



Anti-money laundering and counter-terrorist financing measures

Bhutan

Mutual Evaluation Report

October 2016





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EXECUTIVE SUMMARY

BHUTAN

3RD ROUND APG MUTUAL EVALUATION REPORT 2016

1. This report provides a summary of the AML/CFT measures in place in Bhutan as at the date of the onsite visit 16 to 27 November 2015. It analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of Bhutan's AML/CFT system, and provides recommendations on how the system could be strengthened.

Key Findings

- Bhutan's top proceeds generating crimes are corruption and bribery; illicit trafficking of stolen artefacts and other stolen goods; fraud; smuggling, and illicit trafficking in narcotics and pharmaceutical substances.
- Bhutan's TF risk is self-financing in its porous border areas arising from external threats: Indian Insurgent Groups located in the North Eastern Region of India and Radical Groups, which are the remnants of anti-national groups formed in Bhutan in the 1990s and are now located outside of Bhutan. Radical Groups are suspected of conducting sporadic, small scale terrorism activities, including the use of small improvised explosive devices in the past with the last reported incident in 2012. There are no reported or identified instances of Al Qaeda, Taliban or Islamic State in Iraq and the Levant (ISIL) related activities in Bhutan.
- Bhutan has achieved a low level of effectiveness for Immediate Outcomes, 1, 3, 4, 5, 6, 7, 8, 10 and 11. For Immediate Outcomes 2 and 9 Bhutan has achieved a moderate level of effectiveness.
- For technical compliance, Bhutan is rated compliant or largely compliant with total of 14 Recommendations, mostly preventive measures.
- Bhutan's understanding of its ML/TF risks is incomplete and not broad-based, although developing as part of its first NRA which is due to be finalised by late 2016. Key authorities have a reasonable understanding of Bhutan's ML risks but this is not evident elsewhere, including reporting entities. For TF, key authorities demonstrated a sound understanding of Bhutan's terrorist threats and an understanding of the TF risks. However, this is not the case among all competent authorities and reporting entities.
- In the absence of a comprehensive assessment of risks, there is no comprehensive, national strategy, informed by risks, to combat ML/TF in Bhutan. While Bhutan does not have a documented TF strategy, authorities appear to be implementing a sound strategy to mitigate

terrorist threats and TF.

- Use of financial intelligence by law enforcement is at a developmental stage and financial intelligence has not been used to initiate ML or TF investigations. There is a lack of expertise and resources for financial intelligence analysis, financial crime investigation and prosecution.
- Bhutan has only conducted two ML investigations to date, both were corruption related and undertaken by the Anti-Corruption Commission. One ML investigation led to two ML convictions in 2008. The second investigation, in the period under review, did not lead to a ML prosecution because section 76 of the Anti-corruption Act precludes the prosecution of both the predicate offence and associated ML offence.
- The proceeds of crime are not effectively confiscated. Confiscation is essentially limited to direct proceeds of corruption, instrumentalities and contraband, and proceeds are only confiscated upon conviction via restitution orders. In addition, it is unclear if the funds from all restitution orders are being realised.
- While authorities have focused their actions more at stopping these Radical Groups and Indian Insurgent Groups from entering Bhutan through cross-border international cooperation with India, Bhutan has conducted investigations into the self-financing and material support aspects of the last Radical Groups related incidents in 2012. Bhutan has investigative deficiencies and deficiencies in its TF offence; however, in the team's view, these deficiencies do not fundamentally impact on Bhutan's effectiveness for IO.9 because of the risk and context of Bhutan's TF risk/threat. In the early 2000s Bhutan did prosecute/convict individual of terrorism under section 329 of Penal Code, which includes a limited provision relating to the financing and planning of terrorist acts.
- The legal and institutional framework for targeted financial sanctions for TF is not developed. The revised AML/CFT Regulations introduced in November 2015 only cover, to a very limited degree, UNSCR 1267 freezing of funds for reporting entities. Banks are the only reporting entities conducting any form of implementation, which is limited to non-systematic manual checking of the Consolidated List for Bhutanese names.
- There has been very limited implementation of targeted financial sanctions related to proliferation financing. The AML/CFT Regulations only include a freezing of funds obligation for the purpose of UNSCR 1737 on reporting entities, and even then, the latter have not implemented those obligations.
- Bhutan has established a sound basis for implementing preventive measures with the promulgation of the revised AML/CFT Regulations in November 2015. However, implementation by supervisors and reporting entities is at a rudimentary level. There has been no supervision of AML/CFT requirements and implementation is essentially limited to the banking sector; there is very limited implementation in non-bank financial institutions and no implementation in the DNFBP sector.
- Bhutan has executed one outgoing MLA corruption with Thailand. Bhutan has a law enforcement and intelligence cooperation mechanism with India which is actively used to provide and seek constructive and timely information and assistance on security and border management related issues. This mechanism has been used for mutual legal assistance involving the use of coercive police powers in order to disrupt/prevent: (i) the movement of Indian Insurgent Groups and Radical Groups into Bhutan's porous areas, and (ii) the illicit trafficking of pharmaceutical substances and other border related predicate crimes.

- There are only 368 companies registered in Bhutan. Access to basic information on legal persons is available on a timely basis; however, access to beneficial ownership information on companies is constrained by a lack of collection of such information. The Registrar of Companies has undertaken measures to reduce the risk of potential abuse by subjecting all changes in share ownership and directorship to a vetting and approval process, and preventing bearer shares as required under the Companies Act. There is no legislative or regulatory framework for the creation and establishment of legal arrangements in Bhutan.

Risks and General Situation

2. The following summary of the assessments team's understanding of Bhutan's ML/TF risks is based on working documents of Bhutan's first, although incomplete, national risk assessment (NRA), open source material and information gathered from discussions with competent authorities and the private sector.

ML

3. The assessment team considers the following five categories of predicate offences are Bhutan's top domestic proceeds generating crimes: corruption and bribery; illicit trafficking of stolen artefacts and other stolen goods; fraud; smuggling, and illicit trafficking in narcotics and pharmaceutical substances. Except for corruption and bribery, these predicate crimes are associated with Bhutan's border vulnerabilities with India.

4. Bhutan and the assessment team consider corruption and bribery as Bhutan's primary ML risk. While global and regional indices on corruption and bribery do not rank Bhutan as a high risk jurisdiction, corruption affords the greatest potential for generating proceeds and has the most adverse societal impact. Bhutanese authorities have implemented numerous measures to combat corruption. However, there have only ever been two corruption related ML prosecutions outside the period under review. And, since the enactment of the Anti-Corruption Act (ACA) in 2011, section 76 precludes the prosecution of an offender for both corruption and associated ML.

5. While the number of prosecutions for the predicate crimes has increased over the past five years, these predicate crimes do not seem to be engineered by organised crime groups and the proceeds generated are generally laundered in Bhutan, and used to purchase consumer items or assets such as immovable property using both cash and the banking system.

6. Due to Bhutan's small economy and isolated financial sector, it is not an end destination or transit point for foreign proceeds. Bhutan has significant controls on foreign investment in Bhutan and cross-border capital movements. Beyond a very small real estate market, it does not offer "products" that would be attractive for laundering foreign proceeds.

7. Bhutan's ML vulnerabilities include gaps in legal frameworks, lack of resources and capability, particularly financial investigation and supervision of FIs and DNFBPs.

TF

8. Bhutan's TF risk is self-financing in its porous border areas arising from external threats:

- Indian Insurgent Groups (IIGs), such as the National Democratic Front of Bodoland, that operate in the North Eastern Region of India and move into Bhutan's porous border areas to evade Indian authorities.

- Radical Groups (RGs), now located s located outside of Bhutan, are the remnants of anti-national groups formed in Bhutan in the 1990s. They are suspected of conducting sporadic, small scale terrorism activities, including the use of small improvised explosive devices with the last reported incident in 2012.

9. There is no evidence or intelligence that these two groups are receiving support from within Bhutan or using Bhutan's banking system.

10. There are no reported or identified instances of Al Qaeda, Taliban or Islamic State in Iraq and the Levant (ISIL) related activities in Bhutan.

Overall Level of Effectiveness and Technical Compliance

Assessment of Risks, coordination and policy setting (Chapter 2 - IO.1; R.1, R.2, R.33)

11. Bhutan is conducting its first NRA using the methodology developed by the IMF. The process is expected to be completed by late 2016.

12. On ML, the NRA process has thus far focused on ML threats, as listed above, identifying corruption and bribery as the top proceeds generating crime. Overall Bhutan's understanding of its ML risks is incomplete although the Anti-corruption Commission (ACC) and the FIU exhibit relatively more satisfactory levels of understanding. Bhutan has only started analysing its vulnerabilities and consequences, and these factors have not been integrated with ML threats in order to form a comprehensive and reasonable assessment of Bhutan's ML risk. Nevertheless, the assessment team considers, as reasonable, Bhutan's preliminary identification of the above threats as Bhutan's major ML threats.

13. For TF, although the NRA remains incomplete and TF threats, vulnerabilities and consequences are yet to be integrated into a single document, key authorities demonstrated a sound understanding of the terrorist threats and an understanding of the TF risks posed by IIGs and RGs. However, not all competent authorities or reporting entities exhibited such understanding and awareness. The assessment team considers as reasonable Bhutan's identification that its TF risk is self-financing in its porous border areas associated with IIGs and RGs.

14. There is no comprehensive national strategy informed by risks to address ML/TF in Bhutan. Bhutan has a draft National Strategy and Action Plan – Combating Money Laundering and Terrorist Financing that will come into effect and be updated and informed by the NRA once completed. In addition, Bhutan does have a corruption strategy which examines threats, vulnerabilities and to a limited extent corruption related ML risks. While Bhutan does not have a documented TF strategy, authorities appear to be implementing a sound strategy to mitigate terrorist threats and TF.

15. Coordination on PF is absent.

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

16. Financial intelligence is not being used to initiate ML/TF or predicate crime investigations. The FIU conducts limited operational analysis and no strategic analysis. The FIU

has only spontaneously disseminated five STRs to the ACC, which did not lead to any investigations. However, the ACC has requested information and received a response from the FIU on 40 occasions between December 2014 and February 2015. Generally, the lack of skilled resources and capacity in the FIU, poor STR reporting, limited systematic use of LEA information and non-targeted FIU analysis products all contribute to the very limited supply and demand of the FIU's intelligence products.

17. While the National Coordination Committee (NCC) provides for good policy cooperation, operational cooperation and exchange of financial intelligence is limited, namely between the FIU and ACC. There has been no financial intelligence information exchange between the FIU and other LEAs or foreign counterparts, notably the police, customs, supervisors and India.

18. Bhutan has only conducted two ML investigations to date, both were corruption related and undertaken by the ACC. One ML investigation led to two ML convictions in 2008. The second investigation in 2014 led to a predicate conviction but no ML prosecution. While the ACC lacks skilled resources and capacity, the assessment team considers section 76 of the ACA, which precludes the prosecution of both the predicate offence and associated ML offence, as the primary reason for the absence of corruption related ML prosecutions in the period under review. The police have not conducted any ML investigations because of a lack of policy directive and skilled resources, although enabling legislation permits the police to investigate any criminal act including ML.

19. Sanctions applied in the two ML convictions in 2008 cast doubt on the dissuasiveness of ML sanctions in Bhutan.

20. The police and customs do not have a policy directive to pursue proceeds of crime. Consequently, the ACC is the only LEA pursuing confiscations. However, ACC confiscations are essentially limited to direct proceeds of corruption, instrumentalities and contraband. Proceeds are only pursued upon conviction via restitution orders. Furthermore, due to the absence of an authority responsible for the administration of restitution orders, it is unclear if restitution orders are being realised.

21. There have been some confiscations of non-declared cash at Bhutan's single international airport and border-crossings with India.

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

22. Bhutan's TF risk is self-financing in its porous border areas associated with IIGs and RGs. While authorities have focused their actions more at stopping these groups from entering Bhutan through cross-border international cooperation with India, police with support from the BLO, conducted investigations into the self-financing and material support aspects of the last RG related incidents in 2012. Bhutan has investigative deficiencies and deficiencies in its TF offence. However, in the team's view, these deficiencies do not fundamentally impact on Bhutan's effectiveness for IO.9 because RGs are not complex or highly organised groups, there is no evidence to suggest these groups use Bhutan's banking system, authorities believe there is no support for RGs or IIGs from within Bhutan, and in the 2012 cases no individual were identified for prosecution because investigations concluded materials were brought into Bhutan. Bhutan has however prosecuted/convicted cases of terrorism under section 329 of Penal Code in the early 2000s, which includes a limited provision relating to the financing and planning of terrorist acts.

23. The Ministry of Foreign Affairs (MOFA) is Bhutan's primary interface in dealing with the international community including the United Nations and its various organs. Its role is to disseminate United Nations Security Council Resolutions (UNSCRs) to competent authorities and report back to the UN.

24. There are gaps in Bhutan's UNSCR 1267 freezing obligations and implementation is very limited. Banks are the only financial institutions (FIs) implementing the obligations by checking manually for any Bhutanese names on the UN lists. There is no systematic screening against customers or transactions. At the time of the onsite, no accounts or transactions had been frozen. There is no framework for implementation of UNSCR 1373.

25. While Bhutan has not conducted a formal risk assessment, the NPO sector is small, and the assessment team considers the TF risks to be low. Bhutan's 47 domestic Civil Society Organisations (CSOs) and 97 Religious Organisations (ROs) undergo a mixed financial, compliance and performance audit by the Royal Audit Authority. All foreign CSOs must have a memorandum of understanding with a Government agency that acts as its technical collaborator and monitors its activities.

26. There are significant gaps in Bhutan's legal framework relating to PF: obligations only cover the freezing of funds by reporting entities (REs) for purposes of UNSCR 1737. Furthermore, implementation of this obligation has not commenced.

Preventive Measures (Chapter 5 - IO4; R.9-23)

27. FIs possess limited awareness of the ML/TF risks, and designated non-financial businesses and professions (DNFBPs) even less. FIs and DNFBPs do not apply mitigating measures commensurate with the ML/TF risks due to a lack of understanding. A risk-based approach is yet to be implemented by FIs and DNFBPs, although some banks have commenced planning for a risk-based approach.

28. FIs' understanding and implementation of preventative measures is rudimentary. There is little implementation of beneficial ownership, enhanced CDD, targeted financial sanctions and STR reporting. The exceptions are record keeping and the appointment of an AML/CFT compliance officer by the five banks and two insurance companies. Overall, implementation of basic preventive measures has been limited to the banking sector. DNFBPs do not understand and have not implemented preventive requirements.

29. The national biometric citizen ID card is a key strength. It provides a solid foundation for undertaking CDD, as detailed in the AML/CFT Regulations, and is a key element of Bhutan's on-going actions on financial inclusion.

Supervision (Chapter 6 - IO3; R.26-28, R. 34-35)

30. There are licensing regimes for FIs including banks, insurance companies, securities brokerage firms and money changers. However, the licensing process for money changers is insufficient and there is an absence of licensing, registration or other controls for DNFBPs except for external auditors. For the four non-bank money or value transfer service (MVTs) providers, the licensing/registration regime only applies to their local agents (two banks and Bhutan Post).

31. The Financial Regulations and Supervision Department (FRSD) and Foreign Exchange Department (FED) are the designated AML/CFT compliance supervisors of the financial sector. It has not undertaken onsite or off-site AML/CFT supervision and its understanding of AML/CFT risks are in the developmental stage.

32. There is no designated AML/CFT supervisor for DNFBPs and no supervision has been conducted.

Transparency of Legal Persons and Arrangements (Chapter 7 - IO5; R. 24-25)

33. Bhutan has not assessed its ML/TF risks associated with legal persons and arrangements. Nevertheless Bhutan does have an understanding of the vulnerabilities as shown by measures implemented to date.

34. Basic information is available on a timely basis. The public is able inspect records held by the Companies Registrar and the various registers maintained by companies, as provided in The Companies Act of the Kingdom of Bhutan 2000 (Companies Act). The public can also access information on CSOs and ROs on the respective websites of the two supervisory authorities, namely the CSO Authority and Commission for Religious Organisations. Basic information on legal persons is updated on a regular basis by all three regulatory authorities.

35. The measures under the Companies Act do not allow for bearer shares or bearer shares warrants to be issued in Bhutan.

36. There is neither explicit provision nor prohibition for nominee shareholders or directors in the Companies Act.

37. Timely access by competent authorities to beneficial information on legal persons is constrained by lack of requirements and implementation for collecting such information.

38. There is no legislative or regulatory framework for the creation and establishment of legal arrangements in Bhutan. There is a requirement in the AML/CFT Regulations for reporting entities to identify whether a customer is a trustee; however, reporting entities account opening procedures are not sufficiently comprehensive to identify foreign trustees operating in Bhutan, and reporting entities met during the onsite were not aware of foreign trustees operating in Bhutan.

39. The sanctions available for breaches of administration of legal persons are not effective, proportionate and dissuasive.

International Cooperation (Chapter 8 - IO2; R. 36-40)

40. Bhutan's mutual legal assistance (MLA) framework relies on the use of Letter Rogatory. Bhutan has never received a request for MLA, but has executed one outgoing MLA with Thailand. Bhutan's ML/TF risks are predominately associated with India. Bhutan has a unique relationship with India which has led to the development and use of a more efficient and effective bilateral law enforcement and intelligence cooperation mechanism. This mechanism is actively used to provide and seek constructive and timely information and assistance, including mutual legal assistance involving the use of coercive police powers to prevent/disrupt IIGs/RGs from entering Bhutan, illicit trafficking of pharmaceutical substances and other border related predicate crimes. This mechanism has not been used to pursue ML.

Priority Actions

41. The following are priority actions for Bhutan:

- Complete the NRA and adopt a risk-based AML/CFT strategy including on those risk areas identified in this report. These documents should be disseminated, where appropriate, and used to develop sector specific policies, which cascade into operational priorities and internal policies and procedures for relevant agencies and REs.
- Bring into force and effect as soon as practicable, the proposed AML/CFT Act to address a range of gaps/vulnerabilities in Bhutan's legal framework. The Act should contain a comprehensive framework to respond to TF, including full implementation of R.5 and R.6.
- Implement comprehensive institutional frameworks, procedures and measures to give effect to targeted financial sanctions obligations, once the AML/CFT Act has been enacted.
- Update FIU policies and procedures in order to enhance FIU operational and strategic analysis products and their dissemination to all law enforcement authorities in Bhutan, and where appropriate international counterparts, particularly the FIU India.
- Designate and provide a clear mandate for police to investigate non-corruption based ML and TF, including following the money to deprive criminals of their proceeds of crime.
- Undertake risk-based supervision of FIs to ensure they implement the requirements of the AML/CFT Regulations, including where necessary introducing amended regulations and providing further guidance on more complex and new requirements such as risk-based approach and targeted financial sanctions.
- Continue to establish and strengthen cooperation mechanisms in order to exchange financial intelligence, supervisory and law enforcement information domestically and with foreign counterparts, especially Indian counterparts.
- Allocate additional resources to provide for more effective implementation of existing and proposed AML/CFT measures.
 - The RMA should allocate additional staffing resources to its two supervisory departments and the FIU, and to provide relevant training.
 - LEAs should recruit additional staff with appropriate skills and provide targeted ML/TF and proceeds of crime training to LEA staff, prosecutors and the judiciary to enhance their understanding of ML/TF investigation and prosecution issues.

Effectiveness & Technical Compliance 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	Mod	Low	Low	Low	Low
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	Mod	Low	Low	

Technical Compliance Ratings

AML/CFT Policies and coordination

R.1	R.2
NC	PC

Money laundering and confiscation

R.3	R.4
PC	PC

Terrorist financing and financing of proliferation

R.5	R.6	R.7	R.8
NC	NC	NC	PC

Preventive measures

R.9	R.10	R.11	R.12	R.13	R.14
LC	C	C	C	C	PC
R.15	R.16	R.17	R.18	R.19	R.20
C	LC	LC	LC	LC	PC
R.21	R.22	R.23			
NC	C	PC			

Transparency and beneficial ownership of legal persons and arrangements

R.24	R.25
PC	LC

Powers and responsibilities of competent authorities and other institutional measures

R.26	R.27	R.28	R.29	R.30	R.31
PC	C	NC	NC	PC	PC
R.32	R.33	R.34	R.35		
PC	PC	PC	PC		

International cooperation

R.36	R.37	R.38	R.39	R.40
PC	NC	NC	LC	PC

MUTUAL EVALUATION REPORT OF BHUTAN

Preface

This report summarises the AML/CFT measures in place as at the date of the onsite visit. It analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of the 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 the country, and information obtained by the evaluation team during its onsite visit to the country from 16 to 27 November 2015.

The evaluation was conducted by an assessment team consisting of:

- Mr. Praveen Tiwari, Director, FIU-India, legal expert
- Mr. Arnold Frane, Deputy Director, Anti-Money Laundering Council, the Philippines, legal expert
- Mr. Mohammad Abdur Rab, Joint Director, Bangladesh Financial Intelligence Unit (BFIU) Bangladesh Bank, Bangladesh, financial expert
- Ms. Doreen Vai Kuan Pun, Senior Bank Examiner, Monetary Authority of Macao, Macao, China, financial expert
- Mr. Shaun Mark, Forensic Accountant, Criminal Asset Confiscation Taskforce, Australian Federal Police, Australia, law enforcement/FIU expert
- Mr. Lindsay Chan, Principal Executive Officer, APG Secretariat
- Mr. Shannon Rutherford, Executive Officer, APG Secretariat

The report was reviewed by:

- FATF secretariat
- Ms. Supranee Satichaicharoen, Thailand
- Mr Hari Nepal, Nepal

This is Bhutan's first mutual evaluation since joining the APG in 2011.

CHAPTER 1. ML/TF RISKS AND CONTEXT

1

Background

1. The Kingdom of Bhutan is a landlocked country located in the eastern Himalayas with a total area of 38,394 Km². To the north, it borders the People's Republic of China (China) and to the south, east and west it borders the Republic of India (India). Bhutan has a population of approximately 765,000, and in 2014 its gross domestic product (GDP) was Bhutanese Ngultrum (Nu.) 119.5 billion (approx. USD1.792 billion). The capital of Bhutan is Thimphu, and the economic hub is the Bhutan-India border city of Phuentsholing. Bhutan's main economic sectors are agriculture, electricity and water supply, construction and tourism.

2. In 2008, Bhutan became a democratic constitutional monarchy with the enactment of the Constitution of Bhutan on 16 July 2008. The Druk Gyalpo (Reigning Monarch) is the head of state. Executive power is exercised by the Lhengye Zhungtshog (Cabinet Secretariat), led by the Prime Minister. The parliament is formed through universal suffrage and consists of the National Council, a 25 member upper house, and the National Assembly, a 47 member lower house. Bhutan uses a mixed civil and common law system based on codes established by Zhabdrung Ngawang Namgyal (Great Lama) and influenced by Anglo-Indian law. Primary legislation is in the form of Laws with secondary legislation in the form of Rules and/or Regulations.

3. Bhutan has 20 Dzongkhag (districts). Each Dzongkhag is administered by a Dzongkhag Tshogdu (District Council), a non-legislative executive body.

ML/TF Risks and Scoping of Higher-Risk Issues

Overview of ML/TF Risks

4. This overview is based on material provided by Bhutan, including working documents of its pending first national risk assessment (NRA), open source material and information gathered from discussions with competent authorities and the private sector.

5. Overall, Bhutan is perceived as a low crime jurisdiction. During the mutual evaluation (ME) process the assessment team did not encounter any evidence to suggest this perception is incorrect. Information provided by Bhutan in relation to its NRA supports Bhutan's and the assessment team's view that Bhutan is a low crime jurisdiction.

ML

6. Bhutan and the assessment team consider corruption as the primary ML risk in Bhutan. This seems contrary to global view that Bhutan is a low-risk jurisdiction for corruption. Numerous international corruption measures validate this perception and indicate the prevalence of corruption in Bhutan is lower than other jurisdictions in the region. However, given the limited opportunities for major profit-driven crime in Bhutan, the dominance of state-owned enterprises and relative to other predicate crimes, the assessment team considers corruption, especially related to real estate and natural resources, affords the greatest potential to generate illicit proceeds in Bhutan. The incomplete NRA process identifies corruption and bribery as the top proceeds generating crimes with an estimated total proceeds of USD 6.9 million over the four-year period of 2011 to 2014. In addition, corruption is a threat because of its negative impact on good

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governance, which is one of the four pillars of Bhutan's development philosophy of gross national happiness.

7. Authorities have implemented numerous measures to combat corruption; however, the criminal justice measures have focused on the predicate offence and not ML. There have only been two ML convictions in 2008, and since the enactment of the Anti-Corruption Act (ACA) in 2011 there is a legal impediment on the prosecution of an offender for both corruption and associated ML. For these reasons, the assessment team considers the residual ML risk from corruption to be Bhutan's primary ML risk.

8. The assessment team considers other predicate offences as important ML risks, but not in the same category as corruption. These offences are associated with Bhutan's border vulnerabilities, particularly in the Bhutan-India border town of Phuentsholing through which approximately 82% of Bhutan's imports enter the country, and Bhutan's single international airport. These offences are: illicit trafficking of stolen artefacts and other stolen goods; fraud; smuggling, and illicit trafficking in narcotics and pharmaceutical substances. These offences are generally increasing but there have been no ML investigations or prosecutions. In terms of statistics, there are more cases of illicit trafficking and smuggling in stolen artefacts and non-prescription pharmaceutical substances than corruption; however, the latter generates higher criminal proceeds.

9. There is little evidence to indicate that predicate offences in Bhutan are engineered by organised crime groups within Bhutan. Cases involving corruption are mainly concerning the predicate offender and associates, including relatives. There are groups of individuals involved in smuggling illegal products (such as tobacco), cultural artefacts and contrabands (such as pharmaceutical drugs for use without prescription). However, these groups could not be considered as sophisticated, centralised or hierarchical. For the smuggling of pharmaceutical drugs, most cases involve accessing contraband for use rather than profit.

10. The proceeds of domestic crime are mostly laundered within Bhutan. Proceeds from corruption and other predicate offences are mostly used to purchase consumer items or physical assets such as immovable property. While proceeds are used directly for purchasing such goods, proceeds are also deposited into the banking system then used or converted into other assets. While Bhutanese nationals are prohibited from opening bank accounts offshore without prior approval, Bhutan did not explain to the assessment team how it would enforce this requirement.

11. Bhutan is not an end destination for foreign proceeds. The following factors contribute to the assessment team's view that the ML risk from foreign proceeds, including from India, is low: (i) Bhutan is not an important regional financial centre, (ii) it does not have any foreign banks, (iii) it is not a centre for company formation and registration, (iv) the informal exchange rate of Nu. to India Rupee (IR) is negative, and (v) Bhutan has a small economy. Moreover, while they share a border, there is no evidence to suggest illicit proceeds from China are being invested in Bhutan as the border is officially closed and there is very limited trade between the two jurisdictions (approximately 2% of Bhutan's imports are from China). And, unlike with India, Bhutan's border with China is separated by the Himalaya Mountains.

12. The assessment team considers broad deficiencies in Bhutan's legal framework, LEAs' financial investigation capability and capacity, the lack of implementation of AML/CFT preventive measures and supervision of financial institutions (FIs) and no AML/CFT implementation in

designated non-financial businesses and professions (DNFBPs) to be key ML vulnerabilities in Bhutan.

TF

13. Terrorism and TF related issues in Bhutan are sub-regional with no reported or identified instances of Al Qaeda, Taliban or ISIL related activities in Bhutan. Bhutan's TF risk is self-financing, in porous border areas (see below discussion of the porous border areas), associated with external threats arising from: (i) terrorist attacks in Bhutan that authorities suspect were carried out by Radical Groups (RGs), such as The Bhutan United Socialist Democratic Party and The United Revolutionary Front of Bhutan, which are the remnants of anti-national groups formed in Bhutan in the 1990s and are now located outside of Bhutan, and (ii) Indian Insurgent Groups (IIGs)¹, such as the National Democratic Front of Bodoland (NDFB), that operate in the North Eastern Region of India.

14. The TF risk associated with RGs has significantly reduced. Previously, RGs were suspected of conducting small scale terrorist activities in Bhutan, with the last incident in 2012. In the past, RGs moved from their primary location, outside of Bhutan and via India, into Bhutan's porous border areas where they used small improvised explosive devices and/or small arms against Bhutanese citizens and the Government. In 2012 there were five suspected RG incidents that resulted in damage to Government property, injury of civilians and security personnel and one death. Available data suggests RG activity has decreased from a high in the early 2000s during which time Bhutan did convict persons of terrorism under section 329 of the Penal Code. Along with the decrease in activity, there is an assumed decrease in size and sophistication of these groups. Post the early 2000s, available information from Bhutan suggests RG activities involved the coming together of a few individuals and acts required minimal funds obtained via self-financing. There is no evidence to suggest these groups received funds through Bhutan's banking system from abroad and authorities believe there is no support for RGs from within Bhutan.

15. IIGs are suspected of moving from their primary location of operation into Bhutan's porous border areas to evade Indian authorities. There is no evidence that these groups conduct activities against Bhutan. IIGs did historically have camps in Bhutan's porous border areas, which were used as safe havens. However, since the Bhutan Army pushed them out of the porous border areas in 2003, and with the continued presence of the Bhutan Army, police, Department of Forest and Indian Sashastra Seema Bal forces along the border, there is no evidence to suggest these groups are currently operating from Bhutan's porous border areas. There is no evidence to suggest that IIGs have used Bhutan's banking system to receive funds from abroad. Banking regulations prohibit non-resident Indian nationals from opening bank accounts, and transfer of funds out of Bhutan is tightly controlled with amounts over USD10,000 or its equivalent are subject to RMA approval.

¹The Indian Ministry of Home Affairs Annual Report for 2014–2015 lists 18 active insurgency groups operating in the North Eastern Region of India. The vast majority of these groups have been declared 'Unlawful Associations' under the Unlawful Activities (Prevention) Act 1967, and some groups from Assam, Manipur and Tripura have been listed as 'terrorist organisations' in the schedule of the above Act.

Country's risk assessment & Scoping of Higher Risk Issues

16. Bhutan is in the process of conducting its first NRA with assistance from the IMF. The final product will be a combined ML and TF risk assessment and is expected to be completed by late 2016. Bhutan has not conducted any other ML/TF or sectoral risk assessment.

17. During the onsite, Bhutan provided the team with its working documents on both ML and TF. In reference to ML, the assessment team considers ML threats identified by Bhutan, as discussed above, as reasonable. Bhutan is in the initial stages of analysing its vulnerabilities and consequences, and these factors have not been integrated with ML threats in order to form a comprehensive and reasonable assessment of Bhutan's ML risk.

18. For TF, as discussed above, Bhutan considers its main threats arise from IIG and RG activities; however, threats, vulnerabilities and consequence are still being integrated.

Scoping of higher risk issues

19. Based on material collected, the assessment team gave increased attention to the following issues:

- *Corruption:* corruption and bribery are Bhutan's top proceeds generating crimes. The assessment team focused on natural resources, including real estate and public procurement, as these have been identified as the higher risk areas.
- *Cross-border risks:* Bhutan and India share a border and have close economic ties. The assessment team sought to understand Bhutan's ML/TF threats, vulnerabilities and mitigating measures associated with the Bhutan-India border, particularly in Bhutan's primary import/export gateway town of Phuentsholing (visited by the assessment team). Furthermore, the assessment team did consider the ML/TF risks associated with Bhutan's single international airport.
- *TF:* The assessment team explored Bhutan's TF threats, border vulnerabilities and measures undertaken to combat TF including international cooperation with India.
- *Vulnerabilities in the financial and DNFBP sector:* the assessment team considers that the proceeds of crime are generally laundered in Bhutan and used to purchase consumer items or real assets. The assessment team sought to explore vulnerabilities in the financial and DNFBP sector focusing primarily on AML/CFT implementation in banks and the real estate sector.
- *AML/CFT coordination:* Bhutan does not have a national AML/CFT strategy informed by risk. The assessment team sought to understand the national coordination committee's (NCC) framework for policy and operational coordination.
- *Gaps in skills and resources of competent authorities:* the assessment team focused on skills and resourcing issues to better understand the challenges facing competent authorities and to inform recommendations made.

Materiality

20. Bhutan is a small developing cash-based economy. GDP for 2014 was Nu. 119.5 billion (approx. USD1.792 billion) and its average real GDP growth over the last five years was 6.4%. In

2014, growth was primarily driven by the tertiary sector (e.g., wholesale & retail trade and transport, storage & communication) and secondary sector (e.g., mainly construction and manufacturing).

21. Bhutan's economy is dominated by state-owned enterprise, with the private sector contributing approximately 10% of Bhutan's annual national revenue.

22. Bhutan has close bilateral ties with India. India is Bhutan's primary trade partner accounting for over 80% of Bhutan's total imports and exports, and in 2014-15 Bhutan incurred a Nu.19.0 billion (approx. USD285 million) trade deficit with India. Overall, Bhutan maintains a longstanding current account deficit with India, which in 2014-15 was 25.1% of its GDP. Furthermore, India is Bhutan's largest creditor holding 67.8% of Bhutan's external debt.

