU's capacity to carry out its functions freely. § Section 11 of the AML Law appears to require AMLCB approval before the FIU can exchange information with domestic or foreign authorities. This brings into question the scope of its independence.
30. Responsibilities of law enforcement and investigative authorities	LC	§ Only the BSI and the Investigation Bodies formed by the FIU and the CFT Working Committee are able to undertake investigations into ML/TF offences. § Agencies such as Customs and the ACC are only able to investigate relevant predicate offences and must refer any suspicions of ML/TF offences to the MFIU for further investigation.
31. Powers of law enforcement and investigative authorities	LC	§ The interception of communications is only available to urgent terrorism investigations. § The absence of a centralised register of bank accounts in Myanmar, or other mechanism, makes it difficult for authorities to identify assets in a timely manner.
32. Cash couriers	PC	§ Controls on cash and BNIs are not in place at various border crossing controlled by so-called ceasefire groups § No indication that records of suspicion of ML/TF associated with cross border cash movements is recorded or retained.
33. Statistics	PC	§ There are some weaknesses with collecting and maintaining data and statistics on provisional measures and confiscation, prosecution of predicates, and agency to agency cooperation with foreign counterparts.
34. Guidance and feedback	PC	§ The key areas of risk mitigation, TFS, PEPs, STRs and NPO regulation lack detailed guidance and feedback.
35. Sanctions	PC	§ Absence of administrative monetary penalties for non-compliance with the AML Law. § No civil and administrative sanctions for non-compliance with

Compliance with FATF Recommendations		
Recommendation	**Rating**	**Factor(s) underlying the rating**
		the CFT Rules or the CT Law. § Very weak sanctions for contraventions of AML/CFT measures in the NPO sector. § Lack of proportionate and dissuasive sanctions for persons that carry out MVTS without a license or registration. § Fines for non-compliance with Chapter VIII of AML Law applicable to FIs, DNFBPs, their directors and senior management may not be dissuasive for larger ROs.
36. International instruments	PC	§ Domestic laws have shortcomings and do not fully implement key articles in respective conventions. § There is no simplified process such as the backing of warrants and there is no legal obligation to prosecute without delay in lieu of extradition. § Domestic laws do not enable LEAs to carry out undercover operations, intercepting communications and controlled delivery.
37. Mutual legal assistance	PC	§ Legislation does not specify a need for a case management system to monitor progress of requests. § Dual criminality is a requirement in all MLA matters. § Domestic laws do not provide a basis for undercover operations, intercepting communications, accessing computer systems and controlled delivery.
38. Mutual legal assistance: freezing and confiscation	PC	§ Confiscation of property of corresponding value is only available for tax offences. § Very limited basis to provide cooperation in relation to non-conviction based confiscation. § There are no clear guidelines on managing, disposing of property (different asset types) frozen, seized or confiscated. § Myanmar has no clear legal basis to share confiscated property.
39. Extradition	PC	§ There is no case management system in place and no clearly documented process for timely execution of extradition requests including prioritisation where necessary. § No requirement to for the Central Authority to submit the case without undue delay to domestic LEA for investigation and prosecution. § No legally binding document including documented procedures/processes for simplified extradition procedures.
40. Other forms of international cooperation	LC	§ No legal basis for LEAs (other than MFIU) to cooperate and share information with counterpart and non-counterpart foreign agencies.

Glossary

ACC	Anti-Corruption Commission
AFCD	Myanmar Police Anti-Financial Crime Division (includes MFIU)
AGO	Union Attorney General's Office
AMLCB	Anti-Money Laundering Central Body
AML Law	Anti-Money Laundering Law
ARSA	Arakan Rohingya Salvation Army
ATS	Amphetamine-Type Stimulants
BSI	Bureau of Special Investigation
CBM	Central Bank of Myanmar
CCCT	Central Committee for Counter Terrorism
CCDAC	Central Committee of Drug Abuse Control
CID	Criminal Investigation Department
CrPC	Criminal Procedure Code
DED	Drug Enforcement Division
DICA	Directorate of Investment and Company Administration
DTC	Department against Transnational Crime
FI Law	Financial Institutions Law
FIRD	Financial Institutions Regulation Department
FISD	Financial Institutions Supervision Department
FEMD	Foreign Exchange Management Department
FERA	Foreign Exchange Regulation Act
GAD	General Administration Department
ICRG	FATF's International Co-operation Review Group
IRD	Internal Revenue Department
MAC	Myanmar Accountancy Council
MACML	Mutual Assistance in Criminal Matters Law
MBA	Myanmar Bankers Association
MCA I	Myanmar Companies Act 1914
MCA II	Myanmar Companies Act 2017
MFIU	Myanmar Financial Intelligence Unit
MFS	Mobile Financial Services
MHA	Ministry of Home Affairs
MICPA	Myanmar Institute of Certified Public Accountants
MMK	Myanmar Kyat
MOPF	Ministry of Planning and Finance
MPF	Myanmar Police Force
MRESA	Myanmar Real Estate Service Association
MSEC	Myanmar Securities Exchange Centre
NCA	Nationwide Ceasefire Agreement
NDPS	Narcotic Drugs and Psychotropic Substances Law 1993
NRC	National Registration Card
PSB	Preliminary Scrutiny Board
RO	Reporting Organisation
SB	Special Branch
SEC	Securities Exchange Commission of Myanmar
SLRD	Settlements and Land Records Department
SOP	Standard Operating Procedures
UAGO	Union Attorney-General's Office
YSX	Yangon Stock Exchange

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Anti-money laundering and counter-terrorist financing measures – Myanmar

3rd Round APG Mutual Evaluation Report

In this report: a summary of the anti-money laundering (AML)/counter-terrorist financing (CTF) measures in place in Myanmar as at December 2017. The report analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of Myanmar's AML/CFT system, and provides recommendations on how the system could be strengthened.