23. Bhutan has a relatively small financial sector by global standards and the sector makes up approximately 7.5% of total GDP. There are a total of five domestic commercial banks in Bhutan and they account for 53.73% of the total financial sector assets. There are no foreign banks operating in Bhutan. While small the non-bank financial institutions (NBFI) sector has been steadily growing. The DNFBP sector in Bhutan is small and not well developed (please refer below under preventive measures for further details of FIs and DNFBPs).

24. The size of Bhutan's informal economy is significant with approximately 69% of the population living in rural areas and relying on subsistence/semi-commercial farming for their livelihood. In order to improve the social and economic outcomes in rural areas, and bring rural farms into the formal economy, Bhutan has invested significant resources in the development of Farmers Groups and Cooperatives including the enactment of the Cooperatives (Amendment) Act of Bhutan 2009. This legislation provides groups registered with the Ministry of Agriculture and Forests, legal identity and an ability to open a bank account. At the time of the on-site there were 317 Farmers Groups and 45 Cooperatives, primarily setup to promote production and marketing of local products.

25. With regard to financial inclusion, according to the World Bank Global Findex Database 2014, Bhutan has a low level of financial inclusion compared to other South Asian countries with approximately 34% of adults (15 years old and above) in Bhutan having accounts with FIs. Nevertheless, Bhutan has introduced measures conducive to financial inclusion, including a national biometric ID for all citizens, remittances through Bhutan Post and E-wallet.

Structural Elements

26. While the building blocks for an effective AML/CFT system are generally in place in Bhutan, resources and skills required are incomplete and pose ongoing obstacles to effectiveness. Furthermore, Bhutan's AML/CFT regime is young: Bhutan's FIU was established in 2011 and is not yet an Egmont member, and Bhutan joined the Asia Pacific Group on Money Laundering in 2011.

27. There is political and institutional stability; with accountability, integrity, and transparency mechanisms for key institutions such as the central bank (AML/CFT supervisors and FIU), law enforcement and the justice system. There is an independent judiciary, an anti-corruption agency and a national audit authority. The latter two are relatively well resourced and funded.

28. There is due process and rule of law, and an openness to adopt good practices from abroad. Bhutan has already amended its Financial Services Act (FSA), Companies Act and other laws, and is proposing to introduce a new AML/CFT Act.

Background and other Contextual Factors

29. Entry points into Bhutan are limited. Bhutan maintains no official diplomatic relations with China and there are no official border crossings between Bhutan and China. There are only four major land border crossings with India located in Samtse and Phuentsholing in the west, Gelephu in the central region and Samdrup Jongkhar in the east. Furthermore, Bhutan only has one international airport with flights to and from India (multiple airports); Kathmandu, Nepal; Dhaka, Bangladesh; Singapore; and Bangkok, Thailand.

30. Bhutan has a unique relationship with India. Bhutan was a protectorate of British India. In 1949 Bhutan and India signed a friendship treaty in which both jurisdictions agreed to non-interference in each other's domestic affairs but that Bhutan would be guided by India in its foreign policy and both jurisdictions would consult each other on foreign and defence affairs. While the treaty was last re-negotiated in 2007 and provisions requiring Bhutan to take India's guidance on foreign policy were replaced, Bhutan and India maintain a close relationship (see also discussion below).

31. Bhutan has porous border areas with India in all of its major border towns. For example, in Phuentsholing, Indian citizens can move freely across the border and into the town. However, an entry permits/visas must be obtained by Indian nationals/all non-Bhutanese nationals traveling into the interior parts of Bhutan. Permits/visas are checked by immigration officials at an up-country checkpoint located approximately 5 Kms outside of Phuentsholing on the only road linking Phuentsholing to interior Bhutan. A similar system is in place in the other border towns/land entry points into Bhutan. The assessment team considers this mechanism as an effective method to stop unwanted individuals from entering interior Bhutan.

32. Bhutan citizens can travel freely and without travel permits in India. To travel to towns in the south east region of Bhutan, for example, SamdrupJongkhar, Bhutanese must travel via Indian highways.

33. Entry into Bhutan is tightly controlled. With the exception of visitors from Bangladesh and Maldives who can obtain a visa on arrival, all other visitors must book their trip through an approved tour company and make full payment of their tour package, including meals and accommodation, into a central Government account in order to obtain a visa for entry into Bhutan. Foreign officials visiting may be exempted from the above requirements.

34. Bhutan prohibits the wire transfer of funds, above equivalent of USD10,000 outside of Bhutan for commercial purposes without RMA approval.

35. There are tight controls on foreign nationals opening a bank account in Bhutan. In order to open an account foreign nationals must supply documentation proving they are employed within Bhutan.

Overview of AML/CFT strategy

36. Bhutan has a draft National Strategy and Action Plan – Combating Money Laundering and Terrorist Financing which Bhutan has advised will come into effect and be updated and informed by the NRA once completed in late 2016. At the time of the on-site the NCC had oversight of Bhutan's AML/CFT activities, particularly in relation to policy development and implementation, which the assessment team considers to be Bhutan's primary focus.

37. There is a National Integrity and Anti-Corruption Strategy 2014-2018 (ACC Strategy) that focuses on countering corruption and includes a strategic objective to strengthen systems to prevent and combat corruption through the enactment of the forthcoming AML/CFT Act.

38. There is a National Drug Control Strategy, which includes priority areas and strategies for strengthening drug supply reduction mechanisms and enhancement of law enforcement measures. However, this strategy contains very limited reference to ML and has not been updated since the enactment of the Narcotic Drugs Psychotropic Substance and Substance Abuse Act 2015 (NDPSSAA).

Overview of the legal & institutional framework

39. Bhutan uses a mixed civil and common law system based on codes established by Zhabdrung Ngawang Namgyal (Great Lama) and influenced by Anglo-Indian law. The Constitution of Bhutan 2008 is the supreme law. The Supreme Court, comprising of the Chief Justice and four justices (Drangpons) is the highest court of Bhutan's four-tier court system and is presided over by the Chief Justice of Bhutan. The Supreme Court is the guardian of the Constitution and the final authority on its interpretation. The Supreme Court is also highest appellate authority to entertain appeals against the judgments, orders, or decisions of the High Court in all matters, and it exercises jurisdiction outside Bhutan on the basis of international law principles.

40. As with the Supreme Court, the High Court exercises original jurisdiction as well as appellate jurisdictions and possesses inherent powers and exercises extra-territorial jurisdiction on the basis of international law principles.

41. Bhutan has 20 District Courts (Dzongkhag Court) which exercises original jurisdiction in all cases in their territory. Furthermore, the District Courts exercises jurisdiction overs appeals from Bhutan's fifteen Sub-District Courts (Dungkhag Court), which are the lowest courts in Bhutan.

42. With regard to international instruments, under article 10, section 25 of the Constitution of Bhutan, international conventions, covenants, treaties, protocols and agreements acceded by the Government are deemed to be law upon ratification by the Parliament and in accord with the Constitution of Bhutan. However, during the onsite the Chief Justice of the High Court and officials from the Office of the Attorney General (OAG), confirmed that while some self-executing international instruments do not require enabling legislations, more complex conventions require domestic legislation particularly to create penalties or provide for other measures that are not clearly set forth in the convention. For example, Bhutan is currently drafting an AML/CFT law to give effect to the International Convention for Suppression of the Financing of Terrorism which Bhutan ratified on 22 March 2004.

43. The Penal Code, Anti-Corruption Act 2011 (ACA), Civil and Criminal Procedures Code 2001 (CCPD), FSA, Companies Act, Extradition Act and AML/CFT Regulations are the key legal instruments underpinning Bhutan's AML/CFT regime.

44. The following ministries, agencies and authorities are responsible for formulating and implementing Bhutan's AML/CFT activities:

- *Office of the Attorney General (OAG)*, under The Office of the Attorney General Act of Bhutan 2006 (AGA), is mandated to represent the Government of Bhutan in civil litigation and criminal prosecutions, draft bills and provide legal advice. The OAG is responsible for the prosecution of ML/TF cases.
- *Royal Monetary Authority of Bhutan (RMA)*, an autonomous body, responsible for central banking functions under the Royal Monetary Authority Act of Bhutan 2010 (RMAA), which includes financial sector licensing/registration and supervision and hosting of the Financial Intelligence Unit (FIU). Key AML/CFT related departments as follows:
 - *Financial Regulation and Supervision Department (FRSD)*, under section 122 of the FSA, is the prudential regulator and supervisor, and under Section 21 of the AML/CFT Regulations is the AML/CFT supervisor for all Reporting Entities (REs) except non-bank money or value transfer services (MVTs) providers and non-bank money changers.
 - *Foreign Exchange and Reserve Management Department (FED)*, whilst primarily responsible for management of foreign exchange, it is also responsible for regulating and supervising non-bank MVTs providers and non-bank money changers including AML/CFT supervision in accordance with the AML/CFT Regulations.
- *FIU*, provided for under Section 141 of the FSA, is empowered to receive and analyse suspicious transaction reports (STRs), cash transaction reports (CTRs) and other reports or information.
- *Royal Bhutan Police (Police)*, under the Ministry of Home Affairs, is primarily responsible for maintaining law and order and prevention of crime in Bhutan. Under the Royal Bhutan Police Act 2009 (Police Act) the police have powers to investigate any criminal offence in the Penal Code including ML and TF. While the police have a number of crime and operations branches there is no dedicated ML or TF investigation units.
- *Anti-corruption Commission of Bhutan (ACC)*, established in 2006 under the ACA 2006 (repealed by the ACA 2011) with independent authority guaranteed under Article 26 of the Constitution of Bhutan, is primarily responsible for investigation, and in limited circumstances the prosecution, of all offences in the ACA including corruption, bribery and related ML offences. The ACC has no ML investigation unit.
- *Bhutan Narcotic Control Authority (BNCA)*, under NDPSSAA, functions as the secretariat to the Narcotic Control Board and is a coordination agency of the Government on all matters related to narcotics drugs, psychotropic substances and substance abuse.
- *Department of Revenue & Custom (Customs)*, under the Ministry of Finance, is primarily responsible for taxation collection and enforcement including cross border matters.

- *Civil Society Organisation Authority* (CSO Authority) established in 2009 under the Civil Society Organisation Act 2007 (CSOA) has primary oversight of the civil society sector (not-for-profit sector), including registration, outreach and supervision.
- *Ministry of Foreign Affairs* (MFA) oversees Bhutan's foreign policy, foreign missions and consular services. For AML/CFT, MFA is the primary agency responsible for Bhutan's engagement with international bodies (e.g., United Nations).
- *Company Registrar*, under the Ministry of Economic Affairs, is primarily responsible for the registration of legal persons pursuant to The Companies Act of the Kingdom of Bhutan 2000 (Companies Act).
- *Bureau of Law and Order* (BLO) (the BLO changed to a department post the on-site visit), under the Ministry of Home and Cultural Affairs, functions as a coordination agency of the Government for all matters related to national security, border management and related issues including coordination with Indian authorities. For AML/CFT, BLO is the coordinating agency for IIG and RG activities within Bhutan.

Overview of the financial sector and DNFBPs

Financial Sector

45. Bhutan's formal financial sector comprises the following licensees or registrants as detailed in Table 1 below: five commercial banks, two insurance companies, one reinsurance company, one securities exchange, five securities brokerage firms, one pension fund, four non-bank MVTS, 75 authorized money changers and one credit cooperative.

Table 1: FIs, DNFBPs, Regulators & AML/CFT Supervisors

Sector	No.	Regulator/ SRB	Subject to AML/CFT preventive measures (RE)	AML/CFT Supervisor	Total assets (Billions Nu.)	Percentage of total assets
Banks 5 Commercial banks	5	RMA – FRSD	Yes	RMA – FRSD	93.62	53.73
Insurance 2 Insurance companies 1 Reinsurance company	3	RMA – FRSD	Yes	RMA – FRSD	13.86	7.95
Securities exchange	1	RMA – FRSD	Yes	RMA – FRSD	28.90	16.59
Securities brokerage firms	5	RMA-FRSD	Yes	RMA – FRSD	17.19	9.87
Pension/Provident funds	1	RMA-FRSD	Yes	No	20.67	11.86
Non- bank MVTS	4	RMA – FED	Yes	RMA – FED	-	-

Non-bank authorised money service business (money changers) <i>50 Hotels & Resorts</i> <i>25 Standalone</i>	75	RMA – FED	Yes	RMA – FED	-	-
credit cooperative	1	Dept. of Agriculture Marketing and Cooperative	No	No	-	-
DNFBPs						
Casinos	N/A	N/A	Yes	N/A	N/A	N/A
Dealers in precious metals and stones	13	No	Yes	No	-	-
Real estate agents	6	No	Yes	No	-	-
Company and trust service providers	N/A	No	Yes	No	-	-
Lawyers	27	No	Yes	No	-	-
Accountants	2	No	Yes	No	-	-
India external auditors	8	Royal Audit Authority	Yes	No	-	-

46. The five commercial banks offer a range of products and services, which include credit facilities, savings or deposit services, remittance services, foreign exchange services, and other financial services, such as ATM services, mobile (SMS) banking, and internet banking.

47. Three of the five commercial banks are listed on the stock exchange as required by the FSA. The controlling shareholders in two banks are dominantly owned by the government of Bhutan and its investment or commercial arms, including the largest bank, and one of which also involved equity from international development agencies. One bank is a joint venture with majority shareholding by a leading public sector Bank in India. Only the newest bank is predominately owned by local business interests. The Government of Bhutan is the major controlling shareholder of the only life insurance company in Bhutan and the one pension fund is a Government owned statutory authority.

48. The non-bank MVTs are dominated by four large international money transfer companies that provide their services through agent arrangements with two local banks and Bhutan Post, with the local counterparts acting as the agent and providing the retail shopfront. MVTs are not permitted to remit funds abroad except to India. The services pertain mainly to inward remittances.

49. The securities sector comprises a securities exchange, which is at an early stage of development, four securities brokerage firms and 21 publicly listed companies.

50. There are only two insurance companies which are both listed on the stock exchange. Life insurance products are relatively new and the sum insured relatively low; the average life insurance policy is valued at Nu.100,000 (approx. USD1,500).

51. There are 75 non-bank money changers but most relate to tourism, either hotels or tourist operators.

52. There is one pension fund subject to RMA prudential supervision. There is one very small credit cooperative licensed and supervised prudentially by the Department of Agriculture Marketing and Cooperative.

DNFBP Sector

53. The DNFBP sector in Bhutan is small and not well developed. There are no casinos and no trust service providers. The six real estate agents, 13 dealers in precious metals and stones, 27 law firms and two accountancy firms are not represented by established professional associations or other self-regulatory bodies. The Judicial Service Act codifies the requirement of those in judicial service but there is no bar association. Bhutan is committed to adoption and implementation of International Financial Reporting Standards by 2021. Bhutan is in the process of establishing the Institute of Chartered Accountants. Given the lack of accredited external auditors, Indian accountancy firms are permitted to practice after approval by the Royal Audit Authority.

54. There may be informal providers of money changing services, alternative remittance providers or credit providers. The extent of informal financial service providers has not been formally examined by Bhutanese authorities.

Overview of preventive measures

55. FIs and DNFBPs are captured as REs through listing/designation and not via provision of designated services. The AML/CFT measures applicable to Bhutan's REs are contained in the FSA, AML/CFT Regulations, various enforceable and non-enforceable AML/CFT guidelines, and other RMA issued regulations, including the Foreign Exchange Regulations 2013 (FER). A reporting entity is defined in the FSA as, "a licensee or other financial institutions or person designated by the Authority for the purposes of section 144". FI is defined in the FSA as, "a bank, an insurer, a re-insurer, a stock exchange or another entity licensed under this Act". FIs are required to be licensed and be a publicly listed company. The same is not true of all REs, as some can be registered only. Section 144 also authorises the RMA to include "...any other person, whether licensed by the Authority or not, whom the Authority reasonably designates or describes in a regulation (to the extent provided in such regulation) as conducting activities subject to use in money-laundering or financing of terrorism". Pursuant to section 144, the RMA through the AML/CFT Regulations extended the definition of REs to include DNFBPs which are detailed under the definitions section of the Regulations. Previously under AML/CFT Regulations 2012, which have now been repealed, DNFBPs were captured because they were defined to be FIs or providing a financial service.

56. Except for one credit cooperative, all FIs and DNFBPs are captured by the FSA and AML/CFT Regulations as REs. The one credit cooperative does not meet the definition of a reporting entity as defined in the FSA and AML/CFT Regulations, as it is neither licensed nor designated by the RMA. However, it has only 15 members and the loan amounts are insignificant. The RMA made a formal policy decision on 23 October 2015 to exclude it from AML/CFT coverage

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based on a simple risk assessment. This exemption is expected to be documented in the completed NRA.

57. The AML/CFT preventive measures in the FSA and the AML/CFT Regulations are law and enforceable means respectively. Both instruments contain sanctions for non-compliance (Chapter 11 of FSA and Section 23 of AML/CFT Regulations) and are enforceable. The AML/CFT Regulations are issued pursuant to the FSA, with its sanctions cross-referenced to sanctions in the FSA, and with mandatory language.

58. The following guidelines are also enforceable means because they are issued pursuant to the FSA and include penalties for non-compliance by referencing sanctions in the FSA and/or AML/CFT Regulations. They add additional requirements for three financial sectors:

- FIU G3-AML/CFT Guidelines for Insurance Companies 2014
- FIU G4- AML/CFT Guidelines for Capital Markets Intermediaries 2014
- FIU G5– AML/CFT Guidelines for Money Service Providers 2014

59. There are also two other FIU guidelines: FIU G1: AML/CFT Guidelines for appointment of AML/CFT Compliance Officer 2014; and FIU G2 – Guidelines for STRs 2014. These two guidelines cannot be considered enforceable means because there are no penalties for non-compliance, either in the guidelines themselves or cross-referenced to sanctions in the FSA and/or AML/CFT Regulations.

60. There are also sector specific regulations pertaining to market entry that are also enforceable means, namely:

- The Foreign Exchange Regulations (FER) 2013
- Licensing Regulations for Establishment of Commercial Banks in Bhutan
- Regulations for establishment of Insurance Business in Bhutan
- Securities Brokers Regulations 2011
- Regulation for Establishment of Reinsurance Business in Bhutan
- Credit Rating Agency Regulations
- Insurance Brokers Regulations
- Corporate Governance Regulations.

Overview of legal persons and arrangements

61. The formation of legal persons is provided in three separate laws. The Companies Act provides the legal framework for legal persons undertaking commercial activities. The CSOA provides the legal framework for non-profit organisations. The Religious Organisations Act 2007 (ROA) provides the framework for that sub-category of non-profit organizations. There is no legislative framework for registration of partnerships or proprietorship, though a draft Enterprise Registration Bill is under consideration since 2013 for such entities.

62. There are 368 companies registered in Bhutan. Trusts are not recognised or formed under Bhutanese law.

Overview of supervisory arrangements

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63. All the FIs listed above are licenced/registered and supervised by the RMA in accordance with the FSA. The FSRD is responsible for AML/CFT supervision in accordance with the AML/CFT Regulations for all FIs listed above except non-bank MVTs providers and money changers. The latter two categories are under the ambit of the FED which is the designed supervisor. Bhutan has not designated an AML/CFT supervisor for DNFBPs.

CHAPTER 2. NATIONAL AML/CFT POLICIES AND COORDINATION

Key Findings and Recommended Actions

Key Findings

- Bhutan has launched the process to assess its national ML/TF risks using the methodology developed by the IMF; this NRA process is expected to be completed by late 2016.
- Bhutan has identified the following five predicate offences as the major ML threats: corruption and bribery; illicit trafficking in stolen goods and other goods; fraud; smuggling; and illicit trafficking in narcotics and psychotropic substances. The assessment team nevertheless considers, as reasonable, Bhutan's preliminary identification of the above threats as Bhutan's major ML threats.
- Bhutan's understanding of ML risks is incomplete and not broad-based, although developing through the NRA process. Bhutan has only started analysing its vulnerabilities and consequences, and these factors have not been integrated with ML threats in order to form a comprehensive and final assessment of Bhutan's ML risk.
- Among competent authorities interviewed during the onsite, the Anti-corruption Commission and FIU exhibit relatively more satisfactory levels of understanding of ML risks. This reflects their greater levels of engagement in AML activities. Supervisors' and reporting entities' (REs') understanding of Bhutan's ML risks is at a more developmental stage.
- For TF, although the NRA remains incomplete, key authorities, for example the Bureau of Law and Order (BLO) and police demonstrated a sound understanding of Bhutan's terrorist threats and an understanding of the TF risks posed by Indian Insurgent Groups (IGs) and Radical Groups (RGs). Authorities have noted a decline in terrorist activities due to efforts to disrupt and mitigate terrorist acts. These authorities demonstrated a thorough understanding of the vulnerabilities posed by Bhutan's porous border areas. However, not all competent or reporting entities exhibited such understanding and awareness.
- There is no comprehensive, national strategy, informed by risks, to address ML/TF risks in Bhutan. Activities have therefore focused on the predicate offences.
- Bhutan has adopted the National Integrity and Anti-Corruption Strategy 2014-2018 (NIACS) which includes a focus on confiscation of corruption proceeds, but no focus on corruption related ML.
- While not documented, Bhutan appears to be implementing a sound strategy to mitigate terrorist threats and potential TF through coordinating activities with Indian counterparts to disrupt terrorist acts and their financing from occurring in Bhutan.
- Bhutan does have coordination mechanisms for drug and border operational and policy matters, and there is limited cooperation between the FIU and the ACC and with AML/CFT supervisors.
- Coordination on PF is absent.

Recommended Actions

- Bhutan's should properly identify, assess and understand its ML and TF risks including through the completion of its NRA in consultation with all stakeholders, and development of

recommendations for priority actions against areas identified as higher risk for ML and TF, including any with transnational linkages.

- Adopt the draft AML/CFT strategy and develop sector-specific policies (based on the identified risks), which need to cascade into the internal policies, priorities and procedures of relevant agencies.
- Disseminate the completed NRA to all reporting entities (REs) to support the application of enhanced measures for higher risk scenarios, or simplified measures for lower risk scenarios, and to the broader community.
- Implement a comprehensive risk-based approach to prioritising capacity building and training, and allocating resources, in order to develop and implement measures to prevent and mitigate ML/TF on the basis of the assessed risks. This includes developing policies and prioritising operational resources to address the higher risk areas.
- Bring into force and effect as soon as practicable, the proposed AML/CFT Act to address a range of gaps/vulnerabilities in Bhutan's legal framework.
- Implement a coordination mechanism for PF.

64. The relevant Immediate Outcome considered and assessed in this chapter is IO1. The recommendations relevant for the assessment of effectiveness under this section are R1-2.

Immediate Outcome 1 (Risk, Policy and Coordination)

Country's understanding of its ML/TF risks

65. Bhutan has launched the process to assess its national ML/TF risks, using the methodology developed by the IMF, which is expected to be completed by late 2016.

66. Bhutan has conducted a risk assessment of corruption as part of the NIACS. While the strategy examines threats and vulnerabilities, ML risks associated with corruption are only examined to a limited extent.

67. Bhutan commenced its NRA in May 2014, using the IMF's NRA methodology and IMF technical assistance. The first step was the formation of the NRA Working Group (NRAWG) in June 2014 consisting of the Royal Monetary Authority (RMA), FIU, Anti-Corruption Commission (ACC), Office of Attorney General (OAG), Royal Court of Justice, Ministry of Foreign Affairs (MFA), Ministry of Agriculture and Forests (MoAF), Customs, Bureau of Law and Order (BLO), police, Bhutan Narcotic Control Agency (BNCA), Bhutan Chamber of Commerce and Industry (BCCI), Financial Institutions Association of Bhutan (FIAB), Registrar of Companies and Civil Society Organizations (CSO) Authority. The NRAWG captures all key stakeholders, with the exception of some DNFBPs because of the absence of professional associations for lawyers and accountants, industry associations for precious stones and metals and real estate brokers, and no casinos.

68. Actual work on the NRA commenced in August 2014 through the NRAWG with assistance from the IMF. The NRAWG has focused its work on threat analyses, both proceeds of crime for ML and TF threats. Bhutan shared with the assessment team three working documents on its ML and TF threat assessments.

69. On ML, Bhutan has identified the following five predicate offences as the major ML threats: corruption and bribery; illicit trafficking in stolen goods and other goods; fraud; smuggling; and illicit trafficking in narcotics and psychotropic substances. Bhutan has identified corruption and bribery as the top proceeds generating crimes with estimated total proceeds of approximately USD 6.9 million over the four-year period of 2011 to 2014. Based on statistics provided, the proceeds from corruption and other predicate offences are mostly used to purchase consumer items or physical assets such as immovable property. Ownership of immovable property is a sought after asset in Bhutan, for both legitimate and illicit means.

70. With regard to the other ML threats, the NRAWG is in the process of reviewing its preliminary conclusions, which are based on estimated proceeds of crime, other quantitative inputs and qualitative judgements. Bhutan noted that illicit trafficking in stolen goods and other goods may be the top proceeds generating crime of the remaining four predicate offences. The selection of these predicate offences is based on estimated proceeds of crime and judgements made by competent authorities.

71. Bhutan has only just commenced the process of assessing national and sectoral vulnerabilities. Therefore, it has not ascertained the national level of ML risks based on an analysis of the likelihood of ML events occurring successfully in Bhutan and the consequence(s) of such events. However, from preliminary findings, Bhutan perceives corruption as having the greatest negative impact on Bhutanese society.

72. The assessment team considers, as reasonable, Bhutan's preliminary identification of the top five major ML threats, including corruption as its top threat. This conclusion is based on a review of NRA working documents provided by Bhutan, interviews conducted during the onsite, and information gathered and analysed using open sources.

73. Authorities do have an understanding of how proceeds are laundered in Bhutan. Based on operational knowledge and experience, illicit proceeds, particularly from corruption are laundered into real estate and/or into expensive vehicles. In real estate or natural resources corruption cases, the assets acquired are through illegal allotments, or the proceeds are deposited into bank accounts and then used to purchase assets. Available statistics on seizures and confiscations provided by the ACC, while not comprehensive, supports this view. Authorities also view that most, if not all illicit proceeds are laundered within Bhutan, and that Bhutan is generally not an end destination or recipient of foreign proceeds. This is consistent with the assessment team's views on foreign proceeds as outlined in Chapter 1.

74. Overall, Bhutan's understanding of ML is incomplete and varied. The ACC and FIU exhibited more satisfactory levels of understanding of ML risks, and have been relatively more involved in AML activities, even before the start of the NRA. The level of understanding by the police is lower because they have not conducted any ML investigations, nor have they been given a clear mandate to do so. Supervisors' and REs' understanding of ML risks are at a more developmental stage. Supervisors' lower level of understanding of ML risks is not surprising as both supervisors were only recently designated as AML/CFT supervisors and they have not undertaken any off-site or onsite AML/CFT supervision. Similarly, no FIs or DNFBPs have completed a risk assessment for ML or TF.

75. Key authorities have a sound understanding of Bhutan's terrorism and TF risks relating to IIGs and RGs. The activities of these groups are described in Chapter 1 and IO.9. Although the NRA

remains incomplete, key authorities interviewed during the onsite demonstrated a sound understanding of terrorist threats and an understanding of the relative TF risks posed by these groups. The BLO and police explained in detail the pattern of terrorist activities over the last decade and the use of criminal justice and other measures, noting a decline in terrorist activities and TF risk due to efforts to stop these groups from entering Bhutan. BLO also demonstrated a thorough understanding of vulnerabilities posed by the Bhutan's porous border areas. However, not all competent authorities or REs exhibited such understanding and awareness.

76. The BLO and police indicated that based on intelligence, investigations conducted and cooperation with India, IIGs and RGs self-finance their activities.

77. Given the nature of the TF risk, the authorities have focused their actions more at disrupting and preventing, through cross-border international cooperation with India, these groups from entering Bhutan. This approach is a more practical and pragmatic method to mitigating Bhutan's TF risks given resourcing constraints (refer IO.9 and IO.2).

78. Bhutan demonstrated an understanding the potential risks associated with Al Qaeda, Taliban or Islamic State in Iraq and the Levant (ISIL), and the issue of foreign fighters. Authorities advised there are no reported or identified instances of Al Qaeda, Taliban or Islamic State in Iraq and the Levant (ISIL) related activities in Bhutan.

79. The assessment team gave more weight to Bhutan's understanding of ML risks than TF risks in arriving at the overall conclusion and rating for this IO.

National policies to address identified ML/TF risks

80. Bhutan has undertaken work to draft an AML/CFT strategy which will be finalised once the NRA is completed.

81. In the absence of a completed NRA, there is no comprehensive strategy, informed by risks, to address ML/TF risks in Bhutan. This is a fundamental gap in Bhutan's AML/CFT efforts. Activities have therefore focused on the investigation and prosecution of major predicate offences such as corruption, illegal drug use and smuggling and not ML.

82. As indicated, Bhutan has adopted the NIACS. Bhutan has focused resources on anti-corruption initiatives to implement the NIACS, but resources are more targeted at anti-corruption and confiscation of corruption proceeds, rather than associated ML.

83. There is a National Drug Control Strategy, which includes priority areas and strategies for strengthening drug supply reduction mechanisms and enhancement of law enforcement measures. However, this strategy contains very limited reference to ML and has not been updated since the enactment of the NDPSSAA in 2015. Bhutan has worked closely with India to stop the illegal importation of non-prescription pharmaceutical drugs from India but there has not been any associated ML investigation.

84. In regards to TF, Bhutan appears to be implementing a strategic approach, although not documented, to mitigate terrorist threats and TF. This strategy focuses primarily on coordinating activities with Indian counterparts to disrupt and prevent any reoccurrence of terrorist acts in Bhutan by RGs, and stop IIGs from entering Bhutan in order to avoid Indian authorities. By virtue of the self-financing nature of Bhutan's TF risks, these actions disrupts and prevents TF from occurring in Bhutan (refer to IO.2 and IO.9).

Exemptions, enhanced and simplified measures

2

85. Overall, the concept of a risk-based approach (RBA) remains at the nascent stage of understanding and implementation.

86. Higher or lower risks sectors or entities have not been identified. The exception is the RMA's decision to exempt a 15 persons micro cooperative from AML/CFT measures based on a simple risk assessment.

87. The AML/CFT Regulations provide for a risk based approach but there has been no implementation by FIs or DNFBPs. On the contrary, FIs display a nascent understanding of the concept of a RBA and their ML/TF risks.

Objectives and activities of competent authorities

88. Overall, most competent authorities lack clear objectives and activities on AML/CFT. The BLO, FIU and ACC are the three competent authorities that have objectives and activities that seek to address ML/TF risks, even in the absence of documented, national AML/CFT policies.

89. *Terrorism and TF:* The BLO has undertaken extensive activities to coordinate Bhutan's measures to disrupt and prevent IIGs and RGs from entering Bhutan. Activities are described under IO.2 and IO.9 and primarily relate to disruption and prevention through cross border coordination and cooperation with India. These efforts have been ongoing for more than a decade, and have evolved to reflect the reduced risks from RGs and IIGs.

90. *ML:* LEAs have not sufficiently prioritised ML associated with key categories of predicate offences in keeping with Bhutan's risk profile. The ACC conducted ML investigations that led to two convictions in 2008. Since then there has only been one ML investigation, also conducted by the ACC, which was not prosecuted for ML. The ACC has continued to focus on the predicate offence and confiscation of direct proceeds (refer IO.8).

91. Other LEAs are primarily focused on the major predicate activities such as drugs, fraud, and smuggling and stolen property. However, there have been no ML investigations or confiscations, except for instruments used in criminal activities and contraband products such as non-prescription pharmaceutical goods and tobacco (prohibited substance) smuggled into Bhutan (refer to IO.8).

92. *Supervision:* The FIU issued the current AML/CFT Regulations in November 2015 and four AML/CFT guidelines in 2014. However, there have been no AML/CFT offsite or onsite supervision activities by the RMA or any other supervisory body.

National coordination and cooperation

93. Bhutan has established the National Coordination Committee (NCC) under the authority of the RMA, which is the designated authority responsible for national AML/CFT policies.

94. The NCC membership and Terms of Reference (TOR) allow the FIU, LEAs, supervisors and other relevant competent authorities to cooperate and coordinate on the development and implementation of AML/CFT policies and related activities. The FIU acting as the secretariat for the NCC has taken the lead on recent policy developments, for example, the AML/CFT Regulations and draft national strategy and action plan. Competent authorities have focused their coordination

and cooperation activities on preparing the NRA and also reviewing legislations and regulations ahead of the mutual evaluation.

95. There is, however, limited NCC coordination of operational level activities on ML and TF.

96. Bhutan has sound domestic coordination mechanisms for terrorism, border management and law enforcement that operate at the central level through the Security Coordination Meeting and at the district level primary through the BLO.

97. The BNCA operates as a coordination agency for drug related policy and operational issues and is mandated to develop appropriate measures to control and prevent drug related ML

98. The FIU takes the lead in AML/CFT coordination but there is limited cooperation between the FIU and the ACC and with AML/CFT supervisors.

99. Coordination on PF is absent.

Private sector's awareness of risks

100. Although the Bhutan Chamber of Commerce and Industry, and Financial Institution Associations of Bhutan are members of the NRAWG, there seems to have been limited consultation with private sector stakeholders in the preparation of the NRA, and most of the REs interviewed during the on-site indicated limited involvement in the NRA process thus far. This is partly due to the fact that NRA work to date has focused on assessing ML/TF threats and not sectoral vulnerabilities. The NRA process is ongoing, and authorities did indicate that the NRA, once completed, will be disseminated to all reporting entities and made available to the public. Nevertheless, the ACC in implementing the NIACS has conducted awareness raising with the private sector.

Overall Conclusion on Immediate Outcome 1

101. **Bhutan has a low level of effectiveness with Immediate Outcome 1.**

CHAPTER 3. LEGAL SYSTEM AND OPERATIONAL ISSUES

Key Findings and Recommended Actions

Key Findings

IO.6

- The FIU conducts limited operational analysis and no strategic analysis. The lack of skilled resources and capacity, poor STR reporting, limited use of LEA information and a lack of targeted FIU analysis products all contribute to the very limited supply and demand of the FIU's intelligence products.
- Financial intelligence is not being used to initiate ML/TF or predicate crime investigations. Only the Anti-corruption Commission (ACC) has used FIU information, which was for corruption related investigations. The ACC also received five spontaneous disseminations from the FIU in 2014 that did not lead to any investigations. There has been no other use of FIU or other financial intelligence.
- Operational cooperation and exchange of financial intelligence is limited to between the FIU and ACC. There has been no financial intelligence information exchange between the FIU and other LEAs or foreign counterparts, notably the police, customs, supervisors and Indian counterparts.

IO.7

- Only the ACC has conducted ML investigations. The police have not conducted any ML investigations because of a lack of policy directive and resources, although its enabling legislation permits it to investigate any criminal act including ML.
- Bhutan has only conducted two ML investigations to date, both were corruption related and undertaken by the ACC. One ML investigation led to two ML convictions in 2008. The second investigation in the period under review, did not lead to a ML prosecution because section 76 of the Anti-corruption Act (ACA) precludes the prosecution of both the predicate offence and associated ML offence.
- Sanctions applied in Bhutan's two ML convictions cast doubts on the dissuasiveness of sanctions in the ACA and Penal Code. There is scope for the offender to use the proceeds of crime to pay a fine in lieu of a custodial sentence for a non-felony offence.
- In addition to the deficiency in the ACA noted above, there are significant technical deficiencies in the ML offence in the Penal Code (refer to R.3).

IO.8

- The police and customs do not have a policy directive to pursue proceeds of crime, and any proceeds of crime investigation does not seem to be part of the overall investigative strategy.
- The proceeds of crime are not effectively confiscated in Bhutan, with confiscations essentially limited to direct proceeds of corruption, instrumentalities and contraband. Proceeds are only confiscated upon conviction via restitution orders, and it is unclear if all restitution orders are being realised.
- The ACC is the only LEA pursuing confiscation; however, comprehensive statistics were not

provided to the assessment team.

- The lack of statistics provided by LEAs, besides the ACC, suggests that the proceeds and instrumentalities of the other four major ML threats are not being confiscated.
- There have been some confiscations of non-declared currency at Bhutan's single international airport and border-crossings with India.

Recommended Actions

IO.6

- The FIU should revise and update its procedures to enhance its operational analysis and to conduct strategic analysis. These procedures should maximize the use of accessible and available law enforcement and other information.
- Include a clear provision in the proposed AML/CFT Act to facilitate the exchange of information between FIU and other agencies. The FIU should enter into information exchange instruments with domestic counterparts (police, customs and supervisors) to facilitate the exchange of information and the spontaneous dissemination of FIU intelligence products.
- Recruit additional FIU staff, with appropriate skills, and train ongoing FIU staff to conduct strategic analysis and operational analysis that is targeted to the needs of LEAs.
- As recommended under IO.7, Bhutan should recruit additional LEA staff and conduct appropriate training to enhance LEAs ability to use financial intelligence to initiate and investigate ML/TF and predicate offences.
- Bhutan should establish and enhance the exchange of information/financial intelligence with foreign counterparts; particularly India and Thailand (refer to IO.2).
- Bhutan should provide outreach and further guidance to reporting entities (REs) on STR and CTR reporting requirements.

IO.7

- Adopt as part of the national AML/CFT policy, a clear directive to investigate ML. This should include the development of internal policies, procedures and mechanisms for more effective resource allocation, cooperation and coordination. (refer to IO.1)
- Enact the proposed AML/CFT Act to address any deficiencies identified in the ML offence (refer R.3) and amend the ACA to remove the impediment to prosecute the predicate and associated ML offence. There is scope for the offender to use the proceeds of crime to pay a fine.
- Ensure parallel sanctions are available for ML and predicates and consider a policy to reduce the flexibility of sanctions applied to persons convicted of ML.
- Designate the police to investigate non-corruption based ML.
- Recruit additional LEA staff with appropriate educational background (e.g. accounting and finance) to undertake financial investigations related to ML.
- Provide targeted ML training to LEA staff, prosecutors and the judiciary to enhance their understanding of ML investigation and prosecution issues.
- Utilise ACC forensic accountants within specialist teams rather than as case officers for predicate

offence investigations.

10.8

- Adopt as part of the national AML/CFT strategy a clear policy and operational commitment to prioritise proceeds of crime confiscation, and strengthen institutional frameworks required to support effective systems that address proceeds of crime confiscation in accordance with Bhutan's ML/TF risks. This should include development of internal procedures and mechanisms for more effective resource allocation, cooperation and coordination.
- Provide targeted proceeds of crime confiscation training to LEA staff, prosecutors and judiciary to enhance understanding of AML/CFT issues and awareness of Bhutan's system generally, as well as to increase the technical skills required to perform operational functions effectively.
- Issue policy and provide training to allow for confiscation of indirect proceeds.
- Implement specialist teams in LEAs to conduct financial investigations including proceeds of crime investigations.

102. 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 ML/TF)

STRs received and requested by competent authorities

Reports Received

103. The FIU's ability and capacity to produce good quality intelligence products is negatively affected by the low quantity and poor quality of the STRs/CTRs received and non-uniform reporting. There has been no STR reporting from DNFBPs and the non-banking financial sector due to no implementation of the AML/CFT Regulations, and even within the banking sector some banks have not submitted STRs in the last two years (refer to Table 2). This is inconsistent with the assessment teams understanding of Bhutan's ML risk profile.

104. Furthermore, there seems to have been some confusion as to when banks should submit an STR. During the onsite, the FIU informed the assessment team that in 2014 the vast majority of STRs were submitted based on frequency and threshold of transactions and not suspicion of ML or TF. This caused the spike in the number of STRs in 2014 as seen in Table 2. The FIU did provide banks with additional guidance on when to submit an STR, however, STR submissions seem to have all but ceased since this guidance was provided.

105. The FIU does receive Other Transaction Reports, for example, cash and non-cash transactions above Nu.500,000 (approx. USD7,500) and all international transactions, which are used in the FIU's analysis. There has been no reporting from DNFBPs and only limited non-bank reporting of Other Transaction Reports.

106. The FIU receives cross-border declarations and information on non-declarations from Paro International Airport, and also collects available and obtainable law enforcement information but this is not in a systematic or regular manner.

107. No financial intelligence has been received from supervisors.

Table 2: Reports received by the FIU

Reports received by FIU	2011	2012	2013	2014	2015
STR (total)	0	7	4	52	1
- banks	0	7	4	52	1
- non-bank financial sector	0	0	0	0	0
Other Transaction Reports	0	0	20,691	49,193	43,550
- banks	0	0	20,691	48,591	43,193
- non-bank financial sector	0	0	0	602	357
Customs Declaration	0	0	0	4	0
Dissemination to LEAs	0	0	0	5	0

Reports Requested

108. The FIU has indicated that its STR operational analysis process includes seeking additional information from the bank that reported the STR and, if needed, other banks for additional information. On average, for each STR received, the FIU has approached FIs three times to seek further information.

109. The FIU has requested additional information from banks as a result of the ACC's requests to the FIU on 40 occasions between December 2014 and February 2015. These requests were made directly to the FIU in accordance with the FIU and ACC MOU.

Use of financial intelligence and other information to support operational needs (6.1 and 6.3 together)

110. Financial intelligence has not been used to initiate ML/TF or predicate crime investigations. LEAs use of FIU products has been limited to the ACC's 40 requests to the FIU. In these cases, the FIU provided information held in its database and/or obtained additional information from FIs. The ACC provided no evidence on the utility of this information, although it did advise the assessment team that the information received assisted in its corruption investigations, including in the decision to formally request additional information from FIs. Bhutan provided no evidence of other LEAs requesting or using information from the FIU.

111. In the period under review, the FIU only made five spontaneous disseminations to the ACC in 2014, which did not lead to any investigations. These disseminations involved limited analysis: STR information was analysed in combination with Other Transaction Reports, KYC information, account statements and publicly available criminal record data. The ACC advised the assessment team that it reviewed the reports and assessed them to be non-corruption related. No further action was taken and the reports were not referred to the police for possible action, despite provision under Article 9(1) of the ACA, which allow the ACC to disseminate intelligence and information to other competent authorities.

112. The FIU has not conducted strategic analysis due to a lack of skilled resources and capacity. At the time of the onsite only two full time officials are working in the FIU with one part time IT official assigned from the RMA to provide IT support.

113. Overall, the following factors contribute to the current situation: (i) FIU operational and strategic capability is severely undermined by the lack of skilled resources and capacity, (ii) poor quality and low quantity of STR reporting, (iii) uptake of financial intelligence is hampered by a lack of FIU products targeted to LEAs needs, and (iv) as discussed in OI.7, LEAs lack skilled resources and capacity to use financial intelligence and undertake financial investigations.

Cooperation and exchange of information/financial intelligence

114. While the FIU, through the NCC, has good policy cooperation, operational-level cooperation and exchange of information is limited. This is due to lack of MOUs in place between the FIU and other agencies to enable information exchange.

115. Operational financial intelligence has been exchanged through the MOU between the FIU and ACC. This exchange has been limited to direct requests from the ACC and the five spontaneous disseminations, and appears to be via unsecure means and does not seem to include a feedback mechanism for improving information/financial intelligence exchange.

116. Bhutan provided limited evidence of FIU operational cooperation and exchange of information/financial intelligence with other LEAs. As noted, the FIU only has an MOU with the ACC.

117. Bhutan provided very limited evidence of FIU operational cooperation and exchange of information/financial intelligence with supervisors. However, up until a week before the onsite, the FIU was the designated AML/CFT supervisor not the FRSD and FED, and as discussed in IO.3 no AML/CFT supervision has been undertaken.

118. Bhutan has not exchanged any information/financial intelligence with foreign counterparts.

Overall Conclusion on Immediate Outcome 6

119. **Bhutan has a low level of effectiveness with Immediate Outcome 6.**

Immediate Outcome 7 (ML investigation and prosecution)

ML identification and investigation

120. ML investigations are not being pursued as a policy priority in Bhutan. As indicated previously, there is no comprehensive, national AML/CFT policy informed by ML/TF risks, nor are there internal LEA directives or guidance on ML investigations.

121. The institutional framework for ML investigation is not fully developed. Under their respective acts, the ACC and BNCA are the designated authorities to investigate ML; however, the BNCA only acts as a coordinating agency for drug related matters and does not undertake investigations. Based on onsite discussions, the ACC confirmed that it is the designated authority for the investigation of corruption related ML. The police advised that, while not designated, in

accordance with its act, it can investigate any criminal offence in the Penal Code including ML, and it has the authority to investigate all non-corruption types of ML. The police are not currently undertaking ML investigations because of a lack of policy directive and capacity.

122. Parallel financial investigations are conducted on a very limited basis, and those that are, are mostly related to corruption matters. LEAs on occasion obtain records from financial institutions to assist in their predicate offence investigation. And, in some instances, the ACC uses the powers of the RMA and FIU to obtain financial intelligence; but such inquiries primarily relate to determining whether a predicate offence has been committed.

123. No ML investigation has been initiated pursuant to STRs. The FIU has disseminated five STRs to the ACC but none led to ML investigations. As discussed above, the ACC advised during the onsite that it reviewed the five STRs and assessed them to be unrelated to corruption. No further action was taken and the STRs were not referred to the police for possible action. The lack of a MOU between the ACC and police, and between the FIU and police may be the reason for non-referral.

124. The ACC conducted one ML investigation in the period under review. The ACC advised that this case was submitted to the OAG but was not prosecuted due to section 76 of the ACA. Section 76 of the ACA places a legal obstacle on the prosecution of an offender for both corruption and associated ML. Prior to the introduction of the ACA in 2011, the ACC in 2008 initiated two ML prosecutions related to the same funds under the Penal Code. The two ML prosecutions resulted in a two convictions for ML with both offenders receiving concurrent sentencing with other offences committed.

125. The sentencing for ML acts as another disincentive to pursue ML investigations. In line with the concurrent sentences imposed in the two ML convictions in 2008, during the onsite the OAG advised that any sentence imposed for a ML offence, under the ACA or Penal Code, would be concurrent with the sentence for the predicate offence.

126. Technical deficiencies in the Penal Code also impede the investigation and prosecution of ML. As discussed in Recommendation 3, the Penal Code offence does not contain some elements that must be criminalised under the Vienna and Palermo Conventions, namely conversion, disguise and use of the proceeds of crime.

127. The police and ACC do not have the resources to conduct financial investigations. For example, the ACC has only two forensic accountants, one of which is currently undergoing long-term studies in the US. Furthermore, forensic accountants within the ACC are not utilised as a specialist resource, but due to staff shortages are utilised as case officers. The case officer of any corruption investigation is also solely responsible for the conduct of any financial and/or proceeds of crime investigation. Information obtained during the onsite indicates that some case officers are more advanced in their financial investigation skills than others, which results in differing outcomes. The police do not have forensic accountants.

128. Bhutan has endeavoured to address its lack of skilled resources and capacity, in law enforcement, through reaching out to the international donor community. For example, the Basel Institute of Governance recently conducted a financial investigation and asset recovery training programme in Bhutan.

129. Overall, the following factors contribute to the current situation: (i) impediments and gaps in Bhutan's ML offences, (ii) lack of prioritisation of ML investigations due to no national Anti-money laundering and counter-terrorist financing measures in Bhutan – 2016 @ APG 2016

AML/CFT policy, internal directives or guidance on ML investigations, (iii) lack of understanding of what constitutes ML, (iv) lack of skilled resources and capacity, and (v) prioritization of predicate investigation and prosecution, as it is quicker and less challenging given existing skills and resources.

3

Consistency of ML investigations and prosecutions with threats and risk profile, and national AML policies

130. The ACC has taken some initial steps towards addressing Bhutan's key corruption related ML risk as demonstrated by the 2008 prosecutions for ML and the 2014 ML investigation. As discussed above, further efforts are impeded by a lack of prioritisation of ML investigations and the technical deficiency in the ACA.

131. There has been no investigation of non-corruption related ML.

132. Bhutan is addressing its key ML threats by targeting the predicate crime. The five major proceeds generating predicate crimes are generally investigated (see Table 3), and prosecuted and convicted (see Table 4) as it is quicker and less challenging given existing skills and resources. There are more cases of illicit trafficking and smuggling in stolen artefacts and non-prescription pharmaceutical substances than corruption; however, the latter generates higher criminal proceeds.

Table 3: Cases Received by OAG

Offences	Number of offences		
	2012	2013	2014
Cases received from Police			
- Battery	98	37	56
- Burglary/robbery	103	130	151
- Murder/manslaughter/negligent homicide	35	40	23
- Illegal transaction of controlled substances/possession of controlled substances	44	84	144
- Tobacco smuggling/tobacco products	48	46	47
- Possession of stolen property	8	15	6
- Forgery, fraudulent cheque writing and deceptive practices	31	65	49
- Offence against Ku, Sung, Thuk Ten or Zung (artefact related offence)	18	43	144
- Illegal buying and selling of antique	12	3	1
- Gold smuggling/aiding and abetting	0	0	14
Cases received from ACC			
- Bribery	24	8	19
- Embezzlement	15	3	1
- Official Misconduct	13	3	10
- Tampering official documents	1	2	4
- Participation in an offence	0	0	4
- Misappropriation of Insurance fund	0	0	3
- Aiding and abetting	3	3	0
- Forgery	15	4	10
- Breach of contract	3	0	0

- Illegal mining and stone quarry	2	0	0
- Tax evasion	5	0	0

Table 4: Status of Cases Received By OAG

Status of Cases	2012	2013	2014
Total Cases Received	563	868	826
- Completed Cases	452	567	473
- On-going	94	254	284
- Under review	6	18	17
- Cases return	17	30	52

3

133. Bhutan has not demonstrated nor has it argued that the focus on predicate crimes has mitigated its ML risk.

Types of ML cases pursued

134. Authorities have only pursued self-laundering ML cases. In both the 2008 Samste ML mining case and the more recent 2014 case, the ACC identified instances of 3rd party involvement in laundering the corruption proceeds. In these cases, the third party person holding the assets relating to the corruption offence were charged with an offence of aiding and abetting and not ML, resulting in sanctions less than ML penalties.

135. The lack of successful 3rd party ML 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

136. Bhutan's two ML convictions in 2008, both of which related to the same funds, obtained and sentenced under the Penal Code, suggest sanctions applied seem dissuasive. In one case the defendant was convicted of laundering a total of Nu.1,200,000 (approx. USD18,000). The laundered funds were restituted to the state and the defendant was only sentenced for the substantive charges and not ML; total sentence: seven years imprisonment and restitution of Nu.47,844,281 (approx. USD717,500). In the second case the defendant was found guilty of ML but the sentence was downgraded to a misdemeanour with one year and six months concurrent sentencing with other charges for predicate offences.

137. Furthermore, where predicate crimes, including corruption, are prosecuted, and where the offence is a non-felony offence, the custodial sentence can be reduced to a fine. This reduces the deterrent effect of sanctions.

Other criminal justice measures are applied

138. As indicated above, there has been one instance where a ML investigation has been conducted but not prosecuted because of section 76 of the ACA (cannot prosecute the offender for both ML and predicate offence). This was not due to constitutional and fundamental principles of law. During the onsite, the OAG and the Chief Justice of the High Court confirmed that the inclusion of section 76 in the ACA, and resulting non-prosecution, was not due to constitutional or fundamental principles of law. Rather, its inclusion was due to an incomplete understanding of the

ML offence. The OAG advised of plans to amend the ACA and rectify any ambiguities in the Penal Code ML offence through the proposed AML/CFT Act.

Overall conclusion on Immediate Outcome 7

3

139. **Bhutan has a low level of effectiveness for Immediate Outcome 7.**

Immediate Outcome 8 (Confiscation)

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

140. The proceeds of crime or property of equivalent value are not being pursued as a policy priority in Bhutan. Asset tracing and provisional measures to freeze and seize property are not regularly undertaken by LEAs. Authorities have not given priority instructions to investigators to follow the money and take actions to locate and restrain property that might be subject to confiscation in predicate investigations. There is a draft AML/CFT strategy, which includes a clear commitment and prioritisation to confiscate the proceeds of crime and a requirement for policies/procedures to be established to trace, identify, freeze, and confiscate the proceeds and instrumentalities of ML and TF and their predicate offences. This strategy is scheduled to be in force after Bhutan completes its NRA.

141. The ACC's NIACS provides a policy framework for corruption related criminal activity. This strategy does not provide a comprehensive framework for the recovery of corruption related proceeds of crime, particularly indirect proceeds.

142. There is a National Drug Control Strategy; this strategy does not adequately provide a framework for the recovery of drug related proceeds of crime as it is not focused on law enforcement activities.

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

143. Confiscations by the ACC and police are predominately limited to direct proceeds of corruption, instrumentalities of crime and contrabands such as non-prescription pharmaceutical drugs. No statistics were provided on instruments or proceeds of crime.

144. The ACC has seized and recovered assets, via restitution orders (an order by the court to repay the value of offending), that have been directly purchased with corruption proceeds and that are easily identifiable. It seems that corruption related confiscation only occurs upon conviction, via restitution orders, and only for direct proceeds and instrumentalities of crime.

145. The following information and statistics highlight Bhutan's successes and challenges in respect to confiscation:

- Between 2011 and 2015, the ACC investigated 47 corruption cases: 27 cases are pending, or still under investigation; 14 cases are in various stages of prosecution with the OAG and 10 cases have been prosecuted. In the same time period the ACC obtained restitution orders on 12 cases for land, cash and other assets to a total value of Nu.320,254,218 (approx. USD4,803,813). Of the remaining cases investigated and prosecuted by the ACC,

no details have been provided on amounts restituted or recovered/forfeited, and Bhutan has not provided data on receipt of funds.

- Restitution orders also do not appear to be consistent with the level of offending allowing convicted offenders to profit from their crimes. In one case presented to the assessment team, the offender was required to pay a restitution order for the value of the offending (Nu.1,100,000; approx. USD16,500). The offender had purchased property with the proceeds, which was sold to pay the restitution order. Due to a rise in the property value, after payment of the restitution order, the offender was left with a profit of Nu.900,000 (approx. USD13,500).
- Bhutan does not have an authority responsible for the administration of restitution orders. In its 2014 annual report the ACC highlights that the execution of money and land based restitution orders is a challenge, and examples provided to the team during the onsite demonstrate that in some cases restitution orders may not lead to receipt of property by the State, or restitution orders may take several years to collect.

146. There are a number of fundamental factors inhibiting implementation of a broad based and effective confiscation regime, including gaps in the legal and institutional framework as highlighted in R.4, R.30 and R.31. As discussed in Recommendation 4, the Penal Code only provides for conviction based confiscation of instrumentalities, proceeds and benefits derived from an offence. It is unclear why indirect proceeds are not confiscated, because the Penal Code provides for “benefits derived”. The ACA provides for conviction and to a limited extent civil based confiscation of the proceeds of corruption or instrumentalities of corruption. However, as noted above, confiscation is pursued only for direct proceeds and upon conviction.

147. A number of other factors contribute to the current situation, including; (i) lack of prioritization by LEAs, (ii) lack of skilled resources to conduct complex financial investigations required for the investigation of indirect proceeds, and (iii) institutional infrastructure to ensure restitution orders are paid.

148. There have been no instances or cases of foreign proceeds confiscated, nor repatriation of assets laundered abroad. This is consistent with the risk profile of Bhutan, as described in IO.1; illicit proceeds are mostly generated and laundered domestically.

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

149. Customs has some experience of confiscating cash and other goods that have moved across Bhutan’s border without proper declaration. The legal framework for the reporting of currency is adequate, with reporting of amounts of greater than USD10,000 and equivalent required. A declaration form is required to be completed at Paro International Airport, and recently at the four land border crossings with India. Previous to the dedicated cash declaration form at border crossings, persons crossing the border were required to make a declaration of goods including currency and negotiable instruments in their baggage. Table 5 shows the total value of cross-border seizures for 2012 to 2014. The figures include the estimated value of non-currency seizures and the value of cash/BNI seizures (greater than \$10,000 detected and not declared which are automatically forfeited).

Table 5: Cross-border Seizures

Location	2012	2013	2014
Gelephu (currency and non-currency)			
# of cases	49	9	12
value	Nu.973,561 (approx. USD14,603)	Nu.36,980 (approx. USD554)	Nu.1,639,905 (approx. USD24,598)
Samtse (currency and non- currency)			
# of cases	8	4	12
value	Nu.193,330 (approx. USD2,899)	Nu.43,550 (approx. USD653)	Nu.491,601 (approx. USD7,374)
Samdrup Jongkhar (currency and non-currency)			
# of cases	6	9	0
value	Nu.53,0960 (approx. USD796)	Nu.51,646 (approx. USD774)	Nu.0
Phuentsholing (currency and non-currency)			
# of cases	241	93	163
value	Nu.9,377,599 (approx. USD140,663)	Nu.6,178,572 (approx. USD92,678)	Nu.8,152,018 (approx. USD122,280)
Paro Airport (currency and non-currency)			
# of cases	79	55	18
value	Nu.4,352,928 (approx. USD65,293)	Nu.90,688 (approx. USD1,360)	Nu.48,338,543 (approx. USD725,078)
Gold			4 cases, value of Nu. 36,000,000 (approx. USD540,000)

Consistency of confiscation results with ML/TF risks and national AML/CTF policies and priorities.

150. While Bhutan's has some confiscations in line with its primary ML risk of corruption, the lack of statistics provided by LEAs, besides the ACC, suggests that the proceeds and instrumentalities of Bhutan's other four major ML threats are not being confiscated. Furthermore, the degree to which corruption related confiscations reflect Bhutan's corruption ML risk remains unclear as no data was provided on receipt of property by the State.

151. Bhutan has not convicted any type of terrorism or TF activity in the period under review and therefore no TF confiscations have occurred. This is not inconsistent with Bhutan's TF risks as discussed in Chapter 1.

Overall conclusion on Immediate Outcome 8

152. **Bhutan has a low level of effectiveness for Immediate Outcome 8.**

CHAPTER 4. TERRORIST FINANCING AND FINANCING OF PROLIFERATION

Key Findings and Recommended Actions

Key Findings

IO.9

- Bhutan has investigated but not prosecuted TF because the investigations of terrorist incidents (the last in 2012) concluded that the financing (i.e. self-financing) occurred outside of Bhutan. It has prosecuted/convicted persons for terrorism under section 329 of the Penal Code in the early 2000s when the risk terrorism and TF was higher.
- Authorities lack the skilled resources and capacity to carry out complex TF investigations. To date, the police have conducted limited TF investigations with the last investigation being focused on the self-financing of IEDs used by RGs in 2012 (last reported activity). However, given the level of complexity and self-financing nature of those cases, the capacity gap did not have a significant impact on the findings of those investigations.
- Significant deficiencies in the TF offence (section 329 of the Penal Code) as detailed under Recommendation 5 cast doubts on the potential effectiveness of the criminal sanctions.

IO.10

- There is no framework for implementation of UNSCR 1373, which is a fundamental deficiency given the risk posed by IIGs and RGs.
- The AML/CFT Regulations introduced in November 2015 only cover, to a very limited degree, UNSCR 1267 freezing of funds for reporting entities (REs). Banks are the only FIs conducting any form of implementation, which is limited to checking manually the Consolidated List for any Bhutanese names. There is no systematic screening against customers or transactions due to the absence of automated transaction monitoring system. At the time of the onsite, no accounts or transactions had been frozen.
- While Bhutan has not conducted a formal risk assessment, the NPO (referred to as Civil Society Organisations) sector is small, and the assessment team considers the TF risks to be low. Bhutan's 47 domestic Civil Society Organisations (CSOs) undergo a mixed financial, compliance and performance audit by the Royal Audit Authority, and while not registered under the CSOA, all foreign CSOs have MOUs with a Government agency that acts as its technical collaborator and monitors the its activities.

IO.11

- Bhutan has significant gaps in its legal/regulatory frameworks for PF.
- The AML/CFT Regulations only cover to a very limited extent the freezing of funds by REs for purposes of UNSCR1737. These preventive measures were introduced in November 2015, so there is very limited awareness or implementation by REs and supervision has not commenced.

Recommended Actions

IO.9

- Expedite and incorporate a TF offence, in compliance with Recommendation 5, into the proposed

new AML/CFT Act or another law.

- Develop and implement a counter terrorism and CFT strategy (refer IO.1).
- Designate the police to undertake TF investigations and implement specialist teams within LEAs to investigate TF and conduct related financial investigations.
- Train LEAs, prosecutors and the judiciary in TF and related financial investigations.
- Continue to enhance and strengthen Bhutan-India cooperation on TF (refer IO.2).

IO.10

- Provide in its proposed AML/CFT Act a complete legal framework for its targeted financial sanctions, particularly in relation to UNSCR 1373 given the external TF risk from IIGs and RGs. Once completed, Bhutan should implement comprehensive procedures and measures to give effect to targeted financial sanctions obligations and to augment provisions under the AML/CFT Regulations.
- Provide clear direction and outreach regarding targeted financial sanctions to the private sector.
- Conduct a comprehensive review of the NPO sector focusing on its risk from terrorist abuse, and based on this review provide appropriate outreach and targeted monitoring.

IO.11

- Legislate for a comprehensive legal framework for targeted financial sanctions against proliferation of weapons of mass destruction (WMD). Once completed, Bhutan should implement comprehensive institutional frameworks, procedures and measures to give effect to targeted financial sanctions obligations.
- Provide clear direction and outreach regarding PF, and support FI implementation of their obligations.

153. 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)

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

154. Bhutan has a sound understanding of its TF risks (refer IO.1). As discussed in Chapter 1, terrorism and TF related issues in Bhutan are sub-regional with no reported or identified instances of Al Qaeda, Taliban or ISIL related activities in Bhutan. Bhutan's TF risk is self-financing associated with external threats arising from: (i) RGs located outside of Bhutan that in the past have crossed into Bhutan's porous border areas, through India, to conduct terrorist attacks - last incidents in 2012, and (ii) IIGs that operate in the North Eastern Region of India and move into Bhutan's porous border areas to evade Indian authorities. There is no evidence to suggest these groups are currently operating from Bhutan's porous border areas, or to suggest these groups use Bhutan's banking system and authorities believe there is no support for RGs or IIGs from within

Bhutan. Therefore, there is only a TF risk (self-financing) in Bhutan if, and when individuals associated with these groups enter into the country.

155. As explained under IO.2, to mitigate its self-financing TF threat/risk, Bhutan has implemented an effective three tier law enforcement and intelligence cooperation mechanism with India. This mechanism operates at the secretary, state and district level and operational level and is actively utilised to counter IIG and RG activities and border related crime. During the on-site, Bhutan provided examples of where Indian counterparts provided real-time intelligence to Bhutan on possible IIGs movements into Bhutan's porous border areas. Based on this intelligence, Bhutanese authorities including the police, Bhutan Army and the Department of Forest deployed personnel to counter the potential threat. The BLO and the police credit this cooperation mechanism for prevention of terrorism incidents in Bhutan.

156. In addition, as noted in Chapter 1, Bhutan maintains tight control of capital movements into and out of the country, with the financial sector predominately government owned or controlled, and subject to essentially largely compliant/complaint AML/CFT regulations, although implementation is lacking (refer IOs 3 and 4). Non-resident foreign nationals are prohibited from opening bank accounts, and DNFBP sectors are at a very nascent stage of development.

157. Bhutan has mobilised its criminal justice system, when required, despite investigative deficiencies and deficiencies in its TF offence. As mentioned, Bhutan's last terrorism incidents were in 2012 in the porous border areas and included the use of seven small IED detonations causing several injuries and a shooting causing one death. Despite deficiencies in its TF offence, the police, with support from the BLO as the lead coordination agency including for cooperation with India, conducted investigations into the self-financing and material support aspects of these incidents including type and cost of IEDs, availability of IED materials and potential support from within Bhutan. Authorities concluded these incidents were carried out by just a few individuals using materials sourced from outside of Bhutan through self-financing; the materials used were inexpensive and not easily available in Bhutan. There was no evidence of TF from within Bhutan.

158. These inquiries did not however extend to the use of financial intelligence for in-depth TF investigations aimed at identifying the groups' networks, or funds external to Bhutan's territory, and as mentioned in IO.7, Bhutan lacks the capacity to conduct complex financial investigations. However, given the self-financing nature of the TF risk and the fact RGs are not complex or highly organised groups, advance financial investigations skills were not required. Therefore, in the team's view, investigative deficiencies and technical deficiencies with the TF offence did not fundamentally impact on Bhutan's ability to investigate these cases.

159. The incidents in 2012 all occurred in Bhutan's porous border areas where authorities suspect individuals involved most likely moved quickly back across Bhutan's border with India. In the team's view, because no individuals were identified for TF prosecution (based on investigations) technical deficiencies with the TF offence have not had a fundamental impact on effectiveness, as they did not undermine the investigations or any potential prosecutions. Furthermore, as discussed below, Bhutan has convicted persons under section 329 (terrorism offence) of the Penal Code in the early 2000s.

Effectiveness, proportionality and dissuasiveness of sanctions

160. In the absence of any TF case for prosecution, Bhutan has demonstrated in the past that it is willing and able to use its criminal justice system to sanction individuals under section 329 of (terrorism offence) of the Penal Code. While there is no stand-alone TF offence, Bhutan did convict persons under section 329, which includes a limited provision relating to the financing and planning of terrorist acts, in the early 2000s and sanctions applied were proportionate and dissuasive.

TF investigation integrated with - and supportive of - national strategies

161. Police and BLO counter terrorism, and TF investigation, activities are closely integrated with the Bhutan's national security priorities. Bhutan does not have a national counter-terrorism strategy, but the BLO explained to the assessment team during the onsite that its priorities and activities over the last decade are targeted at countering external threats to Bhutan's national security, principally from IIGs and RGs. The activities of Bhutanese authorities have focused on disruption via cooperation and intelligence sharing between BLO, customs, police, Department of Immigration and other district authorities, and coordination with Indian counterparts in order to stop RGs and IIGs from entering into Bhutan.

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

162. Bhutan has undertaken other steps to disrupt potential TF activities as noted under core issue 9.1. In line with the nature of Bhutan's TF risk, Bhutan places a strong focus on disrupting or preventing terrorist acts or TF before it occurs. Bhutan's activities are primarily aimed at stopping individuals that may pose a TF self-financing risk from entering Bhutan. However, this is not in the context of alternative measures in lieu of TF prosecution when it is not practical, as these preventive/disruptive activities occur, as noted, before persons commit any TF activities in Bhutan.

Overall conclusion on Immediate Outcome 9

163. Despite the gaps identified in its TF offence, the terrorism and TF investigation component of Bhutan's system is functioning coherently commensurate with Bhutan TF risks, and in combination with Bhutan's international cooperation with India, Bhutan is mitigating its self-financing TF risk to some extent.

164. **Bhutan has a moderate level of effectiveness for Immediate Outcome 9.**

*Immediate Outcome 10 (TF preventive measures and financial sanctions)**Implementation of targeted financial sanctions for TF without delay*

165. There are significant gaps in Bhutan's legal framework on targeted financial sanctions against terrorism. Bhutan's promulgation of revised AML/CFT Regulations in November 2015 provide only limited measures to give effect to some aspects of targeted financial sanctions against terrorism. The AML/CFT Regulations only apply to REs and only cover, to a very limited degree, freezing of funds for entities included on the consolidated lists pursuant to UNSCR 1267 and 1988.

166. Asset freezing obligations for UNSCR 1267 in the AML/CFT Regulations do not include provision of funds or financial services to designated persons and do not extend to the scope of funds and associated persons required under the standards. The regulations are focused on REs and do not set out mechanisms or procedures for access to funds for basic and extraordinary expenses, and the protection of bona fide third parties.

167. The Ministry of Foreign Affairs (MFA) disseminates UNSCRs to competent authorities within Bhutan. The MFA role does not extend to proposing persons or entities to the UNSCR 1267/1989 Committee for designation.

168. Bhutan has not implemented a UNSCR 1373, either to establish a designation process or require comprehensive freezing requirements for designated persons and entities. Given Bhutan's TF risk profile, the assessment team considers this to be relatively more important.

169. Bhutan's communication of UNSCR 1267 designations to FIs over the last five years has been inconsistent, at best. This was more for voluntary compliance as there were no enforceable measures in place. However, with the introduction of the revised AML/CFT Regulations, FIs and DNFBPs are required to maintain their own Consolidated List based on direct monitoring of the relevant UNSCR website.

170. As discussed in IO.4, FIs displayed a limited understanding of their obligations with regard to targeted financial sanctions. Banks are the only FIs conducting any form of implementation, which is limited to checking manually the Consolidated List for any Bhutanese names. There is no systematic screening against customers or transactions due to the absence of automated transaction monitoring systems. At the time of the onsite, no accounts or transactions had been frozen.

171. Bhutan provided no evidence to show authorities monitor REs with regards to their targeted financial sanctions obligations. As discussed in IO.3, no AML/CFT supervision has been conducted.

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

172. Bhutan has two types of domestic NPOs (referred to as Civil Society Organisations): Public Benefit Organisations (PBOs) and Mutual Benefit Organisations (MBOs). At the time of the onsite there were 12 MBOs and 35 PBOs operating in Bhutan. There are also approximately 10 foreign Civil Society Organisations (CSOs) operating but unregistered under the CSOA.

173. Bhutan's understanding of the risk TF poses to CSOs is limited. Bhutan is yet to complete its first NRA, which will include a section on CSOs, and it is yet to undertake a comprehensive review of the CSO sector and its risks. No TF related outreach has been conducted.

174. While Bhutan has not conducted a formal risk assessment, the NPO sector is small in Bhutan and the assessment team considers the TF risk to CSOs to be low. The 10 foreign CSOs operating in Bhutan are well known international NPOs from European and Western countries that have been operating in Bhutan for many years, and are well known to authorities. Furthermore, through the MFA, all foreign CSO have established a MOU with a Government agency that acts as its technical collaborator and activity monitor.

175. Authorities and the assessment team believe that fund raising by CSOs or Religious Organisations (ROs) in Bhutan is exclusively for good works within Bhutan, and not for any offshore activities.

176. The CSO Authority maintains regulatory oversight of domestic CSOs, but does not conduct its own onsite inspections because of resource constraints. Instead, the Royal Audit Authority (RAA) conducts a mixed financial, compliance and performance audit of domestic CSOs. Selection is risk-based, taking into consideration budget and expenditure outlay, vulnerabilities, perceived risk and other factors; approximately 10-15 CSOs are audited each year.

177. There are 96 ROs registered with The Chhoekey Lhentshog, which maintains updated information on religious organisations deregistered or suspended on its website.

Deprivation of TF assets and instrumentalities

178. At the time of the onsite, no FIs have had any positive matches against the Consolidated List, and no accounts or transactions have been frozen. Given the lack of screening undertaken, the fact that there have been no matches may be due to poor implementation rather than confirmation of no activities – although no matches would not be inconsistent with Bhutan's TF risks.

179. The effectiveness of freezing and confiscation in the context of terrorism investigations and prosecutions is considered at IO.8.

Consistency of measures with overall TF risk profile

180. Bhutan's lack of implementation of targeted financial sanctions for UNSCR 1373 is inconsistent with its TF risks. Bhutan lacks the ability to identify and designate IIGs and RGs under UNSCR 1373.

181. The assessment team considers the risk TF poses to CSOs and ROs in Bhutan to be low because of the following reasons; (i) foreign CSOs operating in Bhutan are well known international NPOs from European and Western countries, (ii) there is no evidence linking Bhutan's TF threats to CSOs/ROs, (iii) authorities believe there is no support for IIGs and RGs from within Bhutan, and (iv) Bhutan is not an important regional financial centre. Notwithstanding, Bhutan has not taken any material steps to safeguard these sectors from TF abuse.

Overall conclusion on Immediate Outcome 10

182. **Bhutan has a low level of effectiveness for Immediate Outcome 10.**

Immediate Outcome 11 (PF financial sanctions)

Implementation of targeted financial sanctions related to proliferation financing without delay

183. There are significant gaps in Bhutan's legal framework relating to targeted financial sanctions against WMD proliferation. Bhutan's promulgation of revised AML/CFT Regulations in November 2015 provide only limited measures to give effect to some aspects of targeted financial sanctions against WMD proliferation and only in relation to UNSCR 1737 against Iran. Sanctions against the DPRK are not included. The AML/CFT Regulations only apply to REs and only cover, to

a very limited degree, freezing of funds for entities included on the consolidated lists pursuant to UNSCR 1737.

184. Asset freezing obligations for UNSCR 1737 in the AML/CFT Regulations do not include provision of funds or financial services to designated persons and do not extend to the scope of funds and associated persons required under the standards. The AML/CFT Regulations are focused on REs and do not set out mechanisms or procedures for access to funds for basic and extraordinary expenses, and the protection of bona fide third parties.

185. There has been no implementation of targeted financial sanctions related to PF. Bhutan has no institutional framework to support implementation of targeted financial sanctions relating to proliferation of WMD. As discussed in Recommendation 7, the freezing obligation is limited to REs and not to all natural and legal persons within Bhutan.

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

186. Bhutan has not yet taken any material steps to identify funds or other assets of designated persons and entities under UNSCRs 1737 (and those acting on their behalf or at their direction). The AML/CFT Regulations require all REs to directly monitor the relevant lists by logging on to the UNSCR website, but for UNSCR 1737 only. However, no FIs and DNFBPs are conducting screening as yet.

FIs and DNFBPs' understanding of and compliance with obligations

187. FIs displayed a very limited understanding of their obligations with regard to PF because the obligations were introduced less than one week before the onsite. There is no understanding among DNFBPs.

Competent authorities ensuring and monitoring compliance

188. Given the newness and incompleteness of these requirements, Bhutan has not undertaken monitoring or inspection of REs for compliance to their targeted financial sanctions obligations. No guidelines have been provided to REs, and as discussed in IO.3, no AML/CFT supervision has been conducted.

Overall conclusion on Immediate Outcome 11

189. **Bhutan has a low level of effectiveness for Immediate Outcome 11.**

CHAPTER 5. PREVENTIVE MEASURES

Key Findings and Recommended Actions

Key Findings

- The revised AML/CFT Regulations issued in November 2015 bring Bhutan's preventive measures closer into compliance with the FATF standards. Core Recommendations on CDD (R.10) and record keeping (R.11) are now at the compliant level and nine other Recommendations on preventive measures are now at either compliant or largely compliant level. However, there has been no implementation of the additional requirements contained in the regulations since they were only introduced in November 2015.
- Financial institutions (FIs) possess limited awareness of the ML/TF risks and designated non-financial businesses and professions (DNFBPs) even less. They do not apply mitigating measures commensurate with the ML/TF risks due to a lack of understanding. A RBA is yet to be implemented by FIs and DNFBPs, although some banks have commenced planning for a risk-based approach.
- FIs' understanding and implementation of preventative measures are rudimentary. There is no meaningful implementation of beneficial ownership, enhanced CDD, targeted financial sanctions, STR reporting and other additional preventive measures. The exceptions are record keeping and the appointment of an AML/CFT compliance officer by the five banks and two insurance companies. Overall, implementation of basic preventive measures has been limited to the banking sector.
- DNFBPs do not understand and have not implemented preventive requirements.
- The national biometric citizen ID card is a key strength. It provides a solid foundation for undertaking CDD, including for financial inclusion.

Recommended Actions

- The RMA should undertake risk-based supervision of REs to ensure they implement the requirements of the AML/CFT Regulations, including where necessary providing further guidance on more complex and new requirements such as the risk-based approach, targeted financial sanctions and beneficial ownership (refer IO.3 and IO.5.).
- The RMA should undertake outreach to REs subject to AML/CFT supervision to raise awareness of new requirements in the revised AML/CFT Regulations.
- The FIU should provide further guidance to reporting entities on meeting STR reporting obligations, given only one bank submitted one STR in 2015. The RMA supervisory departments should follow-up to ensure compliance and issue sanctions where appropriate.
- Authorities should address the remaining gaps in technical compliance either in the proposed AML/CFT Act and/or further amendments to the regulations, or some other enforceable means.
- In line with identified ML/TF risks, the RMA should ensure the DNFBP sector implements AML/CFT requirements (refer IO.3) on a risk sensitive basis.

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

Immediate Outcome 4 (Preventive Measures)

191. A detailed description of FIs, DNFBPs, and AML/CFT laws, regulations and enforceable means is provided in Chapter 1 and is not replicated in this Chapter.

192. The revised AML/CFT Regulations came into force and effect on 13 November 2015 bringing Bhutan's preventive measures closer into compliance with the FATF standards – key Recommendations on CDD (R.10) and record keeping (R.11) are now at the compliant level. Nine other Recommendations on preventive measures are now at either compliant or largely compliant level. However, at the time of the onsite, there had been no implementation of these additional requirements.

193. The assessment team's conclusions on the level of effectiveness for this IO are based largely on onsite interviews and feedback from other competent authorities. As supervisors have not conducted any onsite or offsite AML/CFT supervision, there are no supervisory reports to assess the level of implementation and effectiveness.

Understanding of ML/TF risks and AML/CTF obligations and apply mitigating measures

194. There has been limited outreach to raise awareness of Bhutan's ML/TF risks as the NRA is not completed.

195. FIs displayed a limited understanding of Bhutan's ML/TF risks, although the larger banks and one insurance company were more aware. FIs have not completed ML/TF enterprise-level risk assessments of their clients, products or distribution channels and are not applying a risk based approach, all of which are required under the previous and current AML/CFT Regulations. FIs have participated to a very limited extent in the NRA exercise, but are developing their understanding of Bhutan's ML/TF risks.

196. Supervisory outreach has been limited to FIs and focused on the requirements of the previous AML/CFT Regulations. No outreach has been undertaken on the current AML/CFT Regulations. During the onsite, all FIs interviewed confirmed receipt of the current AML/CFT Regulations that had been circulated three days before the onsite.

197. The FIU in 2014 issued enforceable AML/CFT guidelines to securities, insurance and money service providers. It has also issued non-enforceable guidelines on the appointment of a compliance officer and STR reporting to supplement requirements in AML/CFT Regulations.

198. FIs also displayed a basic understanding of their AML/CFT obligations on other preventive measures, including on CDD, STRs, PEPs, TFS and wire transfer obligations. While the current AML/CFT Regulations include more comprehensive risk focused obligations, such requirements, albeit less onerous, did exist in the previous AML/CFT Regulations.

199. AML/CFT outreach to DNFBPs has not occurred, and the sectors' understanding of Bhutan's AML/CFT risks and AML/CFT obligations is absent. However, as described earlier, the DNFBP sector is not developed, and there are no casinos or trust service providers.

200. FIs and DNFBPs are not applying mitigating measures commensurate with ML/TF risks due to a lack of understanding of, and capacity to implement, the more complex requirements. This includes circumstances requiring enhanced and reduced due diligence. There is also no regulatory enforcement to expedite implementation.

Application of CDD and record keeping by FIs and DNFBPs

201. There is a lack of comprehensive customer on boarding processes to identify and profile customers on the basis of risk. FIs follow their own CDD procedures and the level of information collection is very limited and not sufficient to meet all CDD measures in the AML/CFT Regulations. For natural customers, questions asked during the account opening stage are confined to name, address and profession, with verification limited to information contained in the national ID and/or online electoral roll. Some FIs do not always ask their clients about their occupations or sources of funds. For non-Bhutanese resident in Bhutan, FIs require passport, work permit, taxation number and other documents. Verification may also involve checking with the person's local employer.

202. The existence of a national biometric ID card for all citizens is of significant benefit to the CDD process performed by banks and other FIs to identify and verify natural person customers. If there are doubts about the veracity of information in the ID card, verification is also conducted using information contained in the Electoral Commission's website.

203. There is limited implementation of enhanced due diligence for higher risk customers such as PEPs, and higher risk customers are mostly associated with Indian nationals working in Bhutan. This is not surprising given the account opening stage is not sufficiently rigorous to identify higher or lower risk customers.

204. Banks do apply more comprehensive measures for the 368 companies in Bhutan. Documents required include certificate of incorporation, details of directors, copy of board of directors resolution, authority of the company to open & operate the account, citizenship ID (applicable only for sole proprietor), trade license, legal authority (signature of authorised person who deals with bank transaction), taxation number etc. The account opening forms of some banks do require ownership details, including the percentage of equity owned and national ID details, of natural persons.

205. Overall, there is very limited implementation during CDD to identify the beneficial owners of legal persons or whether a natural person is acting on behalf of another natural person. This is due to the lack of understanding of the concept of beneficial ownership, and available resources and systems to identify beneficial owners.

206. All FIs have comprehensive record keeping procedures and records are maintained for 10 years.

207. As indicated, there has been no implementation of the AML/CFT Regulations by DNFBPs.

Application of EDD measures

208. FIs have taken very limited measures and DNFBPs have not undertaken any EDD measures on:

- *PEPs*: The understanding of PEP obligations varies between FIs. As indicated, the customer on boarding process is insufficient to identify higher risk customers, including PEPs. FIs also do not have a PEPs list which adds to a lack of effective identification mechanisms. There is no access by REs to any commercial database with information on local PEPs.
- *Correspondent Banking*: Bhutanese banks maintain correspondent banking relationships with a short list of international banks from countries with significantly more onerous AML/CFT requirements. Bhutanese banks have no correspondent banking relationships with banks located in jurisdictions identified in the FATF's current ICRG list.
- Some banks have their own questionnaire for counterparts that include AML/CFT requirements, but these are not fully followed because Bhutanese banks rely on the RMA's new correspondent banking relationship approval process when establishing a new correspondent banking relationship.
- *New Technology*: ML/TF risk assessments are not being conducted by the FIs prior to the introduction of new products. Recently some banks have introduced mobile banking services and E-Wallet services, but no ML/TF risk assessment was conducted by the respective banks.
- *Wire Transfers*: Banks only require originator's and beneficiary's basic information for any inward or outward wire transfer. Furthermore, for inward wire transfers, banks indicated that they rely on the respondent bank to ensure the originator and beneficiary information is present and correct.
- *Targeted Financial Sanctions*: The requirements of UNSCRs are not properly addressed by FIs. Under the AML/CFT Regulations, REs are required to maintain a Consolidated List based on checking of the relevant UNSCR website. During the onsite, banks advised that they would review the list and if there are no Bhutanese names, they do not screen against customers and transactions. In any event, banks do not have the capacity to do real time screening as they do not have automated monitoring systems. No other REs are conducting even this type of screening.
- *High-risk countries*: While REs are required to apply enhanced CDD for high-risk countries under the AML/CFT Regulations, implementation has not occurred.

Reporting obligations and tipping off

209. Overall, FIs have met their reporting obligations to a limited degree, but reporting from DNFBPs is absent. Only banks have submitted STRs, and within the sector reporting is uneven and not increasing, as shown in Table 6. In 2015, there was only one STR submitted. In 2014, 52 STRs were submitted with 79% of the STRs from one bank. The FIU informed the assessment team that the vast majority of these STRs were submitted on suspicion of criminal activity based on frequency and threshold of transactions; however, upon investigation by the FIU these transactions were associated with normal business practices. While outreach provided by the FIU stopped threshold based STR reporting, FIs do not understand their STR reporting obligations as demonstrated by the level of STR reporting that is not commensurate with Bhutan ML/TF risks.

210. FI are submitting Other Transaction Reports, for example, reports on cash and non-cash transactions above Nu.500,000 (approx. USD7,500) and all international transactions to the FIU (see Table 6.)

211. Since establishment of the FIU in 2011, there have been no TF related STRs submitted to the FIU. However, the assessment team believe this is not inconsistent with Bhutan's TF risks, as the nature of Bhutan's TF risk is self-financing and funds are very unlikely to be moved through Bhutan's financial sector.

5 212. FIs do not have practical measures to prevent tipping-off.

Table 6: Table: STRs submitted to FIU

Reports received by FIU	2011	2012	2013	2014	2015
STR (total)	0	7	4	52	1
- banks	0	7	4	52	1
- non-bank financial sector	0	0	0	0	0
Other transaction Reports	0	0	20,691	49,193	43,550
- banks	0	0	20,691	48,591	43,193
- non-bank financial sector	0	0	0	602	357

Internal controls and legal/regulatory requirements impending implementation

213. The application of internal controls and procedures to ensure AML/CFT compliance is limited in FIs and absent in DNFBPs. In banks, with the exception of the appointment of the AML/CFT compliance officer, the majority of banks have non effective procedures or controls. For example, some banks rely on their internal audit department for implementation of AML/CFT requirements, and the majority of banks have no formal AML/CFT procedures, do not conduct AML/CFT audits and AML/CFT training does not appear to be consistently comprehensive or regular.

214. Insurance and securities providers are still in process of developing their internal AML/CFT procedures. Furthermore, the local agents of international MVTS providers have limited access to their organisation's international procedures and sophisticated monitoring systems. No other FIs have internal controls and procedures to ensure AML/CFT compliance.

215. There is no implementation of AML/CFT measures at a financial group level, even though there are only three financial groups, nor is there any requirement in the AML/CFT Regulations.

216. FIs are permitted under the AML/CFT Regulations to rely on CDD conducted by third parties but in practice they do their own CDD irrespective whether the customer is introduced or not.

Overall Conclusion on Immediate Outcome 4

217. **Bhutan has a low level of effectiveness for Immediate Outcome 4.**

CHAPTER 6. SUPERVISION

Key Findings and Recommended Actions

Key Findings

- There is a broad licensing regime for financial institutions (FIs) including banks, insurance companies, securities brokerage firms and money changers. However, the licensing process for money changers is insufficient and there is an absence of licensing, registration or other controls for DNFBPs, except external auditors. For the local agents of the four non-bank MVTs providers, the licensing/registration regime only applies to their local agents (two banks and Bhutan Post).
- The designated AML/CFT compliance supervisors of the financial sector, namely the Financial Regulations and Supervision Department (FRSD) and Foreign Exchange department (FED), have not undertaken AML/CFT supervision and their understanding of AML/CFT risks are in the developmental stage: Bhutan's first NRA is still in progress and no sector specific assessments have been conducted.
- There is no designated supervisor for DNFBPs and no supervision has been conducted.

Recommended Actions

- All FIs under the definition of the FATF should be brought within a supervisory regime (involving licensing or registration) on a risk-based approach, unless the NRA identifies proven low risk for exemption.
- There should be specifically tailored market entry controls (i.e. licensing/registration and "fit and proper" measures), that are commensurate with the level of ML/TF risks, for money changers and all DNFBPs.
- Bhutan should commence risk based supervision of FIs. The AML/CFT supervisors should adopt processes to enable them to maintain an ongoing and more comprehensive understanding of the ML/TF risks in each sector and institutions within a sector. This understanding of ML/TF risk, informed by the results of the NRA, should be used to draw up a risk based strategy for supervision and inform their decisions on AML/CFT supervision priorities.
- A competent authority or self-regulated body should be designated as AML/CFT supervisor for each DNFBP sector. Informed by the experience of conducting financial sector AML/CFT supervision and the NRA, they should organise and conduct risk-based AML/CFT supervision of DNFBPs.
- The RMA should allocate additional staffing resources to its two supervisory departments and the FIU, and to provide relevant training on risk based AML/CFT supervision.
- RMA should increase their engagement with all reporting entities (including FIs and DNFBPs) to promote a better understanding of their AML/CFT obligations and ML/TF risks facing Bhutan, in particular to improve clarity on implementation of the AML/CFT Regulations and supervisory expectations.
- The RMA may, through establishing formal coordination, capitalize on the Royal Audit Authority's knowledge and resources of conducting performance and compliance audits in respect to those entities that lie within the two authorities' purview.

218. 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)

219. The FRSD and the FED, the two supervisory departments of the RMA, are responsible for the prudential supervision and recently empowered as the AML/CFT supervisors for all FIs, with the exception of one pension/provident fund. The pension/provident fund has no designated AML/CFT supervisor even though it is captured as a reporting entity. Other REs such as DNFBPs and the one cooperative, which is not a reporting entity, are not subject to AML/CFT supervision.

220. Table 7 lists relevant regulator and SRBs, and corresponding AML/CFT supervisory authorities in Bhutan.

Table 7: Financial Institutions, regulators & AML/CFT supervisors

Sector	No.	Regulator/SRB	AML/CFT Supervisor
Banks 5 Commercial banks	5	RMA – FRSD	RMA – FRSD
Insurance 2 Insurance companies 1 Reinsurance company	3	RMA – FRSD	RMA – FRSD
Securities exchange	1	RMA – FRSD	RMA – FRSD
Securities brokerage firms	5	RMA – FRSD	RMA – FRSD
Pension/Provident funds	1	RMA – FRSD	Nil
Non- bank MVTS	4	RMA – FED	RMA – FED
Non-bank authorised money service business (money changers)	75	RMA – FED	RMA – FED
Credit Cooperative	1	Dept. of Agriculture Marketing and Cooperative	Nil
DNFBP	various	None	Nil

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

221. There is a sound licensing and market entry framework to prevent criminals from controlling or owning banks, insurance or securities companies. These fit and proper tests were applied in the process of issuing three new banking licenses in 2010 and a second insurance company (re-insurance) in 2013. For the banking licenses, the process was based on the former Financial Institutions Act (FIA) of 1992 and supplemented by other sector specific regulations, which also had significant fit and proper test requirements, including background criminal and probity vetting of significant shareholders, directors and senior management. The regulator advised that one banking applicant was rejected in 2009-10 because of fit and proper concerns. Significant changes in ownership and management control of existing core FIs are first vetted and endorsed by the regulator.

222. There are ineffective measures in place in determining “fit and proper” for the licensing of money changers. As part of the review and approval process, the regulator only requires applicants to submit a copy of their business license issued by the Regional Trade and Industry Office of the Ministry of Economic Affairs (MOEA). To obtain this business license, applicants must have, among other documents, a valid security clearance certificate from the police. The regulator uses this business license as its exclusive “fit and proper” test. Money changers licenses issued by the regulator are valid for an indefinite period of time, until the regulator receives notification by licensees to cancel the license.

223. The four major international MVTs providers are operating in Bhutan based on agent arrangements with local banks and the Bhutan Post for which they have been registered with the RMA. There is no separate licensing regime since the local agents have already been licensed or registered by the RMA.

224. Bhutan’s one credit cooperative that has 15 members is subject to the registration requirements in the Cooperatives (Amendment) Act of Bhutan 2009 and Cooperatives Rules and Regulations 2010. There are no fit and proper test requirements for cooperatives, although there are provisions in the FSA and Cooperative Act to subject cooperatives to RMA supervision if they exceed 50 members (coverage under the Micro Loan Institutions Regulations 2014).

225. The DNFBP sector is mostly not regulated. DNFBPs are not subject to licensing or registration and are only subject to “fit and proper” requirements to a limited extent. All DNFBPs operating as a business are subject to police checks when obtaining a business license from MOEA, similar to money changers as described above.

226. The Accounting and Auditing Standards Board of Bhutan and the Royal Audit Authority do undertake a “fit and proper” test as part of the licensing process for external auditors from India to practice in Bhutan. The RAA maintains a panel of foreign auditors (from India). One Indian firm had its licence revoked for non-compliance. Further details of non-compliance were not provided to the assessment team.

Supervisors’ understanding and identification of ML/TF risks

227. Supervisors’ understanding of Bhutan’s ML/TF risks is in the developmental stage. At the time of the onsite, supervisors’ involvement in the NRA process had been limited as work on the NRA focused on ML/TF threats and not on sectoral vulnerabilities or risks. There has also been no onsite inspection for AML/CFT to help inform supervisors of the risks in the absence of a NRA or sectoral risk assessments.

228. Bhutan’s understanding of its AML/CFT risks related to the DNFBP sector is also hampered by the absence of supervisors or self-regulatory bodies.

Risk-based supervision of compliance with AML/CTF requirements

229. As indicated, there has been no AML/CFT supervision of FIs or DNFBPs – either onsite inspection or offsite surveillance. During the onsite, the FIU and supervisors informed the assessment team that there is a plan to initially conduct joint AML/CFT inspections between supervisors and the FIU based on an inherent risk rating matrix for banks being developed with the assistance from IMF. There is a draft inspection and compliance manual for AML/CFT onsite

and offsite inspection, which is being reviewed by the IMF in consultation with the supervision departments of the RMA.

Remedial actions and effective, proportionate, and dissuasive sanctions

230. There have been no sanctions applied against FIs and DNFBPs for breaches of AML/CFT preventive requirements because there has been no onsite or off-site AML/CFT supervision.

231. The assessment team believes the absence of AML/CFT supervision and enforcement is a major contributing factor to the negligible implementation of preventive measures in Bhutan (refer IO.4).

6

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

232. The RMA's, FIU's and Supervisors', outreach and feedback has not been sufficient to address industry needs. Many of the REs interviewed have a very poor understanding of the ML/TF risks in Bhutan and little understanding of their AML/CFT obligations, including those relating to STR reporting, CDD and PEPs. Many of the REs claimed that there was no ML in Bhutan.

233. There has been some guidance provided to promote REs' understanding of their AML/CFT obligations. The RMA did conduct a familiarization workshop in 2009 on Prudential Regulations 2002 which included limited coverage of AML/CFT issues. The FIU did conduct outreach to all the banks in 2014 to familiarize them with the previous AML/CFT Regulations - similar outreach is yet to be completed for the current AML/CFT Regulations.

234. There seems to have been no engagement with REs when drafting the current AML/CFT Regulations. The AML/CFT Regulations were uploaded to the RMA's website for public consultation, however, evidence of interaction between the RMA and FI was not provided to the assessment team.

235. There is neither guidance nor feedback on AML/CFT obligations and compliance in the DNFBP sectors. However, the assessment team acknowledges that the immaturity of the sector makes promoting a clear understanding of its AML/CFT obligations and risks difficult.

Overall Conclusion on Immediate Outcome 3

236. **Bhutan has a low level of effectiveness for Immediate Outcome 3.**

CHAPTER 7. LEGAL PERSONS AND ARRANGEMENTS

Key Findings and Recommended Actions

Key Findings

- Bhutan has not assessed the vulnerabilities and extent of misuse of legal persons and arrangements. Nevertheless, through the measures undertaken it has demonstrated some understanding of potential vulnerabilities/risks.
- The assessment team considers that there is a low risk of legal persons being misused for ML/TF. There are only 368 companies and a handful of new companies are formed each year.
- Basic information is collected and made publicly available by the Companies Registrar and the various registers maintained by companies, as provided in sections 139 and 98 respectively of the Companies Act. Information on civil society organisations (CSOs) and religious organisations (ROs) is available on the respective websites of the two supervisory authorities, namely the CSO Authority and Commission for ROs.
- Bearer shares or bearer shares warrants are prohibited.
- Timely access by competent authorities to beneficial information on legal persons is constrained by lack of collection of such information. There is a requirement in the AML/CFT Regulations for reporting entities to collect beneficial ownership information on legal persons and trustees but implementation of this requirement has only commenced.
- There is no legislative or regulatory framework for the creation and establishment of legal arrangements in Bhutan. Bhutan is not aware of foreign trusts/trustees operating in the country.

Recommended Action

- Bhutan should assess the risks and develop a comprehensive understanding of the vulnerabilities and risks posed by legal persons and arrangements.
- Bhutan should implement further measures to obtain and maintain up-to-date information on companies' beneficial ownership. This information should be maintained in a way that allows timely access by the relevant authorities without legal restriction or hindrance. This could involve either requiring the Registrar of Companies or companies to hold companies' beneficial ownership information. Supervisors should also ensure that financial institutions fully implement the beneficial ownership requirements under the AML/CFT Regulations issued in November 2015.
- Bhutan should take measures to make its sanctions regime effective, proportionate and dissuasive.

237. The relevant Immediate Outcome considered and assessed in this chapter is IO5. The recommendations relevant for the assessment of effectiveness under this section are R.24 & 25.

Immediate Outcome 5 (Legal Persons and Arrangements)*Public availability of information on the creation and types of legal persons and arrangements*

238. The formation of legal persons is provided in three separate laws. The Companies Act of 2000 provides the legal framework for legal persons undertaking commercial activities. The Civil Society Organisation Act 2007 (CSOA) provides the legal framework for NPOs. The Religious Organisations Act 2007 (ROA) provides the framework for that sub-category of NPOs. There is no legislative framework for registration of partnerships or proprietorship, though a draft Enterprise Registration Bill has been under consideration since 2013.

239. There are 368 companies, 47 CSOs and 96 ROs registered with relevant authorities in Bhutan. For companies, details are provided below:

- 21 Listed Public Companies
- 22 Government Owned Companies
- 6 Government Controlled Companies
- 25 Unlisted Public Companies
- 294 Private Companies

240. Foreign investment is limited. There are only 43 companies that have foreign equity or ownership. Under the Foreign Direct Investment Policy 2010 (FDI), any foreigner wanting to own shares or equity in a company must first be approved by the multiagency FDI Facilitation Committee. There is a requirement to verify the sources of funds, but there is no requirement for a “fit and proper” test of the applicants. Foreign share ownership is limited to new shares or companies. While the objective is to encourage new investments, only a handful of new foreign investment proposals in existing or new companies are received each year.

241. The Registrar of Companies under the Ministry of Economic Affairs is responsible for managing new company registrations and implementing the Companies Act. There are two other regulatory bodies, namely the CSO Authority and Chhoedey Lhentshog (Commission for Religious Organisations) for the implementation of the CSOA and ROA, respectively (see Recommendation 8).

242. The public is able to inspect records held by the Companies Registrar and the various registers maintained by companies, as provided in sections 139 and 98 of the Companies Act, respectively. Under section 99 of the CSOA, members of the public have the right to access and inspect the public register of CSOs that is maintained by the CSO Authority. Further, the public can access basic information on CSOs via the CSO Authority’s website. The website of the Chhoedey Lhentshog contains detailed information on ROs.

243. During the onsite, the Registrar of Companies informed the team that they maintain up-to-date information on companies as the Registrar is required to review and approve any changes in share ownership, directors and articles of associations, as required under the Companies Act. The CSO Authority and Chhoedey Lhentshog also maintain updated information including any CSOs or ROs deregistered or suspended. Under Chapter 15 of the CSO Regulation, the Royal Audit Authority is mandated to conduct an annual audit of PBOs in accordance with the Audit Act of Bhutan 2006. Within one month of this audit, PBOs are required to submit to the CSO Authority,

and publish on their website, an annual financial account prepared by an accountant and endorsed by board members, and an annual report, which is required to include: (i) activities of the PBO during the year, (ii) an explanation of how individuals access the PBO's programmes and services, and (iii) a list of board members, management staff and contributors.

244. As there is no trust law, there is no publicly available information on any foreign trusts or trustees operating in Bhutan.

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

245. There has not been any formal assessment of the vulnerabilities of legal persons or arrangements, or the risk of their misuse for ML/TF. The Registrar of Companies is aware of the risk of abuse and has implemented, as required in the Companies Act, a process of subjecting any changes in share ownership to a review and approval process, and preventing any Bhutanese person with a criminal record from owning shares or becoming a director. However, there is a more limited understanding of risks posed by foreign investors, and while there is a vetting and approval process for foreign investors, there is no criminal check for foreign investors. Non-Bhutanese directors do require home police clearance and they must be a resident of Bhutan.

246. While no formal assessment has been undertaken, based on the context of Bhutan's financial system and information provided by competent authorities during on-site, the assessment team considers that there is a low risk of misuse of legal persons for ML or TF in Bhutan. The Companies Registrar advised the assessment team that the ownership structures of private companies are not complex and normally owned by natural persons. There are only 368 companies and merely a handful of new companies are formed each year. Changes to share ownership are not common, including for the 21 publicly listed companies and require approval by the Registrar of Companies. Bhutanese citizens with a criminal record are prohibited from being shareholders and directors under the Companies Act. Non-citizens cannot purchase existing shares and must apply and obtain a foreign investment certificate.

Mitigating measures to prevent the misuse of legal persons and arrangements

247. The process for registering a company is not simple. The application must be submitted by at least two Bhutanese citizens. Mandatory documents include a police security clearance and a copy of the citizenship identification card for each director, and project approval from the Ministry of Industry. These requirements are in addition to the company name availability form, declaration of compliance form signed by all directors, and articles of incorporation. No statistics were provided on rejected applications.

248. As noted above, foreigners are allowed to hold shares in a company, to incorporate companies or acquire ownership interest in existing companies only after approval by the FDI.

249. There are measures to prevent bearer shares. The following four measures mitigate the use of bearer shares: (i) the Companies Act requires the shares of every company to be entered in a share register, with the name and other details of the shareholder to be recorded, (ii) the Articles of Association that contain the names of the shareholders cannot be altered without the approval from the Registrar of Companies, (iii) the share certificate requires the name and address of the shareholder to be stated, and (iv) the transfer of share ownership requires evidence of intention to contract/transfer ownership, and share transfers are recorded in the share registry.

250. There is neither explicit provision nor prohibition for nominee shareholders or directors in the Companies Act. Section 17 provides for nomination of a person to whom the shares or debentures shall vest in the event of death of the holder, and nominee directors are provided in section 33 with actual reference to nominee directors in Schedule IX. There does not appear to be any requirement for the identification of the nominators. However, the Companies Act also requires the Registrar of Companies to approve any changes in ownership and management of a company. The Registrar indicated during the onsite that nominee arrangements are limited to adults holding shares on behalf of minors and the security clearance process reduces the likelihood of nominee directors being used for illegal purposes.

251. There is no legislative or regulatory framework for the creation and establishment of legal arrangements (i.e. express trust) in Bhutan. There is, however, a legal requirement for trustees acting on behalf of foreign trusts to disclose their status to financial institutions when opening an account or conducting a financial transaction. REs are required to determine whether a customer is a trustee. However, given the findings on implementation of CDD requirements, as detailed under IO.4, this is not occurring on a systematic basis.

Timely access to adequate, accurate and current basic and beneficial ownership information on legal persons and arrangements

252. The Companies Act requires the shares of every company to be registered in a share register, with the name and other details of the shareholder to be recorded. Further, before any amendments are entered, prior approval of the Registrar of Companies is required to ensure identification and “fit and proper” test requirements are met. The Companies Act also requires the Registrar of Companies to approve any changes in ownership and management of a company. The Registrar advised the assessment team that compliance with this requirement is monitored closely and expressed confidence in the accuracy of basic information in share registries. The Registrar of Companies advised the assessment team that for the 319 privately owned and unlisted public companies, there were transfers of ownership 10 times for public unlisted companies (among one or two shareholders) and 20 times for private companies (between friends and family members) in the period 2013-2015.

253. There has been no law enforcement investigation of companies. Access to basic information on companies, CSOs and ROs is attainable on a timely basis. Nevertheless, access by competent authorities to beneficial ownership information on companies is constrained by the fact that information held by the Registrar of Companies and the companies themselves pertain to legal ownership and not necessarily beneficial ownership. Access to beneficial ownership information is also hindered when the company does not have a bank account or does not rely on a DNFBP to assist in its formation or ongoing management.

254. Beneficial ownership information is not required to be obtained and kept by the company, by company service providers or by any registration authority. While the AML/CFT Regulations (issued by the RMA in November 2015) require REs to capture beneficial ownership information on legal persons and trustees that can be access by competent authorities using their powers, there has been no implementation of this requirement by REs (refer IO.4).

Effectiveness, proportionality and dissuasiveness of sanctions

255. The authorities did provide evidence of sanctions against persons who do not comply with their filing requirements. However, the sanctions imposed are not significantly dissuasive because the maximum penalty is only Nu 5,000 (approx. USD 75). It was reported that the total penalty imposed in 2013 amounted to Nu 368,000 (approx. USD 5,520) including Nu 199,000 (approx. USD 2,985) for late filing of Annual Returns. Historically, penalties were imposed on 29 companies (2012), 32 companies (2013) and 57 companies (2014) for non- submission of annual returns; and 60 companies (2012), 128 companies (2013), and 74 companies (2014) for other violations. The increasing number of companies found in violation could possibly indicate ineffectiveness of the sanctions regime, although it does highlight the existence of a regular compliance programme. The authorities indicated that the proposed new companies legislation will have substantially higher penalties.

Overall conclusion on Immediate Outcome 5

256. **Bhutan has a low level of effectiveness for Immediate Outcome 5.**

CHAPTER 8. INTERNATIONAL COOPERATION

Key Findings and Recommended Actions

Key Findings

- Bhutan's mutual legal assistance (MLA) framework relies on the use of Letter Rogatory for non-corruption offences and MLA related provisions in the ACA for corruption offences. However, these frameworks remain largely unused. Bhutan has not received any requests for MLA and has only executed one outgoing MLA with Thailand.
- Bhutan's ML/TF risks are predominately associated with India. Given Bhutan's unique relationship with India and in the absence of an efficient MLA framework, other more efficient and effective bilateral cooperation mechanisms, as detailed below, have been used.
- Bhutan's formal three-tier law enforcement and intelligence mechanism with India is actively provide and seek constructive and timely information and assistance on security and border management related issues. This mechanism has been used on some occasions for simplified mutual legal assistance including the use of coercive police powers to prevent/disrupt IIGs/RGs from entering Bhutan and to some extent disrupt border related predicate crimes but not ML.
- Bhutan has a legal framework for extradition; however, Bhutan has not received, nor requested extradition, therefore, the efficacy of the framework has not been tested.
- Bhutan has never received a request or requested foreign cooperation in identifying and exchanging basic and beneficial ownership information. This is in line with the fact that there are only 368 companies in Bhutan, of which only 43 have foreign equity, and a lack of Bhutanese legal persons operating abroad.

Recommended Actions

- Competent authorities should continue to establish and strengthen their individual cooperation mechanisms in order to exchange financial intelligence, supervisory and law enforcement information with foreign counterparts, especially Indian and Thai counterparts.
- In order to further improve border related international cooperation with India, Bhutan should enhance information sharing to monitor the movements of suspicious persons across its border with India.
- Bhutan should actively pursue the enactment of its draft MLA Act in order to facilitate AML/CFT cooperation with foreign countries.

257. The relevant Immediate Outcome considered and assessed in this chapter is IO2. The recommendations relevant for the assessment of effectiveness under this section are R.36-40.

Immediate Outcome 2 (International Cooperation)

Providing and seeking constructive and timely MLA and extradition [Core issue 2.1 and 2.2]

258. As discussed in Chapter 1, India is Bhutan's most important regional partner in terms of its ML/TF and predicate crime risks (for discussion on cooperation between Bhutan and India see

below). Besides India, Bhutan's ML/TF risks from foreign jurisdictions is limited and is primarily predicate crime based and associated with Bhutan's international air travel connections, namely Thailand. Bhutan's MLA framework for foreign jurisdictions, relies on the use of Letter Rogatory under a general provision in the CCPC to provide and seek a wide range of assistance in relation to civil and criminal matters, and provisions in the ACA for corruption related MLA. Bhutan did not provide evidence of a formal procedure for providing or seeking MLA, and Letter Rogatory is generally considered to be a less efficient process for providing MLA as the letter is normally only issued by the Court after charges have been filed.

259. Notwithstanding the above, Bhutan has sought MLA for one case in the period under review (see Figure 1). The assessment team considers this to be generally commensurate with Bhutan's ML/TF and predicate crime risks. And it also demonstrates competent authorities can pursue predicate crimes with international elements, in this case, for corruption.

260. With regard to providing MLA, the efficacy of the framework has not been tested as Bhutan has not received a request for MLA in the period under review.

261. In regards to extradition, Bhutan has a legal framework for extradition that does not have unreasonable or unduly restrictive conditions. Bhutan did not provide evidence of a formal procedure for conducting extradition. Bhutan has not received, nor requested extradition, therefore, the efficacy of the framework has not been tested.

Figure 1: MLA with Thailand

In 2013 Bhutan sought foreign assistance, from Thailand, in a corruption matter relating to embezzlement by a Bhutanese Embassy official. The ACC used its MOU with the Anti-Corruption Commission of Thailand to seek and obtain foreign assistance in its initial investigation. Following the receipt of initial information, the ACC obtained a letter rogatory, from the High Court, which was used to obtain financial information including bank vouchers and travel details from Thai Authorities including the Anti Money Laundering office of Thailand. The case remains under investigation.

Other forms of international cooperation for AML/CTF purposes

262. In accordance with Bhutan's unique relationship with India (as demonstrated by the Bhutan and India friendship treaty) and in the absence of an efficient MLA framework, the Bhutan India three-tier cooperation mechanism (as detailed under R.40) is used on some occasions for simplified MLA involving the use of coercive police powers as highlighted in Figure 1. This mechanism is however more regularly used for other forms of international cooperation including the exchange of intelligence and other law enforcement information. For example, through quarterly district/operational level meetings and a designated police-to-police hotline (see below), Bhutan and Indian border related counterparts cooperate to prevent IIGs and RGs from entering Bhutan. During the onsite, Bhutan provided an example where Indian real-time intelligence on IIG activity was used by Bhutan to allocate border security resources in order to conduct operations against these IIGs and prevent them from moving into Bhutan's porous border areas. A key deficiency of this mechanism is it has not been used for the exchange of financial intelligence related to ML/TF or predicate crimes.

263. In addition to the three-tier mechanism, Bhutan and India have an extensive range of other cooperation mechanisms that are actively used for operational purposes including; (i) reciprocal liaison officers in Delhi, India and Thimphu, Bhutan, (ii) local meetings between Bhutan and Indian border town administrative authorities, (iii) a hotline between Bhutan and India for real-time intelligence sharing.

264. Bhutan maintains a variety of bilateral and multilateral channels for international cooperation. These include membership of regional and international organisation such as Interpol, SAARC, BIMSTEC and World Customs Organisation. Bhutan FIU and LEAs have also signed bilateral MOUs to facilitate international cooperation for the prevention of ML/TF in relation to their respective scope of duty.

265. Bhutan's FIU lacks an agreement mechanism (MOU or other) with India. Bhutan has signed MOUs with the Bangladesh FIU and Korea FIU. Bhutanese authorities have not received a request or requested any financial intelligence from foreign counterparts since 2011. In 2011, before the Bhutan FIU was established, the RMA did submit one request to a foreign FIU for information related to a Ponzi scheme; however, no response was received. The details of this request were not provided to the assessment team and it is unclear if the request was followed up.

266. With regard to international cooperation by supervisors, with the exception of supervisor training activities in India, supervisors have not undertaken any cooperation with foreign supervisors including India. This lack of supervisory cooperation on effectiveness is negligible. Among reporting entities, the foreign presence is limited to authorised Indian external auditors operating in Bhutan, two local FIs with significant Indian equity and three local FIs acting as agents for four international MVTs providers. There are no Bhutanese reporting entities operating offshore. There is a general cooperation mechanism between the RMA and the Reserve Bank of India.

International exchange of basic and beneficial ownership information of legal persons and arrangements

267. In line with the limited number of foreign companies operating in Bhutan, and the limited number of Bhutanese companies operating abroad, Bhutan has not received or requested foreign cooperation in identifying and exchanging basic and beneficial ownership information. However, should a request be received Bhutan will be able to provide basic information and to a limited degree beneficial ownership information (see IO.5).

Figure 2: Examples of simplified MLA with India

Example 1: Mutual assistance related to robbery of Bhutanese citizens while travelling on Indian highways to towns in South East Bhutan.

Between October and December 2014, there were approximately six incidences of daylight robbery of Bhutanese citizens while travelling on Indian national highways in the Alipurduar district, West Bengal, India. Based on the requests from Bhutan during coordination meetings Indian police arrested 10 people in connection with these robberies: eight persons were directly involved in the robberies and two persons purchased the stolen goods. This case is currently under prosecution in India and Bhutan has requested the stolen items be returned to victims.

Example 2: Mutual assistance related to illicit trafficking of pharmaceutical substances.

Illicit trafficking in narcotics and pharmaceutical substances is one of Bhutan's key ML threats. During investigations of illicit trafficking offenders, Bhutan identified a number of Indian stores, in West Bengal, selling pharmaceutical drugs illegally. Drug issues were discussed in the Border Districts Coordination Meeting in 2009, 2010 and 2014. Based on these discussions, and cooperation under the BNCA's MOU with the Central Bureau of Narcotics, India, between 2011 and 2015, a total of 15 Indian stores selling pharmaceutical substances illegally were raided by Indian Authorities.

Overall conclusion on Immediate Outcome 2

268. **Bhutan has a moderate level of effectiveness for Immediate Outcome 2.**

TECHNICAL COMPLIANCE ANNEX

1. This annex provides detailed analysis concerning the level of technical compliance for Bhutan with the FATF 40 Recommendations. It does not include descriptive text on the member's 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.

Recommendation 1 - Assessing Risks and applying a Risk-Based Approach

2. *Criterion 1.1* – Bhutan is conducting its first national risk assessment (NRA) on money laundering (ML) and terrorist financing (TF) in 2015. The IMF is assisting Bhutan to complete the NRA. Working documents of the NRA were provided to the assessment team during the onsite, and Bhutan advised the NRA is expected to be completed by late 2016.

3. Bhutan has a risk assessment for corruption as part of the National Integrity and Anti-Corruption Strategy 2014-2018 (NIACS). The strategy examines threats, vulnerabilities and to a limited extent, ML risks associated with corruption.

4. Absent a completed formal NRA, key authorities (Bureau of Law and Order and the Police) have documented in NRA working papers their assessments since the 1990s of terrorism and related TF risk associated with Indian insurgent groups (IIGs) located in neighbouring Indian states and Radical groups (RGs). These groups have been on-going concerns for Bhutan since the 1990s. The focus has been more on the terrorism threat, rather than TF.

5. *Criterion 1.2* – Bhutan has established the National Risk Assessment Working Group (NRAWG) with the FIU as the designated lead agency responsible for preparing the NRA. The NRAWG was formed as a result of written requests made by the Governor of the Royal Monetary Authority in mid July 2014. The NRAWG represents key AML/CFT related stakeholders in Bhutan, including some private sector representatives and comprises senior officials of 14 institutions. However, designated non-financial businesses and professions (DNFBPs) are not fully represented primarily because the sector is not well developed and not all actors have associations or self-regulatory bodies.

6. *Criterion 1.3* – There has been no update to the NRA because Bhutan has not completed its NRA. However, the NRAWG Terms of Reference (TOR) states that one of the functions of the NRAWG is “timely review and updating the NRA as an ongoing process once finalized”.

7. The current NIACS was updated in 2013 and will remain in place until 2018; after which Bhutan has advised it will be updated. The Anti-Corruption Commission (ACC) and other related authorities advised the assessment team of this commitment. Given the current NIACS will not expire until 2018, specific details were not provided on when the update will commence.

8. *Criterion 1.4* – Bhutan advised the assessment team that the NRA report will be provided to the relevant competent authorities, and a sanitised version to self-regulatory bodies and financial institutions (FIs) through their representative on the NCC or NRAWG. The FIU advised that the sanitised version of the NRA report, once finalized, will be uploaded to the RMA website and the public will be informed through the mass media. The latter approach will capture DNFBPs which are not represented in the NCC or NRAWG.

9. The NIACS has been widely disseminated and made available to public and private sector bodies via the ACC's website.
10. *Criterion 1.5* – Bhutan has not yet applied a comprehensive risk-based approach to applying resources and implementing measures to prevent or mitigate ML/TF. Bhutan has a draft National Strategy and Action Plan – Combating Money Laundering and Terrorist Financing that will come into effect and be updated and informed by the NRA, once completed.
11. On TF, Bhutan has focused resources and implemented measures to disrupt and prevent IIGs and RGs from entering Bhutan (refer R.40).
12. Bhutan has also focused resources on anti-corruption initiatives to implement the NIACS, but it has focused more on anticorruption and confiscation of corruption proceeds than associated ML. The ACC is one of the best resourced agencies in Bhutan, although this is still not sufficient for its mandated task.
13. Bhutan has adopted a National Drug Control Strategy. This strategy includes priority areas and strategies to strengthening drug supply reduction mechanisms and enhance law enforcement measures. However, this strategy contains very limited reference to ML and has not been updated since the enactment of the Narcotic Drugs Psychotropic Substance and Substance Abuse Act 2015 (NDPSSAA).
14. *Criterion 1.6* – Not all elements of the relevant FATF Recommendations are required to be implemented by FIs or DNFBPs (see section on preventive measures). These exemptions are not based on proven low risk of ML/TF, although section 3.4 of the Anti-money Laundering and Combating the Financing of Terrorism Regulations 2015 (AML/CFT Regulations) includes provision for exemptions from AML/CFT requirements. They are due to supervisors (RMA) not promulgating regulations that capture all the preventive requirements in the FATF Recommendations due to a lack of understanding of the FATF standards, and not because of any deliberate attempt to avoid implementation.
15. *Criterion 1.7* – The NRA has not been completed and as such FIs and designated non-businesses and professions (DNFBPs) are not required to address such risks. The AML/CFT Regulations 2015 under section 3 do require REs to apply a more comprehensive risk-based approach. There are clear requirements for enhanced CDD where the ML/TF risks are assessed as higher under sections 4.10 and 14.1 of the AML/CFT Regulations, but they are limited to the circumstances outlined in those sections, namely certain categories of customers and not the broader requirements envisaged under this criterion. Supervisors have also not undertaken any onsite inspection of REs to ensure compliance.
16. Section 3.24 in AML/CFT Regulations does not include mandatory language that information pertaining to higher risks must be include in any risk assessment conducted by FIs and DNFBPs, only that such information may guide the risk assessment.
17. *Criterion 1.8* – With the exception of the deliberate policy decision based on a simple risk assessment to exclude the 15 member credit cooperative from AML/CFT measures, there has been no implementation of simplified AML/CFT measures based on proven lower risks for financial inclusion or otherwise.
18. The Financial Inclusion Policy for Bhutan has been approved in principle and pending for formal adoption. The RMA board has approved Regulations for Microloan Institution in Bhutan

and research on mobile banking has been conducted and a report issued. To date no micro loan institution has been registered under the Microloan Regulations, although the market entry requirements are less onerous since they are not defined as FIs, but once registered any microloan institution would be captured as REs since they meet that definition in the Financial Services Act (FSA). Microloan institutions provide for a middle tier – below formal FIs but more mature than any credit cooperatives regulated by the Department of Agriculture and Marketing (DAM). This structure, once fully implemented, will provide for a clearer regulatory framework for a risk based approach.

19. *Criterion 1.9* – AML/CFT supervision of the financial sector has not commenced and there is no designated supervisor for DNFBPs.

20. *Criterion 1.10* – This criterion is satisfied by section 3.2 of the AML/CFT Regulations.

21. *Criterion 1.11* – Under section 3.3 of the AML/CFT Regulations, REs are required to have policies, controls and procedures which are approved by senior management and are monitored and enhanced, if necessary. There are clearer requirements for enhanced CDD where the ML/TF risks are assessed as higher under sections 4.10 and 14.1 of the AML/CFT Regulations, but these are limited to the circumstances outlined in those sections.

22. *Criterion 1.12* – Under section 3.3 of the AML/CFT Regulations, REs may apply simplified measures where ML/TF risk is assessed as low and there is no suspicion of ML/TF. However, criterion 1.9 and criterion 1.11 is only mostly met.

Weighting and Conclusion

23. Bhutan is conducting its first NRA, which is scheduled for completion in late 2016. Bhutan has a draft national strategy for a risk based approach to preventing or mitigating ML/TF but this strategy is not in effect and must be updated and informed by the NRA, once completed. There is some form of risk-based approach to external terrorism and TF related threats and internal corruption risks. **R. 1 is rated non-compliant.**

Recommendation 2 - National Cooperation and Coordination

24. *Criterion 2.1* – Bhutan does not yet have national AML/CFT policies informed by an NRA, or from other forms of comprehensive ML/TF risk assessments. There is a draft National Strategy and Action Plan – Combating Money Laundering and Terrorist Financing that will come into effect and be updated and informed by the NRA, once completed.

25. As noted above, there is the NIACS that is focused on corruption, proceeds from corruption and to more limited extent ML, and has been reviewed with the most recent version of the strategy covering 2014-2018.

26. *Criterion 2.2* – The NCC is established under the authority of the RMA and is the designated authority responsible for national AML/CFT policies.

27. *Criterion 2.3* – At the national level, the Deputy Governor of the RMA who is also the Head of the FIU (policy) chairs the NCC, which includes the following institutions:

- Deputy Governor of the RMA and Head of the FIU as chairperson
- Director, Anti-Corruption Commission

- Deputy Chief of Police, Royal Bhutan Police
- Commissioner, Department of Revenue and Custom
- Senior Attorney, Office of the Attorney General
- Senior Officer to verify, Bhutan Narcotic Control Agency
- Director, Department of Multilateral Affairs, Ministry of Foreign Affairs
- Director General, Bureau of Law and Order
- Registrar of Companies, Ministry of Economic Affairs
- Head of FIU (operational) as member secretary

28. Subordinate to the NCC, Bhutan has a Technical Working Committee (TWC), with the FIU as the designated lead agency that coordinates on AML/CFT policy objectives as direct by the NCC.

29. NCC and TWC membership and TORs allow the FIU, LEAs, supervisors and other relevant competent authorities to cooperate and coordinate on the development and implementation of AML/CFT policies and activities. However, these mechanisms do not apply at the operational level.

30. In addition to the NCC and TWC, there are several policy and operational coordination mechanisms/arrangements between domestic agencies on AML/CFT activities:

- The Bureau of Law and Order (BLO) operates as a coordination agency for terrorism and border management and security and law and order related issues. There are established forums such as Security Coordination Meetings at the central level and Dzongkhag Security Coordination Meetings at the district level on security issues. Recently, Coordination Meetings of the LEAs was instituted. However, there is no MOU between the FIU and BLO.
- The Bhutan Narcotics Control Authority (BNCA) operates as a coordination agency for drug related policy and operational issues and is mandated to develop appropriate measures to control and prevent drug related ML. However, there is no MOU between the BNCA and BLO.

31. The FIU has signed a memorandum of understanding (MOU) with the ACC, which allows for the exchange of information and joint investigations on corruption related issues.

32. There is no MOU between the FIU and the Police.

33. *Criterion 2.4* – Bhutan does not have a cooperation mechanism for combating the financing of proliferation (PF) of weapons of mass destruction (WMD).

Weighting and Conclusion

34. Bhutan has established the NCC as the designated authority responsible for national AML/CFT policies; however, it is yet to implement national AML/CFT policies informed by identified risks. Bhutan does have coordinating mechanisms for terrorism, drugs and border operational and policy issues, however, FIU involvement in these mechanisms is limited. There is limited cooperation between the FIU and the ACC. Coordination on PF is absent. **R. 2 is rated partially compliant.**

Recommendation 3 - Money laundering offence

35. *Criterion 3.1* – Money Laundering has been criminalised in two laws, namely the Penal Code and the Anti-Corruption Act (ACA).

36. Penal Code: The ML offence in the Penal Code (section 277), as amended in 2011, excludes some elements that must be criminalised under the Vienna and Palermo Conventions, namely conversion, disguise and use of the proceeds of crime. It does appear to cover acquisition and possession. The elements of purposely and knowingly are provided in sections 54 and 55, respectively, for all crimes, including ML under the Penal Code.

37. ACA: The construction of the ML offence in sections 70 to 73 of the ACA mirrors the Vienna and Palermo conventions and covers the three key components, namely conversion, concealment and use. However, it is limited to corruption only as defined in the ACA.

38. *Criterion 3.2* – The ML offence at section 277 of the Penal Code applies to the proceeds of all crimes. However, the list of crimes in the Penal Code omits racketeering and organized crime offences, counterfeiting and piracy of products, maritime piracy and market manipulation. These are relatively low risk areas in Bhutan. No other laws were provided to the assessment team to demonstrate those activities are criminalised elsewhere.

39. *Criterion 3.3* – Bhutan has adopted an all offences or crimes approach to determining the underlying predicate offences for ML

40. *Criterion 3.4* – The Penal Code and the ACA refer to any proceeds of crime both directly or indirectly but there is no definition of proceeds of crime in the Penal Code or ACA.

41. *Criterion 3.5* – There is no provision in the Penal Code stating that a person need not be convicted of a predicate crime. In the absence of a clear provision and jurisprudence, it remains unclear if the conviction for a predicate offence will be necessary for proving the proceeds of crime. The ACA is more compliant as it clearly states in section 76(2) that prior conviction for the predicate offences is not necessary to establish the illicit nature or origin of assets laundered. However, it precludes the prosecution of an offender for both the predicate offence and the laundering of criminal proceeds from that offence (see c.3.7).

42. *Criterion 3.6* – While, section 277 of the Penal Code applies to “any proceeds of crime”, there is no legal or other (e.g., interpretation by the courts) provision available to construe that it applies to the proceeds of foreign crimes. Section 76(1) (b) of ACA confirms that the ML offences in that act extend to predicate offences committed in another country.

43. *Criterion 3.7* – The ACA and the Penal Code provide for self-laundering. There is however a provision under section 76(2) of ACA that prevents the prosecution of a person for both a corruption predicate and any related ML arising from that offence. In the absence of a clear jurisprudence, it remains unclear if section 76(2) of ACA would restrict the use of the self-laundering provisions in the ACA.

44. *Criterion 3.8* – A defendant's conduct, circumstances and awareness can be used as evidence to show that a defendant's act was committed with his knowledge (of its illegality) or was done purposely to commit a crime, as provided in sections 54 (“Purposely”) and 55 of the Penal Code (“Knowingly”). There are also provisions for recklessly and negligently under sections 56 and 57 respectively of the Penal Code.

45. *Criterion 3.9* – Section 278 of the Penal Code provides for a “value based sentencing or a felony of the third degree, whichever is higher” for the ML offense, and is linked to the amount involved, expressed in terms of the number of years of the daily national wage. According to Bhutan, this produces the sentencing range as shown in Table 8.

Table 8: value based sentencing for the ML offense

Value of ML offense	Degree of Criminality	Sentencing Range
	2 nd degree felony	9-15 years imprisonment
> USD 22,000	3 rd degree felony	5-9 years imprisonment
USD 11,000 – 22,000	4 th degree felony	3-5 years imprisonment
< USD 11,000	Misdemeanour	1-3 years imprisonment

46. The authorities provided details of two corruption related ML convictions in 2008 related to the Samtse mining case. The two ML convictions, both of which related to the same funds, obtained and sentenced under the Penal Code, suggest sanctions applied seem dissuasive. In the first case, the defendant was convicted of laundering a total of Nu.1,200,000.00 (approx. USD18,000). However, the laundered funds were restituted to the state and the defendant was only sentenced for the substantive charges and not ML; total sentence: seven years imprisonment and restitution of Nu. 47,844,281 (approx. USD717,500). In the second case the defendant was found guilty of ML but the sentence was downgraded to a misdemeanour with one year and six months in concurrent prison with other chargers.

47. Under the ACA, corruption offences are to be sentenced as 3rd degree felonies or on a value base, whichever is greater.

48. *Criterion 3.10* – Chapter 34 (sections 508-510) of Penal Code provides sanctions against corporations and other business associations, including partnership, corporations, organization, enterprise, agency, and other legal entity whether public or private and successor, representative, or agent of one of them. Section 165 of ACA states the liability of legal person.

49. *Criterion 3.11* – A range of ancillary offences including attempt, aiding and abetting, solicitation and conspiracy are covered under chapter 10 of the Penal Code. Section 75 of ACA defines a wide range of ancillary offences to the substantive corruption offences set out in Chapter 4 of the ACA.

Weighting and Conclusion

50. ML in Bhutan is criminalised in two pieces of legislation, with significant deficiencies in the Penal Code. The construction of the ML offence in sections 70 to 73 of the ACA mirrors the Vienna and Palermo conventions; however, it is limited to corruption only. Nevertheless, the ACA’s definition is more compliant than the Penal Code’s definition which is significant given corruption related ML poses the highest risk in Bhutan. **R. 3 is rated partially compliant.**

Recommendation 4 - Confiscation and provisional measures

51. *Criterion 4.1* – Sections 47 and 48 of the Penal Code provide for conviction based confiscation of proceeds, instrumentalities and benefits derived from offences. However, there appears to be no provision for:

- Confiscation in the absence of conviction;
- Confiscation of property related to TF; and
- Confiscation of property of corresponding value.

52. The confiscation provisions in the Penal Code are also limited by the absence in the Penal Code of several ML predicate offences, and deficiencies in the scope of the TF offence.

53. Sections 131 to 134, 144 and 153 of the ACA contain powers for the confiscation of the proceeds of corruption or instrumentalities of corruption. These confiscation powers include both criminal and civil based powers and of corresponding value.

54. Section 93 of the NDPSSAA covers property derived directly or indirectly through the commission of an offense under the act, or a “relevant” offense in the Penal Code. Direct or indirect proceeds, or property intended for use in illicit trafficking are captured by section 94 of NDPSSAA. There is a very general power to “seize” in section 84 of NDPSSAA.

55. *Sub-criterion 4.2(a)* – Sections 180 and 181 of the Civil and Criminal Procedures Code 2001 (CCPC) provide for a police officer to seize any property associated with the commission of an offence. The police have powers of search and seizure under section 73 of the Police Act. Section 82 of the ACA provides the ACC with the same powers as contained in the CCPC. Sections 86 (1) (b), 94 (2), 95, 103, 104, 106, 107, 108, 143, 144 of the ACA create a comprehensive regime for the investigation and control of property subject to confiscation under the Act.

56. *Sub-criterion 4.2(b)* – There is no comprehensive provision for freezing and seizing to support confiscation under sections 47 and 48 of the Penal Code, except for the limited mechanism under section 180 of the CCPC for the seizure of stolen property or property found in circumstances that create suspicion of the commission of an offence. Seizure of movable and immovable property is however provided for in the ACA; sections 86 (1) (b), 94 (2), 95, 103, 104, 106, 107, 108, 143, 144 lay down a regime for the investigation and control of property subject to confiscation under that Act. Chapter 9 of NDPSSAA contains provisions for search, seizure, arrest and detention; confiscation; forfeiture and disposal.

57. *Sub-criteria 4.2(c) and (d)* – Section 96 of the NDPSSA and section 108 of the ACA provides for contracts or ownership to be voided if associated with illicit proceeds and subject to seizure respectively. Sections 133 and 134 provides for confiscation of property or payment in lieu if suspect has absconded, intermingled with property acquired from legitimate sources, cannot be located or transferred to third party.

58. *Criterion 4.3* – The Penal Code does not have provisions for protection of the rights of the bona fide third parties. However, the ACA, section 131(1)(b) provides that the interests of innocent owners and persons who have acquired forfeitable property in good faith and for value are not subject to confiscation. The NDSSA provides under section 96 for any person having an interest in any property ordered to be forfeited to apply to the Court in order to protect his/her interest in the property.

59. *Criterion 4.4* – The Penal Code does not contain any provisions regarding managing or disposing of the property frozen, seized or confiscated. The CCPC (section 71) however deals with release, restoration and sale of attached property in ‘dispute’; Section 62 of the Penal Code states that a person not a party to the litigation having a legal interest in the property attached may make a claim to the Court which issued the attachment order within hundred and eight days of the date of attachment. The ACA (sections 103,104, 106,107, 108, and 144) deals with management of the property seized under the act. These include a power to sell the seized property.

Weighting and Conclusion

60. Bhutan does not meet most of the requirements of this Recommendation with the major deficiencies pertaining to the scope of confiscation measures, provisional measures, rights of bona fide third parties and mechanism for managing property. However, it is more compliant in terms of the ACA, which is important because corruption is the highest ML risk. **R. 4 is rated partially compliant.**

Recommendation 5 - Terrorist financing offence

61. *Criterion 5.1* – Section 329 of the Penal Code criminalizes terrorism but does not create a stand-alone TF offence. There is reference in section 329 (b) to participate in the financing, planning or perpetration of terrorist acts or in supporting terrorist acts directly. This only covers a very narrow set of TF conduct is not in accord with the Terrorist Financing Convention.

62. *Criterion 5.2* – Section 329 of the Penal Code is limited to the financing and planning of terrorist acts. It has the following deficiencies: support for terrorist acts must be made directly and indirect support for terrorist acts are not covered; the provision does not cover financing or support for a terrorist organization or individual terrorist, either directly or indirectly; the collection of funds is not covered; and there is no definition of financing in the Penal Code. Bhutan also does not criminalise the collection or provision of funds for the financing of travel for purposes related to terrorism as required under UNSCR 2178.

63. *Criterion 5.3* – The penal code does not define the term “funds” in the context of terrorism and financing.

64. *Criterion 5.4* – Authorities believe that the financing of terrorist acts under section 329 (b) does not require that the terrorist act be committed; however, there have been no TF cases this interpretation remains to be adjudicated in court. Significant gaps in the TF offence, however, remain.

65. *Criterion 5.5* – A defendant's conduct, circumstances and awareness can be used as evidence to show that a defendant's act was committed with his knowledge (of its illegality) or was done purposely to commit a crime, as provided in sections 54 (“Purposely”) and 55 of the Penal Code (“Knowingly”).

66. *Criterion 5.6* – The violation of section 329 is felony of the first degree which carries a penalty of imprisonment; a minimum of fifteen (15) years and a maximum of life imprisonment. (Section 330 and Chapter 3, Section 8, Penal Code).

67. *Criterion 5.7* – Sections 508 to 512 of the Penal Code cover the criminal liability of a corporation or other business association. Sections 511- 512 allows the legal person's charter to

be either forfeited, revoked or even dissolved without prejudice to the prosecution of the legal persons' responsible officers, in addition to custodial sentencing. However, a range of proportionate sanctions is not available.

68. *Criterion 5.8* – Although Sections 120 and 125 of the Penal Code define criminal attempt, aiding and abetting, and liability as an accomplice, the absence of clear definition on what would constitute financing, planning and support makes assessment for compliance difficult at this stage. Moreover, the act of organizing and directing others to commit TF offense or to contribute to the commission of one or more TF offense is not covered.

69. *Criterion 5.9* – The TF offence under section 329 is captured as a predicate offence because the ML definition in section 277 includes all offences or crimes in determining the underlying predicate offences for ML. As noted, there are significant deficiencies in the TF offence.

70. *Criterion 5.10* – The penal code makes no distinction regarding the venue for the commission of the offense. It is not clear, however, if the provisions of the penal code have extra-territorial application.

Weighting and Conclusion

71. Bhutan does not have a stand-alone TF offence. There are fundamental deficiencies in the Penal Code's criminalisation of the TF offence, particularly in the definition of the TF offence under c.5.1-3. **R. 5 is rated non-compliant.**

Recommendation 6 - Targeted financial sanctions related to terrorism and terrorist financing

72. *Sub-criterion 6.1(a)* – The Ministry of Foreign Affairs (MFA) is Bhutan's primary interface in dealing with the international community including the United Nations and its various organs. It has a coordinating role on matters relating to the UNSCR 1267/1989 Committee or 1988 Committee by relaying and disseminating UNSCR updates to the relevant offices in Bhutan. MFA would be the ministry responsible for proposing persons or entities to the 1267/1989 Committee for designation.

73. *Sub-criteria 6.1(b) to (e)* – Bhutan does not have mechanisms or procedures for identifying and designating persons or entities to be proposed to the UNSCR 1267/1989 Committee or 1988 Committee.

74. *Sub-criterion 6.2(a)* – Bhutan does not have a designated competent authority or court with responsibility for designating persons or entities that meet the specific criteria for designation, as set forth under UNSCR 1373, either under its own motion or in response to a foreign request.

75. *Sub-criterion 6.2(b) to (e)* – Bhutan has no regulations in force and effect to implement UNSCR 1373.

76. *Criterion 6.3* – Bhutan has no regulations in place that would govern information gathering to meet the criteria for designation and operate ex parte against such targets.

77. *Criterion 6.4* – The AML/CFT Regulations provide the mechanism for implementing targeted financial sanctions specifically the freezing mechanism. However, other components of the freezing mechanism are largely absent.

78. *Criterion 6.5* – The legal and institutional framework for targeted financial sanctions is not fully developed in Bhutan.

79. *Sub-criterion 6.5(a)* – Sections 17.2 and 17.6 (a) of the AML/CFT Regulations require REs to maintain an updated UNSCR Consolidated List by obligating them to update directly from the UNSC websites, and authorizes REs to freeze the customers' funds or block their transactions within 24 hours (for existing customers) even without prior notice from the FIU. The duration of the freeze is for an indefinite period until further notice. This freezing mechanism only captures REs and not all natural and legal persons within Bhutan.

80. *Sub-criterion 6.5(b)* – It is unclear whether the freeze covers all types of funds or assets. The obligations appear to be limited to name matching against the Consolidated List. There is no obligation for REs to identify funds or assets of persons and entities acting on behalf of, or at the direction of, designated persons or entities. Other provisions in the AML/CFT Regulations, however, cover circumstances where the customer is acting on behalf of, or is the beneficial owner of an account (s).

81. *Sub-criterion 6.5(c)* – Section 17.6 of the AML/CFT Regulations only authorizes REs to block transactions and reject potential customers. There is no prohibition on natural or legal persons, or entities within Bhutan from providing funds to designated entities and persons outside of services provided by REs.

82. *Criterion 6.5(d)* – Sections 17.2, and 17.3 require the REs to keep updated copies of the Consolidated List, providing the electronic links to the UNSC websites. Sections 17.6 and 17.8 provide the procedure to observe in case a name match is confirmed and eliminate “false positives” if any.

83. *Sub-criterion 6.5(e)* – Sections 17.6 and 17.7 require REs to submit a suspicious transaction report and inform the relevant authorities in case a freeze is made. Attempted transactions made by designated persons are reported as suspicious transactions.

84. *Sub-criterion 6.5(f)* – There are no rules that would govern the protection of the rights of bona fide third parties. Sections 17.6 and 17.8 provide the procedure to observe in case a name match is confirmed and eliminate “false positives” if any.

85. *Criterion 6.6* – Bhutan has no regulation covering de-listing, unfreezing and access to frozen funds or assets. Sections 17.6 and 17.8 provide the procedure to observe in case a name match is confirmed and eliminate “false positives” if any.

86. *Criterion 6.7* – Bhutan has no regulation covering access to frozen funds intended for basic and extraordinary expenses.

Weighting and Conclusion

87. There are fundamental deficiencies in Bhutan's implementation of Recommendation of R.6 particularly with UNSCR 1373 given Bhutan's TF risk profile. **R. 6 is rated non-compliant.**

Recommendation 7 – Targeted Financial sanctions related to proliferation

The financing of proliferation is a new Recommendation added in 2012.

88. *Criterion 7.1* – The AML/CFT Regulations only cover UNSCR 1737, are limited to REs and do not cover all funds and assets

89. *Sub-criterion 7.2(a)* – Sections 17.2 and 17.6 (a) of the AML/CFT Regulations 2015 require only REs to maintain an updated UNSCR 1737 List and authorizes only REs to freeze the customer's funds or block their transactions within 24 hours (for existing customers), even without prior notice from the FIU. The duration of the freeze is for an indefinite period until further notice. Other natural or legal persons within Bhutan are not subject to the freezing requirements, and there is no coverage of UNSCR 1718 for DPRK.

90. *Sub-criterion 7.2(b)* – It is unclear whether the freeze covers all types of funds. The obligations appear to be limited to name matching only against the UNSCR 1739 list. There is no obligation for REs to identify funds or assets of persons and entities acting on behalf of, or at the direction of, designated persons or entities. Other provisions in the 2015 AML/CFT Regulations, however, cover circumstances where the customer is acting on behalf of, or is the beneficial owner of an account (s).

91. *Sub-criterion 7.2(c)* – Section 17.6 of the AML/CFT Regulations 2015 only authorizes REs to block transactions and reject potential customers in respect of UNSCR 1737. There is no prohibition on natural or legal persons, or entities within Bhutan providing funds to designated entities and persons outside of services provided by REs.

92. *Sub-criterion 7.2(d)* – Sections 17. 2, and 17.3 require REs to keep updated copies of the UNSCR 1737 List, by obligating them to update directly from the UNSC websites. Sections 17.6 and 17.8 provide the procedure to observe in case a name match is confirmed and eliminate “false positives” if any. There is no obligation in respect of UNSCR 1718 for DPRK.

93. *Sub-criterion 7.2(e)* – Sections 17.6 and 17.7 require REs to submit a suspicious transaction report and inform the relevant authorities in case a freeze is made, but only for UNSCR 1737. Attempted transactions made by designated persons are reported as suspicious transactions. However, the deficiencies above cascade into this criterion.

94. *Sub-criterion 7.2(f)* – There are no rules that would govern the protection of the rights of bona fide third parties.

95. *Criterion 7.3* – Non-compliance with the AML/CFT Regulations 2015 is subject to sanctions that may be imposed under Section 147 of the Financial Services Act of 2011, or under any other regulations that may be issued pursuant to the latter. Although there are sanctions for violations, supervisors have not commenced onsite inspections for monitoring and ensuring compliance.

96. *Criterion 7.4* – Bhutan has no publicly known procedures for submitting de-listing requests to the Security Council.

97. *Criterion 7.5* – Bhutan has no rules or regulations in place governing contracts, agreements or obligations that arose prior to the date the accounts became subject to targeted financial sanctions.

Weighting and Conclusion

98. There are fundamental deficiencies in Bhutan's implementation of TFS for proliferation financing. **R. 7 is rated non-compliant.**

Recommendation 8 – Non-profit organisations

99. *Criterion 8.1* – Bhutan has previously reviewed its non-profit organisation sector (referred to as Civil Society Organisations) legislations in the lead-up to drafting and subsequent passage of the Civil Society Organisation Act 2007 (CSOA) and the CSO Rules and Regulations 2010 (CSO Regulations), but these reviews did not cover any aspect related to TF. Bhutan has also not conducted a domestic review of its Civil Society Organisation (CSO) sector; neither has it conducted periodic assessments of the sector's vulnerabilities to TF. The sector is included in Bhutan's pending NRA. The Civil Society Organisation Authority (CSO Authority) has a framework to obtain information on activities, size and other relevant features of all registered CSOs through registration and reporting regimes and an inquiry mechanism under the section 17-19 CSOA.

100. *Criterion 8.2* – While the CSO Authority conducts outreach and provides general awareness-raising at its annual meeting with CSOs and at other forums, at the time of the onsite such outreach had not included TF issues.

101. *Criterion 8.3* – Bhutan's policies for promoting transparency, integrity, and public confidence in the sector are provided for in the CSOA and CSO Regulations.

102. The CSO Authority has a website devoted to providing information to NPOs and to the public about the sector. The website provides the current status (registered or suspended) of CSOs registered under the CSOA and some basic information on each CSO. In addition, each financial year the CSO Authority publishes details of CSOs registered, suspended, mergers and consolidations, and de-registered. Furthermore, each registered CSO is required to publish on its website information relating to its purpose, activities, funds received and utilized, accomplishments and decision-making processes. However, publicly available information may be outdated or inaccurate due to a lack of systematic monitoring of compliance by the CSO Authority.

103. Under the CSOA, Bhutan has two types of domestic CSOs: Public Benefit Organisations (PBOs), which are established to benefit a section or society as a whole, and Mutual Benefit Organisations (MBOs), which are established to advance the shared interests of their members or supporters. At the time of the onsite there were 12 MBOs and 35 PBOs. The CSOA includes provisions for the accreditation of foreign CSOs. However, at the time on the onsite there was a small number (less than 10) of unregistered foreign CSOs operating in Bhutan. These friendship associations are aimed to foster people-to-people contact and promote friendship and harmony between the people of Bhutan and the concerned country. Authorities were unable to provide information on CSOs that account for a significant proportion of financial resources and international activities of the sector.

104. The Religious Organisations Act 2007 (ROA) provides the framework for that sub-category of non-profit organizations. There is no provision in the ROA for public access to basic information on religious organisations registered with the Chhoedey Lhentshog, which is the regulatory authority for religious organisations. However, significant details of all religious organisations are freely available to the public at the authority's website.

105. *Sub-criterion 8.4(a)* – Under Chapter 5 of the CSOA and Chapter 7 of the CSO Regulation, at the time of registration, a CSO must provide an Article of Association and a Memorandum of Association, which includes information on; (i) the organisation’s purpose, objectives and scope of activities, (ii) board members, and (iii) structure, accountability and reporting responsibilities of its officials and key personnel.

106. In addition to the above information, foreign CSO are required to establish a MoU with a government agency that acts as its technical collaborator, and provide a certified copy of its Certificate of Registration in its home country.

107. *Sub-criteria 8.4(b) and (c)* – Under Chapter 15 of the CSO Regulation, the Royal Audit Authority is mandated to conduct an annual audit of PBOs in accordance with the Audit Act of Bhutan 2006. Within one month of this audit, PBOs are required to submit to the CSO Authority, and publish on their website, an annual financial account prepared by an accountant and endorsed by board members, and an annual report, which is required to include: (i) activities of the PBO during the year, (ii) an explanation of how individuals access the PBO’s programmes and services, and (iii) a list of board members, management staff and contributors.

108. MBOs are excluded from the annual audit and reporting obligation stated above. Under section 16 of the CSOA, the CSO Authority shall prescribe an endowment fund limit for MBOs. However, section 190 of the CSO Regulations stipulates an endowment fund minimum of Nu.50,000 (~US\$765.00) not a limit.

109. Under Chapter 10 of the CSO Regulations, foreign CSOs are required to submit an annual expenditure report to the CSO Authority, and conduct ongoing monitoring and evaluation of their activities in accordance with their MoU.

110. *Sub-criterion 8.4(d)* – Under section 22 of the CSOA, CSOs are required to be registered with the CSO Authority. Under section 219 of the CSO Regulation, the CSO Authority shall impose a fine of Nu.30,000 (~USD460.00), close the organisation and confiscate its assets, if an organisation or individual carries out activities without registration. Since 2010 all new CSOs have been required to register with the CSO Authority, however, there has been no enforcement of CSO registration for CSOs established prior to 2010 as required under section 23 of the CSOA.

111. While accreditation of foreign CSOs is detailed in Chapter 7 of the CSOA and Chapter 10 of the CSO Regulations, as identified above, foreign CSOs operating in Bhutan are not registered with the CSO Authority. However, they do have MoUs with government agencies that act as technical collaborators.

112. *Sub-criterion 8.4(e)* – At the time of registration, a CSO must submit to the CSO Authority a Memorandum of Association, which includes a description of beneficiaries. This documentation does not necessarily extend to knowing your beneficiaries and associated NPOs to the extent envisaged under this criterion.

113. *Sub-criterion 8.4(f)* – Under section 189 of the CSO Regulations, CSOs are required to retain for 10 years records of funding raising activities including information on all contributions, revenue received, expenses incurred, and account number, name and location of bank in which funds were deposited. This record retention clause does not extend to all documentation provided under criterion 8.4 (a) & (b).

114. There are similar requirements in the ROA.

115. *Criterion 8.5* – As stated above, the Royal Audit Authority is mandated to conduct an annual audit of all PBOs, and PBOs must comply with annual reporting obligations. In practice, the Royal Audit Authority uses a risk based approach to auditing with an approximate total of 10 to 15 CSOs audited each year.

116. The CSO Authority reviews each PBO's annual financial account and annual report.

117. Under the CSO Regulations and the CSOA, the Authority can apply a range of proportionate and dissuasive sanctions, including; (i) fines to a maximum of Nu.20,000 (~USD307) (section 218 of the CSO Regulation), (ii) seizure of property or money not used for the purpose or activities set forth in the Article of Association or Memorandum of Association (section 220 of the CSO Regulation), (iii) de-registration (section 140 of the CSO Regulation), (iv) removal of board members or employees (section 114 of the CSOA), and (v) sentencing in accordance with Bhutan Penal Code for false statements, false and misleading information, breach of trust, misuse of investment, unlawful collection and illegal fund raising. At the time of the onsite, sanctions had only been applied in relation to late payment of annual membership renewal.

118. There are similar requirements in the ROA.

119. *Criterion 8.6* – The CSO Authority has no formal cooperation, coordination or information sharing mechanisms with other competent authorities. However, the CSO Authority does include one senior official from both the Ministry of Home and Cultural Affairs and the Ministry of Finance.

120. As stated above, registration and reporting regimes provide for information on the administration and management of CSOs. Under section 17-19 of the CSOA, the CSO Authority has the power to summon and compel any person to give evidence and produce documents and accounts and statements relating to a CSO Authority inquiry. General investigative powers of RBP and ACC provide for investigation into criminal acts as discussed at Recommendation 30 & 31. There is nothing in the CSOA that would inhibit such access.

121. There are similar requirements in the ROA.

122. *Criterion 8.7* – There is no identified point of contact or procedures in the CSO Authority for responding to international requests for information, either received directly or through the Ministry of Foreign Affairs.

123. There are similar requirements in the ROA.

Weighting and Conclusion

124. While the CSOA provides a strong platform for oversight in line with this Recommendation, its limited application combined with the lack of a sectoral review, especially in relation to abuse for terrorism financing, means the NPO sector is not yet subject to adequate outreach and oversight for AML/CFT purposes. **R. 8 is rated partially compliant.**

Recommendation 9 – Financial institution secrecy laws

125. *Criterion 9.1* – Financial institution secrecy laws do not appear to inhibit the implementation of the AML/CFT measures. Financial institutions have the duty of customer confidentiality imposed by section 216 of the FSA and the AML/CFT Regulations. However, access to information by competent authorities for the proper performance of their functions in

combating ML or FT is ensured through section 216 of the FSA. Furthermore, section 22.1.2 of the AML/CFT Regulations provides exemption to confidentiality for the purposes of the Royal Monetary Authority Act 2010 (RMAA), the FSA, the AML/CFT Regulations or otherwise in connection with the performance of their duties.

126. The RMA, as the financial supervisor, may provide information under section 213 of the FSA to any state authorised government agency, self-regulatory agency or foreign counterparts, subject to confidentiality requirements. At the time of the onsite there are no other AML/CFT supervisors.

127. Under Section 217 of the FSA, FIs are allowed to exchange business and financial information about any customer. There are no inhibitions to sharing of information between FIs where this is required by Recommendations 13, 16 or 17.

128. There is no specific provision to allow exemption to confidentiality for the financial supervisors or FIs to share customer information internationally except when the disclosure is required or authorised by a court order.

Weighting and Conclusion

129. Financial institution secrecy laws applying to REs are overridden by specific provisions in the AML/CFT Regulations. However, there is a lack of clarity concerning the ability of sharing information internationally. **R. 9 is rated largely compliant.**

Recommendation 10 – Customer due diligence

Detailed CDD requirements

130. *Criterion 10.1* – Under section 4.1.1 of the AML/CFT Regulations, REs are prohibited from keeping anonymous accounts or accounts in obviously fictitious names.

When CDD is required

131. *Sub-criterion 10.2(a)* – Under section 144 (a) of the FSA, there is a higher level principle requirement for a reporting entity to establish procedures on appropriate review of customers or those for whom they act, by establishing a KYC system of identification and verification. Further detailed requirements are provided in section 4.2.1 (a) of the AML/CFT Regulations that require REs to undertake CDD measures when establishing business relations.

132. *Sub-criterion 10.2(b)* – CDD is required under section 4.2.1 (b) and (c) of the AML/CFT Regulations when a RE is carrying out occasional transactions above the applicable designated threshold of Nu.500,000 (USD7500), including situations where the transaction is carried out in a single operation or in several operations that appear to be linked, and carrying out cash transactions involving an amount equivalent to Nu. 500,000 and above. For money service business (MSB) providers, section 5.2 (e) of the MSB Guidelines, which are enforceable means, provides for a threshold exemption of USD 5,000 in aggregate or USD 1,000 per transaction.

133. *Sub-criterion 10.2(c)* – Under section 4.2.1 (d) of AML/CFT Regulations, REs are required to undertake CDD measures when carrying out occasional transactions that are wire transfers in the circumstances covered by Recommendation 16.

134. *Sub-criterion 10.2(d)* – Under section 4.2.1 (d) of the AML/CFT Regulations, CDD measures should be undertaken when there is a suspicion of ML/TF, regardless of amount. This also applies to MSB regardless of the threshold as specified in section 6.2 of the MSB Guidelines.

135. *Sub-criterion 10.2(e)* – CDD is required under section 4.2.1 (f) of the AML/CFT Regulations when the RE has doubts about the veracity or adequacy of previously obtained customer identification information.

Required CDD measures for all customers

136. *Criterion 10.3* – The requirements to identify a customer and verify that customer's identity are set out in section 4.3.1 of the AML/CFT Regulations. REs are required to identify the customer (whether permanent or occasional, and whether natural or legal person or legal arrangement) and verify that customer's identity using reliable, independent source documents, data or information (identification data). Prior to providing a financial service to a customer, REs are required to verify specific identification documentation, record the specified information in relation to that customer and retain a copy of the documents.

137. *Criterion 10.4* – Section 4.3.1(b) of the AML/CFT Regulations states that REs are required to verify that any person purporting to act on behalf of the customer (either natural person or legal persons/arrangements) is so authorised, and identify and verify the identity of that person.

138. *Criterion 10.5* – Section 4.3.1(c) of the AML/CFT Regulations states that REs are required to identify the beneficial owner and take reasonable measures to verify the identity of the beneficial owner, using the relevant information or data obtained from a reliable source, such that the RE is satisfied that it knows who the beneficial owner is. Beneficial owner is defined (under Definitions) in the AML/CFT Regulations consistent with the FATF standards. For capital market intermediaries, this is also required in section 5.2 of the AML/CFT Guidelines for Capital Market Intermediaries, which are enforceable means.

139. *Criterion 10.6* – Section 4.3.1 (d) of the AML/CFT Regulations states that REs are required to understand and, as appropriate, obtain information on, the purpose and intended nature of the business relationship.

140. *Sub-criterion 10.7(a) and (b)* – Ongoing due diligence is required under section 144(b) of the FSA and specifically prescribed in section 4.3.1 (e) of the AML/CFT Regulations. REs are required to conduct ongoing due diligence on the business relationship, including: (i) scrutinising transactions undertaken throughout the course of that relationship to ensure that the transactions being conducted are consistent with the reporting entities knowledge of the customer, their business and risk profile, including where necessary, the source of funds; and (ii) ensuring that documents, data or information collected under the CDD process is kept up-to-date and relevant, by undertaking reviews of existing records, particularly for higher risk categories of customers.

Specific CDD measures required for legal persons and legal arrangements

141. *Criterion 10.8* – Section 4.4.1 of AML/CFT Regulations states that for customers that are legal persons or legal arrangements (both domestic and foreign), REs are required to understand the nature of the customer's business and its ownership and control structure.

142. *Criterion 10.9* – Section 4.4.2 (a)-(c) of the AML/CFT Regulations contains specific provisions for REs to identify and verify customers that are legal persons and legal arrangements.

143. *Criterion 10.10* – Section 4.4.3 (a) - (c) of the AML/CFT Regulations contains specific provisions for REs to identify and take reasonable measures to verify the beneficial owners of customers that are legal persons with reference to the three steps detailed under this criterion.

144. *Criterion 10.11* – Section 4.4.4 (a)-(b) of the AML/CFT Regulations contains specific provisions for REs to identify and take reasonable measures to verify the beneficial owner of customers that are legal arrangements (both domestic and foreign), including the identity of the settlor, trustee (s), protector (if applicable), or identity of persons of equivalent similar positions.

CDD for Beneficiaries of Life Insurance Policies

145. *Criterion 10.12* – Section 4.5.1 (a) - (c) of the AML/CFT Regulations contains additional CDD measures to be undertaken by REs on the beneficiary of life insurance and other investment related policies, which are to be carried out as soon as the beneficiary is identified or designated.

146. *Criterion 10.13* – Section 4.5.2 of AML/CFT the Regulations state that REs are required to include the beneficiary of a life insurance policy as a relevant risk factor in determining whether enhanced CDD measures are applicable. If the RE determines that a beneficiary who is a legal person or a legal arrangement presents a higher risk, it is required to take enhanced measures which should include reasonable measures to identify and verify the identity of the beneficial owner of the beneficiary, at the time of pay-out.

Timing of verification

147. *Criterion 10.14* – Section 4.6.1 (a) - (c) of the AML/CFT Regulations contains detailed provisions on the timing of verification of the customer and beneficial owner, including provision of verification after the establishment of the business relationship subject to the conditions specified under this criterion.

148. *Criterion 10.15* – Section 4.6.2 of the AML/CFT Regulation states that REs are required to adopt risk management procedures concerning the conditions under which a customer may utilise the business relationship prior to verification.

Existing customers

149. *Criterion 10.16* – Under section 4.7.1 of the AML/CFT Regulations, REs are required to apply CDD requirements to existing customers on the basis of materiality and risk. Furthermore, under Section 4.7.2, REs are required to conduct due diligence on such existing relationships at appropriate times, taking into account whether and when CDD measures have previously been undertaken and the adequacy of data obtained.

Risk-based approach

150. *Criterion 10.17* – Under section 4.10 of the AML/CFT Regulations, REs are required to perform enhanced CDD where the ML/TF risks are assessed as higher.

151. *Criterion 10.18* – Under section 3.3.1 (c) of the AML/CFT Regulations, REs may apply simplified measures to manage and mitigate ML and TF where the risk is assessed as being low, but is not acceptable whenever there is suspicion of ML/TF, or specific higher risk scenarios.

Failure to satisfactorily complete CDD

152. *Criterion 10.19* – Section 4.8.1 (a)- (b) of the AML/CFT Regulations contains required actions where REs are unable to satisfactorily complete relevant CDD measures.

153. *Criterion 10.20* – Section 4.9.1 of the AML/CFT Regulation states that in cases where REs form a suspicion of money laundering or terrorist financing, and they reasonably believe that performing the CDD process will tip-off the customer, they should be permitted not to pursue the CDD process, and instead should be required to file a suspicious transaction report.

Weighting and Conclusion

154. **R. 10 is rated compliant.**

Recommendation 11 – Record-keeping

155. *Criterion 11.1* – Sections 91 to 92 of the FSA require all licensees to maintain records for at least 10 years following completion of the transaction. Furthermore, section 16.2 of the AML/CFT Regulations requires REs to keep transaction records for at least 10 years following the completion of the transaction, the termination of the business relationship or after the date of the occasional transaction.

156. *Criterion 11.2* – Under section 16.1 of the AML/CFT Regulations, REs are required to keep the relevant records including any accounts, files, business correspondence and documents relating to CDD process, both domestic and international, for a period of 10 years after the termination of the business relationship. This includes documents used to verify the identity of customers and beneficial owners, and results of any analysis undertaken. The records maintained must remain up-to-date and relevant.

157. *Criterion 11.3* – Sections 91 to 93 of the FSA require the transaction records to exhibit clearly and correctly the state of the RE's affairs, to explain its transactions and financial position, and to enable the RMA to determine whether the RE has complied with the provisions of the FSA and the regulations under it.

158. *Criterion 11.4* – Section 141(h) of the FSA requires REs to provide information or documents to the FIU. Section 16.4 of the AML/CFT Regulations states that REs are required to ensure that all CDD information and transaction records are available swiftly to domestic competent authorities upon appropriate authority. The RMA under section 120 of the FSA may request any additional information as it may reasonably be required for the exercise of its functions. Furthermore, under section 94(1) (b) of ACA, the ACC have the powers to compel the production of documents.

Weighting and Conclusion

159. **R. 11 is rated compliant.**

Recommendation 12 – Politically exposed persons

160. *Criterion 12* – Sections 5.2.1 to 5.2.3 of the AML/CFT Regulations requires REs to put in place a risk management system to determine whether a customer or a beneficial owner is a foreign PEP. Furthermore, senior management approval is required before establishing (or continuing, for existing customers) such business relationships. In addition, REs are required to take reasonable measures to establish the source of wealth and the source of funds of customers and beneficial owners identified as PEPs. Section 5.2.4 of the AML/CFT Regulations requires

enhanced CDD of foreign PEPs. Enhanced ongoing monitoring of foreign PEPs is covered in section 4.11.3, which states that the frequency of the on-going due diligence or enhanced on-going due diligence shall commensurate with the level of ML/TF risks posed by the customer based on the risk profiles and nature of transactions.

161. *Criterion 12.2* – Section 5.3.1 of the AML/CFT Regulations requires REs to take reasonable measures to determine whether a customer or beneficial owner is a domestic PEP, or a person entrusted with a prominent function by an international organisation. Section 5.3.4 of the AML/CFT Regulations requires enhanced CDD of domestic PEPs or persons entrusted with a prominent function by an international organisation, when such a person is assessed as higher risk. The provisions of enhanced ongoing due diligence under section 4.11 would also apply.

162. *Criterion 12.3* – Under section 5.1.1 of the AML/CFT Regulations, the relevant requirements in criteria 12.1 and 12.2 extend to family members and close associates of all types of PEPs.

163. *Criterion 12.4* – Section 5.3.7 of the AML/CFT Regulations states that in relation to life insurance policies, REs are required to take reasonable measures to determine whether the beneficiaries and/or, where required, the beneficial owner of the beneficiary, are PEPs. This should occur, at the latest, at the time of the payout. Furthermore, section 5.3.8 states that, where higher risks are identified in relation to life insurance policies, REs are required to inform senior management before the payout of the policy proceeds, to conduct enhanced scrutiny on the whole business relationship with the policyholder, and to consider making a suspicious transaction report.

Weighting and Conclusion

164. **R. 12 is rated compliant.**

Recommendation 13 – Correspondent banking

165. *Criterion 13.1* – Section 8.2 of AML/CFT Regulations requires REs to gather sufficient information to understand fully the nature of the respondent bank's business, assess the respondent institution's AML/CFT controls, obtain approval from senior management and clearly understand the respective responsibilities in full accordance with this criterion.

166. *Criterion 13.2* – Section 8.3 of AML/CFT Regulations states that in relation to “payable-through accounts”, reporting entities are required to satisfy themselves that the respondent bank has performed CDD obligations on its customers that have direct access to the accounts of the reporting entity, and is able to provide relevant CDD information to the reporting entities upon request.

167. *Criterion 13.3* – Section 8.4 of AML/CFT Regulations prohibits REs entering into, or continuing correspondent banking relationships with shell banks and the same section requires reporting institutions to be satisfied themselves that respondent banks do not permit their accounts to be used by shell banks.

Weighting and Conclusion

168. **R. 13 is rated compliant.**

Recommendation 14 – Money or value transfer services

169. *Criterion 14.1* – Section 9.1 of AML/CFT Regulations requires the natural or legal persons that provide MVTs providers to be licensed or registered in line with the Foreign Exchange Regulation 2013.

170. *Criterion 14.2* – Section 23.3.9 of AML/CFT Regulations states that non-compliance to section 9.1 shall be liable as per section 56(c) of Foreign Exchange Regulation 2013. However, Bhutan has not provided any evidence that it has proactively identified and sanctioned unlicensed or unregistered MVTs operators. Bhutan has stated that there are no Hawala providers operating in Bhutan.

171. *Criterion 14.3* – In Bhutan, most MVTs providers are banks and they are subject to AML/CFT monitoring requirements. There are four non-bank MVTs providers including two large, well known international companies that are only allowed to provide inward remittance services and outward remittance to India for only educational purposes. The Postal Services of Bhutan acts as the agent for one of these foreign MVTs provider and two commercial banks act as agents for the other three. These non-bank MVTs providers are not explicitly subject to monitoring for AML/CFT compliance.

172. *Criterion 14.4* – Bhutan advised that there is a typographical error in section 9.4 of the AML/CFT Regulations; the stated requirement in the regulations is for agents of MVTs to keep a list of agents, rather than MVTs providers to keep a list of agents as required in the FATF standards. Since the error appears in the revised AML/CFT Regulations issued in November 2015, the practical consequences of this error are not clear at the end of the onsite. Although given the nature of the remittance market is essentially limited to banks and the postal office (either providing services autonomously or as agents for foreign MVTs), the requirement of agents of MVTs to keep a list of agents does cover the current situation in Bhutan.

173. *Criterion 14.5* – Section 9.5 of AML/CFT Regulations requires the MVTs providers to include the agents in their AML/CFT programmes and monitor them for compliance with these programmes.

Weighting and Conclusion

174. There are shortcomings against the essential criteria. MVTs providers are required to be registered; however, authorities are not identifying illegal MVTs providers and not adequately monitoring MVTs providers for AML/CFT compliance. **R. 14 is rated partially compliant.**

Recommendation 15 – New technologies

175. *Criterion 15.1* – The introduction of new technologies is subject to RMA approval after REs have assessed their ML/TF risks as required under section 10 of the AML/CFT Regulations.

176. *Criterion 15.2* – Section 10.2 of AML/CFT Regulations requires REs to undertake the risk assessment prior to the launch or use of such products, practices and technologies; and to take appropriate measures to manage and mitigate the risks.

Weighting and Conclusion

177. **Recommendation 15 is rated compliant.**

Recommendation 16 – Wire transfers

178. *Criteria 16.1-15* – Section 11.2 of AML/CFT Regulations requires REs to include required and accurate originator information and required beneficiary information, on wire transfers and related messages, and that information remain with the wire transfer or related message throughout the payment chain. This requirement covers intermediary and beneficiary FIs. There is also a requirement to monitor wire transfers to ensure such information is included. There is no minimum threshold for KYC/CDD rules.

179. *Criteria 16.6-17* – Sections 9.2-3 cover the circumstances articulated under these two criteria.

180. *Criterion 16.18* – Section 11.1.2 of AML/CFT Regulations requires REs to comply with the requirements on combating the financing of terrorism under section 17 of the regulations when in carrying out wire transfers. The deficiencies of section 11 are discussed under R.6.

Weighting and Conclusion

181. The deficiencies under R.6 affect compliance with this Recommendation. **R. 16 is rated largely compliant.**

Recommendation 17 – Reliance on third parties

182. *Criterion 17.1* – Section 12 of AML/CFT Regulations allows REs to rely on third parties to conduct CDD or to introduce business, but the ultimate responsibility and accountability of CDD measures shall remain with the reporting entity relying on the third party.

183. Section 12.5 of the regulations also states that the relationship between the reporting entity and the third party (relied upon by the REs to conduct CDD) shall be governed by an arrangement that clearly specifies the rights, responsibilities and expectations of all parties. This section also requires the reporting entity to be satisfied that the third party has an adequate CDD process, measures in place for record keeping requirements, can provide the CDD information and provide copies of the relevant documentation immediately upon request, and is properly regulated and supervised by the respective authorities.

184. Section 12.6 of the regulations allows the reporting entity to obtain an attestation from the third party to satisfy itself that the requirements in section 12.5 have been met. Section 12.7 also allows REs to obtain written confirmation from a third party that it has conducted CDD on the customer or beneficial owner in accordance with Section 4 requirements on CDD. However, ultimate responsibility still rests with the financial institution and the obligations in Section 4 on CDD are still applicable as stated in Section 12.7.

185. *Criterion 17.2* – Section 12.4 of AML/CFT Regulations prohibits REs relying on third parties located in higher risk countries that have been identified as having on-going or substantial ML/TF risks.

186. *Criterion 17.3* – Section 12.8 of AML/CFT Regulations permits REs to rely on a third party that is part of the same financial group in accordance with this criterion. The regulations, however, fall short as there is no requirement for group level AML/CFT compliance (refer R.18) and there is

no supervision at a group level by competent authorities. There are, however, only a handful of financial groups in Bhutan.

Weighting and Conclusion

187. Bhutan has comprehensive regulatory requirements for reliance on third parties, except deficiencies from R.18 on group level compliance cascade onto c.17.3. However, there are only a handful of financial groups in Bhutan. **R. 17 is rated largely compliant.**

Recommendation 18 – Internal controls and foreign branches and subsidiaries

188. *Criterion 18.1* – Section 144 (d) of FSA provides that FIs should establish procedures to develop internal programs including training programs, procedures, controls and audit functions related to ML/TF. Section 7.1.1 of AML/CFT Regulations also requires REs to have a written AML/CFT Programme endorsed by the board of the reporting entity. Section 7.1.2 of the regulations requires the RE to implement programmes to mitigate against ML/TF, which corresponds to its ML/TF risks and the size of its business. Sections 7.2 to 7.3 detail the role of the board of directors and senior management in the compliance programme, including under section 7.3.2. (g) to appoint a compliance officer at the management level.

189. Section 7.5 of the regulations requires the RE to have a screening mechanism for hiring employees and throughout the course of employment. REs are also required to establish an employee assessment system that is commensurate with the size of operations and risk exposure of reporting entities to ML/TF.

190. Section 7.6 of the regulations requires REs to conduct awareness and training programmes on AML/CFT practices and measures for their employees. Such training must be conducted regularly and supplemented with refresher courses. Section 7.6.7 also requires REs to provide the training to specific categories of employees, such as front line employees, supervisors and managers.

191. Section 7.6 of the regulations requires the Board of the reporting entity to ensure independent audit functions. REs are required to ensure that independent audits are carried out at the institution level at least on an annual basis.

192. *Criterion 18.2* – There is no specific requirement for group wide programs against ML/TF.

193. *Criterion 18.3* – Section 144 (e) of FSA 2011 requires REs to ensure that the foreign branches and subsidiaries have appropriate operational measures to combat ML/TF. It is not explicit that this provision requires the foreign branches and subsidiaries apply the home AML/CFT measures where the host jurisdiction is less strict, to the extent that host country laws and regulations permit.

194. *Section 2.4* of AML/CFT Regulations states the provision of applicability of the regulations over the branches and subsidiaries of the REs. It does not explicitly require the foreign branches and subsidiaries to apply the home AML/CFT measures where the host jurisdiction is less strict, to the extent that host country laws permit.

Weighting and Conclusion

195. Bhutan has put in most of the requirements with regard to internal controls and foreign branches and subsidiaries. However, gaps remain; financial groups are not required to have group-wide programmes and measures against AML/CFT, but there are only a few, relatively small financial groups in Bhutan and no branches or subsidiaries offshore. There also no branches or majority owned subsidiaries of foreign FIs in Bhutan. **R. 18 is rated largely compliant.**

Recommendation 19 – Higher-risk countries

196. *Criterion 19.1* – Section 14.1 of AML/CFT Regulations requires REs to conduct enhanced CDD for business relationships and transactions with any person from countries identified by the FATF or the Royal Government of Bhutan as having on-going or substantial ML/TF risks. Section 14.2 of AML/CFT Regulations also requires REs, where ML/TF risks are assessed as higher risks, to conduct enhanced CDD for business relationships and transactions with any person from countries identified by the FATF or the Royal Government of Bhutan as having strategic AML/CFT deficiencies, and which have not made sufficient progress in addressing those deficiencies.

197. *Criterion 19.2* – Section 14.3 of the regulations provides for potential countermeasures to be taken proportionate to the risk, including for higher risk jurisdictions when called upon by the FATF or independently of any call by the FATF. Four potential measures are listed under section 14.3 (a)- (d) consistent with the options listed in the interpretative note on R.19, and under section 14.3 (e), there is scope for the FIU to issue other measures as may be specified.

198. *Criterion 19.3* – There is no system is in place to proactively advise REs of concerns about weaknesses in the AML/CFT systems of other countries.

Weighting and Conclusion

199. Bhutan lacks measures in place to ensure FIs are advised of concerns of weaknesses in the AML/CFT systems of other countries. **R. 19 is rated largely compliant.**

Recommendation 20 – Reporting of suspicious transaction

200. *Criterion 20.1* – There are general but clear obligations for REs to submit STRs in sections 144 and 144(c) of the FSA, namely that REs should report suspicious transactions. There are more detailed obligations in section 6.1 of the AML/CFT Regulations. Section 6.1.1 of the regulations requires REs to promptly submit a suspicious transaction report whenever they suspect or have reasonable grounds to suspect that funds are the proceeds of a criminal activity, or are related to TF. Section 6.1.4 requires the RE to establish a reporting system for the submission of STRs.

201. The STR reporting obligations are undermined, however by the fact that not all predicate offences in the FATF standards are criminal offences in Bhutan (refer R.3), and there are significant deficiencies in the TF offence in the Penal Code (refer R.6).

202. *Criterion 20.2* – Section 6.1.2 of AML/CFT Regulations requires REs to submit all suspicious transactions, including attempted transactions, regardless of the amount of the transaction. The FIU Guidelines on STR provide further advice on attempted transactions to clarify the obligations.

Weighting and Conclusion

203. The deficiencies pertain mainly to scope deficiencies from R.3 and R.6 onto the suspicious transaction reporting requirements under section 6.1 of the AML/CFT Regulations. **R. 20 is rated partially compliant.**

Recommendation 21 – Tipping-off and confidentiality

204. *Criterion 21.1* – Section 145 of FSA 2011 provides necessary protection to REs from criminal and civil liability in respect of disclosure of information in good faith. This provisions, however, does not contain any protection to RE's directors, officers or employees.

205. Section 22.3.3 of AML/CFT Regulation 2015 states that, where a reporting obligation for a reporting entity arises or has arisen under regulation 6.1, the reporting entity or its employees shall be liable to any action or damages, unless conducted in good faith. However, the safe harbour provided for employees is not contained in law, only in the AML/CFT Regulations.

206. *Criterion 21.2* – Section 216 of FSA requires the present and former licensees or managers, directors or employees of licensees to keep secret any confidential information. However, there is no prohibition on the actual reporting entity.

Weighting and Conclusion

207. There are significant deficiencies in obligations covering tipping-off and confidentiality including a lack of protection for RE's directors and employee.

208. **R. 21 is rated non-compliant.**

Recommendation 22 – DNFBPs: Customer due diligence

209. The FSA, AML/CFT Regulations and enforceable guidelines are applicable to all designated non-financial businesses and professions (DNFBPs) as they are captured in the definition of a reporting entity. The definition of a reporting entity in the FSA is, "a licensee or other financial institutions or person designated by the Authority for the purposes of Section 144." The AML/CFT Regulations issued on 13 November 2015 include all FATF designated DNFBPs as REs with the exception of casinos as they are illegal in the country.

210. *Criterion 22.1* – The findings on CDD under R.10 apply to all DNFBP activities in Bhutan; in addition, there is a CDD threshold of Nu.500,000 (USD7500) for cash transactions for dealers in precious metals, bullion and precious stones as per section 4.2.1 (c) of the AML/CFT Regulations. As indicated above, casinos are prohibited in Bhutan.

211. *Criterion 22.2* – The conclusions under R.11 on record keeping are also applicable to all relevant DNFBP activities.

212. *Criterion 22.3* – The findings noted under R.12 on PEPs are also applicable to all relevant DNFBP activities.

213. *Criterion 22.4* – The findings noted under R.15 on new technologies are also applicable to all relevant DNFBP activities.

214. *Criterion 22.5* – The findings noted under R.17 on reliance on third parties are also applicable to all relevant DNFBP activities.

Weighting and Conclusion

215. **R. 22 is rated compliant.**

Recommendation 23 – DNFBPs: Other measures

216. *Criterion 23.1* – The findings noted under R.20 on STR reporting are also applicable to all relevant DNFBP activities under this criterion.

217. *Criterion 23.2* – The findings noted under R.18 on internal controls are also applicable to all relevant DNFBP activities.

218. *Criterion 23.3* – The findings noted under R.19 on higher risk countries are also applicable to all relevant DNFBP activities.

219. *Criterion 23.4* – The findings noted under R.21 on tipping off and confidentiality are applicable to all relevant DNFBP activities.

Weighting and Conclusion

220. While Bhutan provides for general requirements in relation to reporting of STRs, establishment of internal controls and tipping-off and confidentiality, the gaps in relation to R.18, R.19, R.20 and R.21 for FIs also apply to DNFBPs. **R. 23 is rated partially compliant.**

Recommendation 24 – Transparency and beneficial ownership of legal persons

221. *Criterion 24.1* – There are separate legislations that govern the different types of legal persons in Bhutan.

222. The Companies Act of 2000 (Companies Act) govern, among others, the: (a) registration and incorporation of a company; (b) rules on the issuance, registration, recording and transfers of shares; (c) qualifications and rights of company shareholders; (d) the qualification, powers and duties of directors; and (e) prosecution and penalties for specific violations. The Companies Act provides for equity and preference share capital and debentures.

223. Section 98 of the Companies Act allows for any member of the public to inspect the various registers maintained by the company. Section 139 of the Companies Act allows any person to inspect or copy any document maintained by the Registrar of Companies.

224. The Civil Societies Act, 2007 (CSOA) applies to associations, societies, foundations, charitable trusts, not-for-profit organisations or other entities that are not part of government and do not distribute any income or profits. The ROA provides the framework for that sub-category of non-profit organizations. These two laws provide for the creation of these types of legal persons and the keeping of basic information.

225. Under section 99 of the CSOA, members of the public shall have the right of access to and inspect the public register of CSOs that is maintained by the CSO Authority. Further, the public can access basic information on CSOs via the CSO Authority's website.

226. There is no provision in the ROA for public access to basic information on religious organisations registered with the Chhoekey Lhentshog, which is the regulatory authority for religious organisations. However, significant details of all religious organisations are freely available to the public at the authority's website.

227. There is no legislation for creation of sole proprietorship and partnership firms, though a draft Enterprise Registration Bill of Bhutan, 2013, intended to provide a legislative framework for the same, is under consideration.

228. Beneficial owners, although mentioned in Section 19 of the Companies Act, reflects legal ownership but not necessarily beneficial ownership. For CSO and religious organisations, legal ownership is generally synonymous with beneficial ownership.

229. *Criterion 24.2* – National Risk Assessment is underway to assess ML/TF risk of legal persons.

230. *Criterion 24.3* – Section 5 of Companies Act states all companies that operate in Bhutan should first register with the Registrar of Companies. The basic information required to be submitted at the time of registration is the Articles of Incorporation (Section 4), in prescribed form, which provides: (a) the name of the company; (b) the place where the registered office; (c) the main and ancillary objectives of the company; (d) limited liability of shareholders; (e) authorized capital share of the company; (f) company regulations; and (g) the subscribed number of equity shares in the capital.

231. The additional information submitted to the Registrar of Companies, aside from the Articles of Incorporation, include the (a) names and addresses of the first directors and the Chief Executive Officer; (b) prescribed consent form to act as directors by the first directors; and (c) a prescribed declaration form by one or more of the directors stating that all the requirements under the Companies Act have been complied with.

232. All foreign investors intending to establish businesses under the Foreign Direct Investment (FDI) Policy are likewise required to incorporate under the Companies Act (Section 7, FDI Rules and Regulations). Among the information required to be submitted under the FDI rules include the:

- Notarized copy of Company Incorporation Certificate or equivalent/CV of foreign investor in case of individual;
- Notarized copy of passport of foreign investors (if individual);
- Tax return/audited accounts of the foreign investor/s for the last 3 years; and
- Board of Directors'/Shareholders' resolution of the foreign investing company.

233. If the Registrar is satisfied that all the requirements under the Companies Act have been complied with, it will issue a Certificate of Incorporation. The company's corporate existence shall commence from the date of incorporation as mentioned in the Certificate of Incorporation and shall exercise all the powers and functions of an incorporated company (Section 5, pars. 3 and 4).

234. As noted under c.24.1, the public is able inspect records held by the Companies Registrar and the various registers maintained by companies, as provided in sections 139 and 98 respectively of the Companies Act.

235. *Criterion 24.4* – Section 97 of Companies Act requires companies to keep at their registered office, inter alia, an updated register of directors and their shareholdings, with any changes recorded within 7 days of the change taking place. The Register of directors' shareholdings is required to contain the name of the director; the number, description and amount of shares in, or debentures of, the company or any other body corporate, being the company's subsidiary or holding company. Sections 32 (1) requires maintaining such details as the name and address of each shareholder and the number of shares held, maintained in a manner which is also capable of being retrieved by electronic means, but does not mention about other details such as category of shares, and the nature of the associated voting rights in respect of shareholders or members, as required by this criterion. Although shareholders nevertheless acquire their rights once entered in the register of shareholders. Section 97 requires that the information should be maintained at the registered office of the company.

236. Section 97 of Companies Act also requires every company to keep at its registered office, the following statutory registers, with relevant particulars entered within 7 days from the happening of the event concerned:

- Register of buy-back of shares;
- Register of transfers;
- Register of charges;
- Register of inter-corporate loans, etc.;
- Register of inter-corporate investments;
- Register of contracts in which directors are interested in;
- Register of Directors, etc.;
- Register of Directors' shareholdings.

237. Any changes in share ownership and directorship must be approved by shareholders and by the Registrar.

238. There is no explicit requirement in the Companies Act for the registered office to be located in Bhutan, although the location must be advised to the Registrar. During the onsite, the Registrar advised that it interprets the various provisions in the Companies Act as requiring the registered office to be located in Bhutan, and that all registered offices are located in Bhutan.

239. *Criterion 24.5* – While Section 97 of the Companies Act requires the maintenance of statutory registers, and Registrar has implemented a process whereby any proposed changes in shareholdings, directorship and articles are advised to the Registrar for review and approval.

240. *Criterion 24.6* – There is no explicit requirement in the Companies Act for companies to obtain information on beneficial ownership. Bhutan however has a range of measures to access information on beneficial ownership from all three sources listed under this criterion:

- The Register of Companies maintains information from the registration and updating processes. This would include information on applicants approved via the FDI process. However, information pertains to legal ownership and not necessarily beneficial ownership.

- Companies are required under section 32 of the Companies Act to maintain a register of shareholders and debenture holders. Further, section 32 states that the register of beneficial ownership maintained by a depository shall be deemed to a register of shareholders or debenture holders. However, the details captured in the register may not include true beneficial ownership information, despite its reference that the register of shareholder is synonymous with the register of beneficial ownership. The requirements are for legal ownership, which may not necessarily be the same as beneficial ownership information, particularly where the shareholder is not a natural person, but a legal person, or a natural person acting for another person.
- With the promulgation of the revised AML/CFT Regulations in November 2015, reporting entities are now required to collect beneficial ownership information as noted under R.10 and R.22. However, implementation is at a very early stage.
- The stock exchange for listed companies but there are only 21 publicly listed companies and 28 government owned/controlled companies of the 368 companies registered in Bhutan. The disclosure requirements for publicly listed companies in Bhutan provide for sufficient transparency to identify the controlling share owners.
- The Department of Revenue and Custom may also have relevant information as it collects information from corporate taxpayers via business income tax and corporate income tax, and all businesses and companies must register with the relevant regional office of the department to obtain their trade licenses or business permits.

241. It is not clear that any of the above mechanisms would provide for timely access to potentially available beneficial ownership information as there has never been a police investigation of a company.

242. *Criterion 24.7* – There are two main avenues for beneficial information to be updated. Firstly, there is a requirement to ensure beneficial ownership is accurate and updated in the AML/CFT Regulations for reporting entities as part of ongoing CDD. However implementation of this requirement has only commenced. Secondly, the transfer of shares is covered in Schedule VIII of Companies Act, which requires the name, occupation, father's/husband's name and address in respect of the transferee to be captured, along with the name, occupation and address of the nominee. However, it is not clear what details will be captured if the transferee is a legal person. Once again, this captures legal ownership but not necessarily beneficial ownership.

243. *Criterion 24.8* – Section 68 of the Companies Act requires books, papers and records to be made available to the Registrar or other government agencies. There is no requirement for prior notice and all records must always be open for inspection during business hours. All company employees are required to provide information and the CEO and directors are subject to sanctions for non-compliance.

244. *Criterion 24.9* – There is no requirement in law to meet the elements of this criterion on record keeping. However, section 67 of the Companies Act requires the books of accounts to be preserved for five years. As noted under R.20 (record keeping), REs are required to keep records for at least 10 years, and this has been practiced by FIs.

245. *Criterion 24.10* – Section 133 of the Companies Act specifies that the Government of Bhutan may, by order, require companies to furnish company information within the specified

time in the order. The powers of law enforcement agencies as detailed under R.31 are applicable for use also in respect of legal persons, including FIs and DNFBPs.

246. *Criterion 24.11* – The Companies Act contains measures to prevent bearer shares. As noted earlier, the Companies Act requires the shares of every company to be registered in a share register, with the name and other details of the shareholder to be recorded. The Articles of Association that contain the names of the shareholders cannot be altered without the approval of the Registrar. The share certificate, as detailed in section 24 and Schedule VI of the Companies Act, requires the name and address of the shareholder to be stated. Moreover, the transfer of share ownership requires evidence of intention to contract/transfer ownership, and share transfers are recorded in the share registry (section 30).

247. *Criterion 24.12* – There is neither explicit provision nor prohibition for nominee shareholders or directors in the Companies Act. Section 17 provides for nomination of a person to whom the shares or debentures shall vest in the event of death of the holder, and nominee directors are provided in section 33 with actual reference to nominee directors in Schedule IX. There does not appear to be any requirement for the identification of the nominators. However, the Companies Act also requires the Registrar of Companies to approve any changes in ownership and management of a company.

248. *Criterion 24.13* – Specific penalties are included in a few sections of the Companies Act and there is a general penalty provision in section 140 to cover other areas where specific penalties have not been provided. The most serious penalty is for insider trading under section 39 (2) which references penalties under the Penal Code, while the rest are monetary fines. According to section 140 of the Companies Act, if a company or any other person contravenes any provision of this Act for which no punishment is provided elsewhere in this Act, the company and every director shall be punishable with fine that may extend to Nu. 5,000 and where the contravention is a continuing one, with a further fine that may extend to Nu. 500 for every day after the first during which the contravention continues. Since the fine is limited to Nu. 5,000, which is less than USD100, it does not seem to meet the criteria of being proportionate and dissuasive.

249. *Criterion 24.14* – Authorities advised they have never received any formal request from abroad for information on companies, nor have they made any request offshore.

250. *Criterion 24.15* – The above findings on c.24.14 are applicable to this criterion.

Weighting and Conclusion

251. Basic information on legal persons is available via the Registrar of Companies (and CSO Authority and Commission of Religious Organisations) and from the companies themselves. Beneficial ownership is available to the extent that legal ownership is the same as beneficial ownership which may not be the case. There is also an obligation for reporting entities to obtain and maintain beneficial ownership information. **R. 24 is rated partially compliant.**

Recommendation 25 – Transparency and beneficial ownership of legal arrangements

252. *Sub-criteria 25.1(a) and (b)* – Bhutan does not have legislation that permits the creation of trusts or trust-like arrangements and therefore to hold information as described under c.25.1 (a) and (b). The authorities and judiciary also advised that the Courts would not recognise a trust in

Bhutan as it is not provided by law. However, there is nothing in Bhutanese law precluding foreign trustees to enter into an ongoing business relationship with a financial institution or DNFBP in Bhutan. In fact, there are specific provisions in the 2015 AML/CFT Regulations to require REs to undertake CDD on customers that are trusts or trustees.

253. *Sub-criterion 25.1(c)* – If a trustee is captured as a reporting entity, it would be required to maintain information for at least five years as required under the 2015 AML/CFT Regulations, but not in the context of c.25.1 (c).

254. *Criterion 25.2* – This criterion is applicable only insofar as foreign trustees establish a business relationship with a local FI or DNFBP. Reporting entities are required under the AML/CFT Regulations (section 4.4.4) to collect information on trustees, including beneficial ownership information, as part of the KYC/CDD process. There are also requirements for ongoing CDD and record keeping (section 16).

255. *Criterion 25.3* – As indicated above, REs are required under the AML/CFT Regulations 2015 (4.4.4) to identify whether a customer is a trustee as part of the KYC/CDD process. During that process, trustees are required to disclose their status to FIs and to DNFBPs when forming a business relationship or carrying out an occasional transaction.

256. *Criterion 25.4* – Trustees are not prevented by law or enforceable means from providing competent authorities, FIs or DNFBPs with information they hold relating to trusts.

257. *Criterion 25.5* – Competent authorities have powers as described under R.31 and R.27 to obtain access to information on trusts and other legal arrangements where such information is held in Bhutan. This includes any information held by REs, as required under the AML/CFT Regulations. However, there are some issues with the powers of the RBP (see the analysis for Recommendation 31).

258. *Criterion 25.6* – There are gaps in the international cooperation framework as described in R.37 and R.40. Bhutan has indicated that it has not received any foreign request for information on trusts or other legal arrangements.

259. *Criterion 25.7* – The AML/CFT Regulations cover lawyers, notaries and other legal professionals and accountants as REs if they act as trustees, in which event they would be subject to any sanctions under those regulations. Those sanctions are discussed under R.35.

260. *Criterion 25.8* – This criterion is applicable to information held by REs. Information held by REs on trusts or other legal arrangements are available to competent authorities as described in R.9, R.26 and R.31. There are sanctions under section 171 of the FSA for failure to comply with any provisions of that Act, which includes powers under sections 121 to 127 of the FSA to access information held by REs.

Weighting and Conclusion

261. The criteria that apply to Bhutan are mostly met. **R. 25 is rated largely compliant.**

Recommendation 26 – Regulation and supervision of financial institutions

262. *Criterion 26.1* – Under section 122 of the FSA, the RMA is the designated supervisor of all RMA licensed institutions. The Financial Regulation and Supervision Department (FRSD) within

the RMA is the responsible unit for regulating and supervising the majority of the licensees, including commercial banks, insurance companies, securities brokerage firms, securities exchange as well as the National Pension and Provident Fund. The Foreign Exchange Department (FED) within the RMA has a role in regulating and supervising non-bank MVTS providers and money changers. The one micro-credit cooperative with 15 members is subject to registration requirements by the Department of Agriculture Marketing and Cooperative.

263. *Criterion 26.2* – Core principle FIs such as those in the banking, securities and insurance sectors must be licensed in Bhutan as required under section 11 of the FSA, which mandates that any person who offers financial services as a business is required to be licensed by the RMA. Only a public limited company, listed with the stock exchange in Bhutan can be licensed as a financial institution.

264. The RMA may regulate other FIs by adopting regulations to establish systems of licensing and regulation consistent with sections 362 to 363 of the FSA. For Money Service Businesses (money changers) and non-bank MVTS providers, the Foreign Exchange Regulations provide the regulatory framework.

265. Shell banks are not explicitly precluded from establishment in Bhutan. There are, however, sufficient licensing requirements in the FSA and in the Regulations for Establishment of Commercial Banks in Bhutan to ensure that the meaningful mind and management of a bank is located within the country. This includes requirements for the CEO of a bank to be a natural person resident in Bhutan and for all new banks to open five branches during the first three years of operation. Currently the RMA requires banks to open one branch in every region.

266. *Criterion 26.3* – The licensing requirements for banks, securities companies and insurance companies are detailed in the FSA and in the separate RMA regulations for all three categories of FIs. The licensing requirements for non-bank MVTS providers are contained in the AML/CFT Regulations and for money service businesses under the Foreign Exchange Regulations.

267. As part of the licensing or registration requirements and ongoing supervision for financial services under the FSA, the RMA has powers to prevent criminals from holding a controlling interest or management function in a FI. The FSA also empowers the RMA to remove any Chairman, Director or Chief Executive Officer (CEO). The fit and proper requirements under section 16 of the Corporate Governance Regulation are applicable to all “relevant persons” in any FIs licensed by the RMA. Relevant persons cover management, board of directors and significant shareholders. These requirements include whether the person has been subject to any disciplinary, administrative, civil or criminal proceedings. The Prudential Regulation (under section 1.3.3) also requires prior approval of the RMA to be obtained for the appointment of board of directors and CEO of all FIs.

268. *Sub-criterion 26.4(a)* – For core principles institutions, the FSA or the AML/CFT Regulations contain no apparent provisions relating to adherence to the Core Principles and on the application of consolidated group supervision. Implementation of certain key principles is lacking. Bhutan’s corporate governance requirements and powers of inspection (section 136 of the RMAA) are more in accord with the core principles.

269. *Sub-criterion 26.4(b)* – For all other FIs, the RMA has issued AML/CFT Regulations, which under section 9 imposes regulations for MVTS and the Foreign Exchange Regulations and MSB Guidelines covers money changers. There are no details provided on what systems the RMA has

adopted or implemented in supervising or monitoring compliance with obligations in the regulations.

270. *Criterion 26.5* – Section 21.3 of the AML/CFT Regulations contain provisions with regard to the basis for determining frequency and intensity of onsite and off-site AML/CFT supervision of RE identical to the FATF requirements.

271. *Criterion 26.6* – Section 21.4 of the AML/CFT Regulations states that the supervisor should review the assessment of the ML/TF risk profile of a financial institution or group (including the risks of non-compliance) periodically, and when there are major events or developments in the management and operations of the financial institution or group. As highlighted under R.18, there are some gaps in relation to financial groups.

Weighting and Conclusion

272. The RMA has strong licensing requirements for FIs. There are legal measures in place aimed at preventing criminals and their associates from holding controlling interest or holding management functions in an FI. The AML/CFT Regulations have stipulated a programme of onsite inspections or off-site monitoring, on risk based approach, to ensure compliance with preventive requirements. However, the pension fund is not subject to AML/CFT supervision and there is a lack of coverage of financial groups. **R. 26 is rated partially compliant.**

Recommendation 27 – Powers of supervisors

273. *Criterion 27.1* – Section 136 of RMAA and section 122 of FSA provides the RMA with adequate powers to supervise or monitor and ensure compliance with AML/CFT requirements by FIs or licensees.

274. *Criterion 27.2* – The RMA has powers to conduct inspections of FIs under section 136 of RMAA and section 122 of the FSA. Further under section 129 of the FSA, the RMA has powers to investigate any violations of the Act or regulations made under the Act.

275. *Criterion 27.3* – The RMA has powers under sections 121 to 127 of the FSA to compel FIs to produce information relevant to the operations of the licensee, enforcement of the FSA, or the regulations made under it, including AML/CFT requirements. Pursuant to section 20.3.1 (d) of the AML/CFT Regulations, the FIU may request a person (defined to include legal persons) to provide the information or documents sought within the specified time period in the notice.

276. *Criterion 27.4* – Pursuant to section 150 the FSA, the RMA is able to impose a range of sanctions, including issuing instructions or other conditions to correct non-compliance; restrict, suspend or revoke the licence; and apply financial sanctions for failure to comply with the Act or regulations made under it.

Weighting and Conclusion

277. **R. 27 is rated Compliant.**

Recommendation 28 – Regulation and supervision of DNFBPs

278. *Criterion 28.1* – There are no casinos, including internet casinos, permitted in Bhutan.

279. *Criterion 28.2* – There is no designated competent authority or SRB responsible for monitoring and ensuring compliance by DNFBPs with AML/CFT requirements.

280. *Criterion 28.3* – Other DNFBPs are not subject to systems for monitoring compliance with AML/CFT requirements.

281. *Sub-criterion 28.4(a)* – Since there is no designated competent authority or SRB responsible for DNFBPs, the requirement to have adequate powers to monitor compliance is also not met.

282. *Sub-criterion 28.4(b)* – There is no self-regulatory authority for the legal or accountancy profession. There are plans to introduce professional organisations for both. Neither is there any SRO for real estate agents, precious stones and gems or any other DNFBP. There are some market entry requirements for public accountants as external auditors as they are required to be endorsed by Royal Audit Authority.

283. *Sub-criterion 28.4(c)* – Since the AML/CFT Regulations are also applicable to DNFBPs, the sanctions available are also applicable to deal with failure to comply with AML/CFT requirements of DNFBPs. However, such sanctions are not in effect for DNFBPs as there is no designated competent authority or SRB to apply available sanctions.

284. *Criterion 28.5* – There has been neither implementation nor supervision of DNFBPs' compliance with the AML/CFT Regulations.

Weighting and Conclusion

285. Fundamental deficiencies exist for monitoring and ensuring compliance with AML/CFT requirements for DNFBPs, including the absence of a designated supervisor(s) to ensure implementation. **R. 28 is rated non-compliant.**

Recommendation 29 - Financial intelligence units

286. *Criterion 29.1* – Bhutan established the Financial Intelligence Unit (FIU) within the Royal Monetary Authority (RMA) in 2011 under Section 141 of the FSA. The powers and functions of the FIU are stated in the same section of the Act and include receipt and analysis of suspicious transaction reports (STRs), cash transaction reports (CTRs) and other reports or information.

287. There is also provision in Section 141 (c) for FIU reports to be disseminated to the Anti-Corruption Commission (ACC), the Office of the Attorney General (AG), the Royal Bhutan Police (Police), other LEAs and supervisory bodies, inside or outside Bhutan. The power to disseminate rests with the “Authority”, which is the RMA, and not the FIU. The powers of the Authority are executed by the Executive Committee under Section 4 of the FSA, and under section 6, can delegate these powers. Section 20 of the AML/CFT Regulations provides further specificity to the operations of the FIU, including the powers of the FIU operational head to disseminate STRs. Bhutan has advised that Board of the RMA has designated the deputy director of the FIU as the operational head of the FIU with the power of dissemination. The FIU head, who is also the Deputy Governor of the RMA will remain responsible for policy matters.

288. *Criterion 29.2* – The FIU is empowered under Section 141 (b) to receive STRs, CTRs and other reports or information.

289. *Criterion 29.3* – For c.29.3 (a), section 3.6.1 of AML/CFT Regulations empowers the FIU to obtain any additional information from REs upon written notice related to any STR or reports to FIU. This provision is limited to a reporting entity that has submitted a report(s). Section 141(h) of the FSA provides broader powers for the FIU to require a reporting entity to provide information or documents in accordance with any direction issued by it, irrespective of whether that reporting entity had previously filed a report. For c.29.3 (b), there is specific provision in section 11.1 of the AML/CFT Regulations for the FIU to request, in writing, an agency of the Royal Government of Bhutan or person to provide information or documents within the specified period unless legally prevented from complying. This provision would appear to provide the FIU with access to the widest possible range of information from other competent authorities.

290. Section 141(f) of FSA and section 11.1 of AML/CFT Regulations requires FIU to enter into MoU with agencies of the Royal Government of Bhutan and other relevant agencies for exchange of information and other general cooperation. At this stage, it has only entered into an MOU with the ACC.

291. *Criterion 29.4* – Section 20.2.1 (e) of AML/CFT Regulation requires FIU to conduct operational and strategic analysis, by using available and obtainable information. Bhutan has not provided evidence that it conducts operational analysis that uses available and obtainable information. The FIU is preparing draft FIU standard operating procedures (SOPs) that will include operational and strategic analysis procedures. Due to lack of resources, the FIU is not in a position to conduct strategic analysis at this stage.

292. *Criterion 29.5* – Section 141(c) of FSA only provides for the Authority (RMA), if it considers appropriate, to spontaneously disseminate information and any analysis to the ACC, AG, RBP and LEAs, or supervisory bodies inside Bhutan. The power of dissemination has now been delegated to the deputy director – FIU, who is now the FIU's operational head.

293. Section 20.2.1(d) of AML/CFT Regulation 2015 empowers FIU to disseminate intelligence reports, either spontaneously or upon request to any law enforcement agency where there is a suspicion that ML, TF or other offence has or is about to take place. But there is no requirement to disseminate the intelligence report to other relevant competent authorities.

294. The only legislative provision for an LEA to request information from the FIU is under section 89 of the NDPSSAA, which allows the Bhutan Narcotics Control Agency (BNCA) to direct the RMA (not the FIU) to furnish or share information on fictitious and suspicious transactions of money to facilitate investigation of suspected narcotic and ML matters. This is limited to ML only and does not apply to TF. While there is an MOU between the RMA/FIU and ACC, it is not clear whether the MOU includes provision for the ACC to request information from the FIU.

295. There are no procedures in place to use dedicated, secure and protected channels for dissemination. A draft FIU SOP has been prepared to address this issue.

296. *Sub-criterion 29.6(a)* – Section 212 of FSA prohibits the disclosure of any confidential information by any officer, employee, or adviser of the RMA. Further, the AML/CFT Regulations 2015 in section 20.3.2 requires the FIU to protect information by having rules in place governing the security and confidentiality of information, including procedures for handling, storage, dissemination, and protection of, and access to, information. However, there are no FIU rules to comply with this section of the regulation.

297. There are no specific confidentiality requirements for FIU staff. There is no prohibition for FIU staff to disseminate confidential information to other RMA staff. On the contrary, as mentioned, there are specific provisions in the FSA requiring such disclosure. This means there is no firewall between those two categories of RMA staff. At present, there are no FIU procedures in place governing the security and confidentiality of such shared information.

298. *Sub-criterion 29.6(b)* – Section 20.3.2 (b) of AML/CFT Regulations 2015 requires the FIU to protect information by ensuring that FIU staff members have the necessary security clearance levels and understanding of their responsibilities in handling and disseminating sensitive and confidential information. However, the FIU did not demonstrate any existing process for additional security clearance beyond that of other RMA staff.

299. *Sub-criterion 29.6(c)* – Section 20.3.2 (c) of AML/CFT Regulations 2015 requires the FIU to protect information by ensuring that there is limited access to its facilities and information, including information technology systems. But physical access to FIU facilities is not secured. There is no security door limiting access to the FIU's office and there is no controlled access by non-FIU staff.

300. *Sub-criterion 29.7(a)* – The FIU is established under section 141 of FSA. The FIU is located within the RMA and its structure is very similar to other departments within the RMA with operational activities controlled by the RMA. As noted, while section 141 of the FSA provides for autonomy in receipt, and analysis functions, there is no provision for autonomy in the dissemination of financial intelligence because dissemination powers rest with the RMA. However, dissemination authority has recently been delegated to the FIU operational head pursuant to section 20.2.1(d) and section 20.3.3 (a) of AML/CFT Regulations 2015 that state that the FIU should be operationally independent and autonomous, by having the authority and capacity to carry out its functions freely, including the autonomous decision to analyse, request and/or forward or disseminate specific information.

301. *Sub-criterion 29.7(b)* – There is provision in section 141 (f) of the FSA for the FIU to make arrangements or engage with other domestic competent authorities as determined by the RMA. Regarding foreign counterparts, section 10.4 allows the FIU to communicate its information with foreign governments and LEAs, if the RMA is satisfied of specific conditions, primarily relating to security of information.

302. Section 20.3.3 (b) of AML/CFT Regulations 2015 states that the FIU should be operationally independent and autonomous by being able to make arrangements or engage independently with other domestic competent authorities or foreign counterparts on the exchange of information.

303. The FIU has signed a MOU with Bangladesh and the Republic of Korea.

304. *Sub-criterion 29.7(c)* – As indicated, while the FIU is located within the RMA, section 141 of the FSA does provide the FIU with core functions very different to the rest of the RMA.

305. Section 20.3.3 (c) of AML/CFT Regulations 2015 states that the FIU should be operationally independent and autonomous when it is located within the existing structure of another authority, having distinct core functions from those of the other authority as outlined in Section 20.2.1

306. *Sub-criterion 29.7(d)* – The resources and budget of FIU is dependent on the RMA. As mentioned, the legal framework as provided under section 141 of the FSA explicitly allows for the RMA to decide on operational matters. Section 20.15-16 explicitly provide for the RMA to determine the staffing and operational budget allocation of the FIU. There is no evidence that such powers have been abused to compromise the FIU's operational independence.

307. *Criterion 29.8* – Bhutan has applied for Egmont Group Membership. Bangladesh FIU and the Korea FIU are sponsoring Bhutan for Egmont Group membership.

Weighting and Conclusion

308. While Bhutan has established the building blocks of an FIU, the FIU has only conducted very limited operational analysis and no strategic analysis. Given the deficiencies against c.29.4, the most important criterion, **R. 29 is rated non-compliant.**

Recommendation 30 – Responsibilities of law enforcement and investigative authorities

309. *Criterion 30.1* – In the absence of a national AML/CFT policy, the role of law enforcement agencies in investigating ML and TF is not clearly defined. At present, only the ACC is legally designated and have responsibility for investigating ML. The ACA designates the ACC as the responsible agency for the investigation and detection of corruption and associated ML offences (under sections 70 to 73). However, section 76(2) prevents the prosecution of a person for both the predicate offence and any related ML arising from that offence. The ACC has no role in relation to TF investigation. The RBP has yet to be formally designated to undertake ML or TF investigations. The designation of the RBP as the investigating law enforcement agency for ML/TF will be specifically reflected in the proposed AML/CFT Act. At present, there is no law or instrument that specifically mentions the RBP as the ML/TF investigator, although the Police Act authorises the police to investigate any offence.

310. The Bhutan Narcotics Control Agency (BNCA) has the powers under sections 108-111 of NDSPSSA to investigate narcotic offences and related ML. Bhutan has advised that the BNCA only acts as a coordinating agency and does not undertake investigations because of a lack of resources.

311. The ACC undertakes investigations of corruption and related ML. The ACC does not undertake joint corruption investigations with the Police. However, the ACC can and does investigate other predicate crimes, if they are linked to the corruption investigation.

312. There are other competent authorities that undertake predicate crime investigations in Bhutan, namely the Department of Revenue and Customs (DRC), Department of Immigration (DI), and Department of Forest and Park Services (DoFPS). These competent authorities can undertake investigations of predicate offences under their enabling legislations, although the scope of such investigations varies depending on resources available and powers under enabling legislations.

313. *Criterion 30.2* – As mentioned under c.30.1, the police can investigate predicate offences and any related ML/TF offences, while the ACC can investigate corruption and related ML. However, the police have not been designated to do so. Some agencies that conduct predicate offence investigations can undertake financial investigations under their enabling legislations.

314. *Criterion 30.3* – In relation to corruption and bribery, the ACA designates the ACC as the competent authority to identify, trace and initiate freezing and seizing of property that is, or may

become, subject to confiscation, or is suspected of being proceeds of crime related to a corruption offence. Sections 86 (1) (b), 94 (2), 95, 103, 104, 106, 107, 108, 143, 144 of the ACA create a comprehensive regime for the investigation and control of property subject to confiscation under the Act.

315. There is no specific section of the Police Act that mandates or provides the RBP with the authority to trace, freeze and seize property; however, they are provided broad ranging powers to investigate criminal activity under section 41 of the Police Act. The RBP requires a search warrant issued by the courts to identify, trace, and initiate freezing and seizing of property that is, or may become, subject to confiscation, or is suspected of being proceeds of crime.

316. The BNCA is the designated authority to conduct financial investigations and to trace, freeze and seize property where those assets relate to narcotic offences. The BNCA under section 109 of the NDPSSA may establish a Drug Intelligence Unit and establish legal mechanisms to identify, trace, freeze, seize, confiscate or forfeit the proceeds of crime. However, no such unit has been established as the BNCA does not have the resources to undertake such functions.

317. *Criterion 30.4* is not applicable. The Bhutan authorities advised that no other competent authorities (not law enforcement authorities per se) have responsibility to conduct ML or TF investigations.

318. *Criterion 30.5* – As indicated, the ACC has the powers to conduct a range of search, seizure and confiscation powers in matters of corruption under Sections 94 – 98, 103, 106, 107 and 131 – 133 of the ACA.

Weighting and Conclusion

319. The role of law enforcement agencies investigating ML and TF in Bhutan is not clearly defined. Only the ACC is mandated to investigate ML which is consistent with the ML risk profile in Bhutan. No other competent authorities have the designated responsibility to conduct ML or TF investigations. However, the RBP is provided with broad powers to investigate any offence. Financial investigations can either be undertaken by the responsible agency, or referred to the RBP. **R. 30 is rated partially compliant.**

Recommendation 31 - Powers of law enforcement and investigative authorities

320. *Criterion 31.1* – In general, LEAs are able to obtain necessary documents and information for use in the investigation of ML and TF, and associated predicate offences. The following summarises the situation in Bhutan:

321. *Sub-criterion 31.1(a)* – Relevant powers to compel production of records are held under section 94(b) and section 94(2) of the ACA for DNFBPs and other natural or legal person, including FIs. Under the Income Tax Act, section 25, the DRC can compel FIs to furnish information on the financial status and accounts of any taxable person. The DRC under the Sales Tax Customs and Excise Act (STCEA), section 2.1 can on written demand seek all public, private entities and individuals to furnish any information on the tax-payer that may be required by the DRC. Section 2.2 allows the DRC to demand FIs to provide information to the DRC on the financial status and the accounts of any taxable entity or person.

322. *Sub-criterion 31.1(b)* – Relevant powers to search persons and premises are provided in sections 95 to 98 of the ACA, Section 73 of the Police Act, Section 82 of the NDPSSAA, General Provisions Section 41.1 and 42.1 of the Income Tax Act and Chapter 12 Section 38 and 42 of the Sales Tax Customs and Excise Act.

323. The police hold the power of search and seizure upon obtaining a search warrant under section 73 of the Police Act. There are limited grounds where searches can be conducted without a search warrant.

324. *Sub-criterion 31.1(c)* – Section 84(2) of the ACA provides for the ACC to take statements in matters of corruption.

325. Section 161.6 of the CCPC requires that it is mandatory for police to get a statement from any material witness questioned during the course of the investigation.

326. *Sub-criterion 31.1(d)* – Sections 95-98 of the ACA, section 82 of the NDPSSAA, section 73 of the Police Act, section 42.1 of the Income Tax Act and section 42.3 of the STCEA enable seizing and obtaining evidence in Bhutan.

327. *Criterion 31.2* – There are various special investigation techniques available as summarised below:

328. *Sub-criterion 31.2(a)* – Section 86(1)(c) of the ACA authorises the use of undercover operations in corruption matters, and sections 101 and 102 of the NDPSSAA authorises the BNCA to conduct undercover operations in narcotics matters. The police do not have any powers, under the Police Act, to conduct undercover operations in Bhutan.

329. *Sub-criterion 31.2(b)* – Section 87 of the ACA authorises the ACC to intercept communications in corruption investigations. Wiretapping requires the issue of a warrant under section 183 of the Civil and Criminal Procedure Code. The Chief of Police may authorise the intercept of communications without judicial authorisation, however the authorisation must be obtained within 24 hours of the commencement of the communication intercept. Section 168 of the Civil and Criminal Procedure Code provides that search warrants may be issued to the police to conduct a search for criminal evidence.

330. *Sub-criterion 31.2(c)* – Section 97(2)(a) of ACA authorises the seizure of computers in corruption investigations. Seizure of items is generally authorised under section 82 of the NDPSSAA in narcotic matters and section 73 of the Police Act, subject to the Civil and Criminal Procedure Code. Neither specifically mentions the access of computer systems.

331. Chapter 3 of the General Provisions and section 10.5 of the STCEA authorise the DRC to detain, seize or confiscate documents, records and articles relevant to an enquiry under the Act. The DRC also holds powers to search under section 42 of the Income Tax Act.

332. The Police and the BNCA do not have any powers to access computer systems.

333. *Sub-criterion 31.2(d)* – Section 86(1)(f) of the ACA authorises the use of controlled delivery in corruption matters, and sections 101 and 102 of the NDPSSA authorise the BNCA to conduct controlled delivery in narcotics matters.

334. The police do not have any power to conduct controlled delivery.

335. Section 412 of the Penal Code also raises issues of entrapment where the law enforcement official has induced or encouraged a crime by making a false representation that the offence is not illegal.

336. *Criterion 31.3* – Section 94(2) of the ACA gives the ACC the ability to, with, or without notice, visit any place, examine any accounts, books, documents or other articles of or relating to, any person which may be required for the purpose of the investigation and the disclosure of all or any information relating thereto, and to take copies of such accounts, books or other relevant entry therein. It does not provide the option of serving a notice on any financial institution to provide details of bank accounts. Chapter 4 Section 26.1 of the Income Tax Act allows the DRC by written demand to FIs obtain the financial status and accounts of any taxable person.

337. The police and the BNCA can only access information from FIs under search warrant provisions.

338. *Criterion 31.4* – The only legislative provision for an LEA to request information from the FIU is under section 110 of the NDPSSAA, which allows the BNCA to direct the RMA (not the FIU) to furnish or share information on fictitious and suspicious transactions of money to facilitate investigation of suspected narcotic and ML matters. This is limited to only ML and not TF. There is an MOU between the FIU and ACC, which allows the ACC to request information from the FIU.

Weighting and Conclusion

339. Law enforcement agencies and competent authorities generally have sufficient powers to gather the material they would need to conduct a ML, TF and predicate investigation. Currently the BNCA is the only agency that can conduct undercover and controlled delivery operations, or can seek further information from the FIU. However, the BNCA does not conduct investigations because of limited resources. Only the BNCA can request the RMA to share information. A MoU exists between the ACC and RMA/FIU which has allowed the ACC to request information. **R. 31 is rated partially compliant.**

Recommendation 32 – Cash Couriers

340. *Criterion 32.1* – A declaration system exists in Bhutan. Under section 3.8.1 of the AML/CFT Regulations, a person commits an offence if the person moves physical currency or BNI into or out of Bhutan of USD10,000 (or its equivalent) or more, without a declaration. A person is defined to include a natural or legal person and legal arrangements.

341. Section 5 of the Foreign Exchange Regulations (FEX Regulations) also imposes obligations to declare when carrying Ngultrum 5,000 (~USD78) or more when entering or departing Bhutan. Section 6(a) imposes a declaration obligation when entering or departing Bhutan with USD10,000 or more. Section 6(b) requires that persons entering or departing Bhutan, to any country other than India or Nepal, carrying Indian Rupees greater than 10,000 (~USD157) shall make a declaration.

342. Section 6(c) of the FEX Regulations offers some exemptions to Bhutan residents in the form of cheques drawn on accounts in Bhutan and banknotes, travellers cheques and other instruments denominated in foreign currencies and that are held in accordance with the Foreign Exchange regulations.

343. Section 6(d) of the FEX Regulations offers exemptions to non-residents on departure on foreign currency, or the balance of Ng converted with foreign currency.

344. Further declaration conditions apply in the STCEA under sections 10, 19 and 36. Under section 36 a passenger is required to make a declaration of goods (which includes currency and negotiable instruments) in their baggage.

345. The requirements cover the physical movement of currency through the post as the definition of “move physical currency into the Kingdom of Bhutan” includes “send” which is defined as “in relation to physical currency, includes send through the post”.

346. *Criterion 32.2* – A declaration system of USD10,000 and greater exists in Bhutan as detailed in c32.1 above.

347. *Criterion 32.3* – Bhutan has adopted a declaration system and not a disclosure system.

348. *Criterion 32.4* – Section 7.2 of the STCEA allows for an officer of the DRC, upon reason to believe, goods (which includes currency and BNI) have been illegally imported or exported, to detain the currency and BNI for further inquiry. It is not clear that this covers non-declaration or false declaration.

349. *Criterion 32.5* – Section 56(a) of the FEX Regulation imposes a fine in the amount of the currency not declared where there is no declaration.

350. Section 3.8.7 of the AML/CFT Regulations states that where a person brings into, or takes out of Bhutan physical currency or a BNI in respect of which a declaration should have been made, and no declaration has been made, the physical currency or a BNI is forfeited to the Kingdom of Bhutan.

351. Penalties also exist section 16 of the STCEA that imposes a fine in the amount of 50% of the value of the goods for non-declaration, mis-declaration. Section 18 may also impose a criminal sanction including a term of 3 years and 6 months for making a false statement.

352. *Criterion 32.6* – Section 3.8.5 of AML/CFT Regulations states that if a declaration of physical currency or BNI is made under 3.8.4 of the Regulations, then the Customs officer must within five business days after the receipt of the report forward the report to the FIU. In other cases reports must be provided to the FIU within 10 days. It is not clear that a mechanism or system is in place to facilitate such dissemination.

353. *Criterion 32.7* – The National Coordination Committee (NCC) is the responsible committee for AML/CFT policies. There are currently no legal provisions establishing the NCC. The NCC is chaired by the RMA and ACC, RBP, Customs, AG, BNCA, BLO, MOEA and the FIU are members.

354. There is currently no MoU between Customs and the FIU, or other LEAs relating to cross border movement of currency and BNI. The NCC is a good first step in the coordination of efforts against ML and TF, however this needs to be formally recognised.

355. *Criterion 32.8* – Section 7.2 of the STCEA allows for an officer of the DRC, upon reason to believe, goods (which includes currency and BNI) have been illegally imported or exported, to detain the currency and BNI for further inquiry.

356. This section may cover instances where there has been no declaration or false disclosure; however, it would not cover instances where there is a suspicion on ML/TF activity.

357. *Criterion 32.9* – There is no specific provision in the AML/CFT Regulations or the Custom's Act for declaration information to be retained by Customs. The FIU would have such records, if such records have been transmitted to the FIU as required under section 3.8.4 of the AML/CFT Regulations.

358. *Criterion 32.10* – Section 30 of STCEA requires that information obtained by Customs staff in the course of their employment to be treated with confidentiality and not be disclosed to unauthorised persons.

359. Section 9 of the AML/CFT Regulations also requires that employees and consultants of the RMA do not make a record or divulge or communicate to any person any information obtained in the course of their duties except as permitted.

360. *Criterion 32.11* – Confiscation of currency or BNI that have not been declared is provided for under section 3.8.7 of the AML/CFT Regulations and section 56 of the FEA. The sanctions available under R.3 and R.5 are application here - see criterion 3.9 and criterion 5.6.

Weighting and Conclusion

361. A declaration system exists in Bhutan for amounts of USD10,000 or more, and its equivalent, including BNI. Regulations requiring the declaration of Nu5,000 (USD78) or more, and INR10,000 (USD157) or more (except India and Nepal) also exist. Powers exist for Customs officers to detain currency where they believe the goods (which include currency) have been imported or exported illegally. Fines in the amount of the currency not declared can be imposed and the AML/CFT regulation states that non declared currency and BNI will be forfeited. Declarations of currency and BNI are forwarded to the FIU. There are no MoUs in place between Customs and the FIU relating to cross border movement of currencies. There currently is no provision for the retention of records by customs. **R. 32 is rated partially compliant.**

Recommendation 33 – Statistics

362. *Criterion 33.1* – Bhutan has provided the assessment team with incomplete statistics for the following sub-criterion:

- *Sub-criterion 33.1(c)* – Details of property frozen, seized and confiscated.
- *Sub-criterion 33.1(d)* – Details of MLA and other international cooperation.

363. Bhutan AM/CFT regime is at a relatively nascent stage and therefore there are limited statistics related to AML/CFT. For example, there have been only five STR disseminations and two ML convictions in 2008review. However, there have been confiscations and non MLA international cooperation but detailed statistics have not been provided to the assessment team.

Weighting and Conclusion

364. The available statistics on thematic areas where there have been AML/CFT implementation are not sufficiently detailed and comprehensive to demonstrate that they meet the scope of R.33. **R. 33 is rated partially compliant.**

Recommendation 34 – Guidance and feedback

365. *Criterion 34.1* – The FIU has the powers and functions to issue guidelines to REs in relation to their application of AML/CFT measures under section 141(g) of the FSA. The FIU has issued the following guidelines:

- AML/CFT guidelines for Money Service Business 2014
- AML/CFT Guidelines for appointment of AML/CFT Compliance Officer 2014
- Suspicious Transaction Guidelines for Reporting Entities 2014
- AML/CFT Guidelines for Insurance Companies 2014
- AML/CFT Guidelines for Capital Market Intermediaries 2014

366. Bhutan has not provided any evidence that it has provided feedback to REs on AML/CFT matters, except on STRs, beyond any guidance in the above listed documents.

Weighting and Conclusion

367. The FIU has issued various guidelines for REs, not only pertaining to banks but also money services business, insurance companies and capital market intermediaries. No procedures or systems have been set up to provide feedback to the REs. **R. 34 is rated partially compliant.**

Recommendation 35 – Sanctions

368. *Criterion 35.1* – The FSA and AML/CFT Regulations contain a range of penalties and sanctions for the failure to comply with the AML/CFT requirements. They are applicable to both natural and legal persons as described below:

- *Conviction based criminal sanctions:* Under section 147 of the FSA, any person who fails to comply with the provisions of sections 143 and 144, or regulations issued under the Act, commits an offence and on conviction shall be liable for petty misdemeanour. The sanction in the Penal Code if convicted of a petty misdemeanour is a minimum of one month and a maximum of less than one-year imprisonment.
- The AML/CFT Regulations include a number of offences that constitutes the petty misdemeanour penalty under section 147 of the FSA, namely provision of false or misleading information, structuring to avoid reporting, non-compliance with CDD measures, confidentiality and tipping-off requirements.
- *Administrative sanctions:* Sections 150 of the FSA provides a range of sanctions relating to restricting, revoking or imposing remedial conditions upon a licensee or significant owners. The measures under section 150(c) are reasonably broad to avoid non-compliance or correct the consequences of past non-compliance with the Act or the regulations made under it. Public censure is provided for under 150(d). More dissuasive measures under section 151 include terminating specified services, markets or removing natural persons, and under section 152, revoking a license. The latter, however, can only be invoked if the holder of the license has not done business for a year or more, which may be achieved by the supervisor under section 151.

- *Financial sanctions:* There are other offences specified under section 23 of the AML/CFT Regulations that are subject to financial sanctions for non-compliance with AML/CFT requirements. These include a monetary fine of ranging from USD 16 per day for the period of irregularity for CDD, USD79 per incident for STR, USD 79 per infraction for CTR and USD 79 per day until such time the infraction continues, and USD 79 per day for non-compliance with required AML/CFT programmes.

369. The range of sanctions is reasonably broad against both natural and legal persons, although the monetary fines are relatively small and may not be dissuasive. Nevertheless, the powers to restrict a licensee's operations could potentially have greater monetary impact. The sanctions are specifically linked to certain preventive measures detailed in the FSA, AML/CFT Regulations or Guidelines; however, there is a generic provision in section 23.3.12 to capture any violation of the regulations, by referencing sanctions under the FSA.

370. *Criterion 35.2* – The sanctions available are applicable to natural persons, including any director or officer of a licensee or FI, and there are specific provisions in 151 of the FSA to dismiss or prevent employment or association with a licensee, where the person is not fit or proper, or has caused a violation of the Act or regulations under it. The AML/CFT Regulations are also applicable to DNFBPs given the scope of the Regulations covers REs, which by definition include DNFBPs.

Weighting and Conclusion

371. While a range of sanctions is in place for all REs, including FIs and DNFBPs, as well as against both natural and legal persons, the monetary sanctions are not sufficiently dissuasive and there are no DNFBP supervisors to issue sanctions for those sectors. **R. 35 is rated partially compliant.**

Recommendation 36 – International instruments

372. *Criterion 36.1* – Bhutan status against the relevant international conventions are as follows:

- UN Convention against Corruption – signed on 15 September 2005 Ratification of the Convention currently under process (awaiting Royal assent).
- UN Convention on Transnational Organized Crime (Palermo Convention) – neither ratified nor signed
- Vienna Convention – Acceded on 27 Aug 1990
- International Convention for Suppression of the Financing of Terrorism - signed on 14 November 2001 and ratified on 22 March 2004

373. *Criterion 36.2* – As per the Constitution of Bhutan, all international treaties shall be deemed as national law upon ratification by Parliament. Therefore, for those instruments that are self-executing, implementation can be carried out directly based on the instruments. Bhutan has not fully implemented the above conventions (refer Recommendations 3-5, 37-38).

Weighting and Conclusion

374. Bhutan has not signed and ratified all international conventions, and there are deficiencies, as described in Recommendations 3-5 and 37-38, relating to implementation. **R. 36 is rated partially compliant.**

Recommendation 37 - Mutual legal assistance

375. *Criterion 37.1* – Bhutan does not have a legal basis to rapidly provide the widest possible range of MLA in relation to TF, ML and associated predicate offences. However, under section 29 of the CCPC of Bhutan, 2001, “the Royal Courts of Justice shall apply International Convention, Covenant, Treaty and Protocol that are duly acceded by the Royal Government of Bhutan and ratified by the National Assembly of Bhutan.” This does provide an avenue for MLA but it would be through the Courts, similar to the process for a letter rogatory. However, letters rogatory can be a time consuming and cumbersome process.

376. Bhutan is a party to international Conventions containing MLA provisions as described in R.36 but it has not ratified the Palermo Convention. Bhutan may be able to act upon MLA requests through international cooperation provisions in those Conventions based on reciprocity, which is limited to drugs and TF.

377. There is also provision in section 141 of the ACA for dealing with MLA requests from foreign states for investigation or prosecution of corruption offences, which can be coursed through the Ministry of Foreign Affairs, or if necessary through the Attorney General, but a High Court order is required to execute the request. Bhutan has advised that it has not received a MLA request. Bhutan is able to engage in broader MLA with fellow members of the South Asian Association for Regional Cooperation (SAARC), as it is a signatory to that group’s Convention on Mutual Assistance in Criminal Matters. Mutual legal assistance under the SAARC Convention on MLA would be through the Ministry of Foreign Affairs. Bhutan and India have an extradition treaty, which includes a section on MLA.

378. *Criterion 37.2* – Bhutan has no designated central authority but the Ministry of Foreign Affairs (MFA) acts as the channel for receipt and submission of any inward and outgoing requests. There is no clear process for MLA, except for MLA related to corruption as provided under sections 147 and of the ACA including evidence and freezing and seizing. There is no requirement for a Court order and the ACC is deemed to be the competent authority to issue the request. A court order is required for issuing an evidence order against any person resident overseas. However, there is no case management system. Bhutan has made one request to Thailand for a corruption related matter.

379. *Criterion 37.3* – The grounds for refusal listed under the SARRC Convention on MLA are not unreasonable or unduly restrictive. The provisions in section 146 of the ACA are also not unreasonable. It is not clear whether MLA outside of the SARRC or ACA is subject to unreasonable or unduly restricted conditions. Bhutan has not provided information on how MLA incoming request would be managed.

380. *Criterion 37.4* – The SARRC Convention lists circumstances in which a mutual legal assistance request will be refused, but does not include the fact that the request pertains to an offence involving fiscal matters, or to confidentiality or to financial secrecy requirements. Given

tax is a predicate crime for ML and there are no secrecy provisions for FIs, it is unlikely that broader MLA would be refused on these grounds alone, but Bhutan has not provided information to confirm this.

381. *Criterion 37.5* – There is no separate legislative or other enforceable instrument to ensure that the confidentiality of requests is maintained for MLA, except under the ACA.

382. *Criterion 37.6* – Bhutan did not provide any information whether MLA assistance can be provided in cases where the request does not involve use of coercive powers and dual criminality does not exist.

383. *Criterion 37.7* – Bhutan did not provide information whether the dual criminality requirement will be met even if Bhutan and the requesting country do not place the offence within the same category of offence or have the same terminology.

384. *Criterion 37.8* – Bhutan has not received an MLA, and Bhutan did not provide information to demonstrate that the powers and investigative techniques under Recommendation 31 are available for use in response to MLA. However, sections 142-143 and 145 in the ACA provide for use of the powers of the ACC in response to MLA.

Weighting and Conclusion

385. Bhutan lacks an efficient MLA framework to rapidly provide for the widest range of MLA and relies on letters rogatory. **R. 37 is rated non-compliant.**

Recommendation 38 – Mutual legal assistance: freezing and confiscation

386. *Criterion 38.1* – Bhutan has advised that there is no provision to take expeditious action in response to foreign countries requests, except under the ACA, section 144 (2) under international cooperation.

387. *Criterion 38.2* – Bhutan has advised that there is no provision to respond to requests for co-operation on non-conviction based confiscation proceedings, except under the ACA, section 144 (2) to apply the provisions under section 144 (1).

388. *Criterion 38.3* – Bhutan has no arrangements for co-ordinating seizure and confiscation actions with other countries and no mechanisms for managing and, when necessary, disposing of property frozen, seized or confiscated. There are provisions in section 144 of the ACA for developing mechanisms for managing and disposing of assets.

389. *Criterion 38.4* – Bhutan has no legal framework, or mechanisms, to share confiscated property with other countries, in particular in the context of co-ordinated law enforcement actions.

Weighting and Conclusion

390. There is an absence of legal provisions to allow competent authorities to take expeditious action in response to requests by foreign countries concerning freezing and confiscation. **R. 38 is rated non-compliant.**

Recommendation 39 – Extradition

391. *Sub-criterion 39.1(a)* – Money Laundering and TF offences are extraditable offences. Extraditable offenses under the Bhutan Extradition Act 1991 include:(i) any offence which is committed in Bhutan would be punishable under any other section of the law of Bhutan (Alternative 1, no. 18); or (ii) any offence which, in accordance with law of the Kingdom of Bhutan, is punishable with death or imprisonment for life or a term exceeding twelve months shall be treated by the Court as an extradition offence under this Act.

392. *Sub-criterion 39.1(b)* – Bhutan has not provided any evidence or information of a case management system

393. *Sub-criterion 39.1(c)* – There are no unreasonable or unduly restrictive conditions. The limitations extradition requests are those that involve political offenses, trivial offenses, those made in bad faith, pendency of criminal action and prescription.

394. *Criterion 39.2* – The extradition law does not specify whether Bhutan can extradite its own nationals. The law, however, defines a "fugitive offender" as a person who, being accused or convicted of an extradition offence within the jurisdiction of a foreign state is, or is suspected to be, in Bhutan. The definition prima facie covers Bhutan nationals.

395. The extradition law allows prosecution in lieu of extradition. The law provides that if the Royal Government finds it reasonable to punish than extradite any fugitive offender based on the report submitted by the Court, it may order the Court to initiate the proceedings for punishment. In such a case, the Royal Government shall inform the requesting state of the intention to punish the fugitive offender in Bhutan.

396. *Criterion 39.3* – Dual criminality is not a pre-requisite for extradition as long as the offence falls within the Schedule or in the extradition arrangement with a treaty state. Extradition Offence means an offence included in the Schedule to this Act constituting an offence against the law of Bhutan, or an offence specified in the extradition treaty or arrangement with the foreign state.

397. There are two alternatives under the schedule of extraditable offenses: i) a list approach where offenses are specified (Alternative 1); and ii) a threshold approach based on the penalty to be imposed (Alternative 2).

398. *Criterion 39.4* – Bhutan does not have simplified extradition arrangements with other jurisdictions such as fellow members of the South Asian Association for Regional Cooperation (SAARC), or a simplified extradition mechanism for consenting persons who waive formal extradition proceedings. Bhutan has an extradition treaty with India (ratified in 1997) but there is no provision in the treaty for simplified extradition arrangements. Request for extradition or punishment of the fugitive offender who, after committing an offence, has absconded to the Kingdom of Bhutan may be made in writing through the diplomatic mission of the foreign country in Bhutan or through the Bhutanese diplomatic mission in that country. If such a request cannot be made through these channels, the foreign country may make the request directly to the Royal Government of Bhutan.

Weighting and Conclusion

399. There are minor deficiencies against c.39.1(b) and c.39.4. **R. 39 is rated largely compliant.**

Recommendation 40 – Other forms of international cooperation

400. *Criterion 40.1* – Bhutan and India have a formal three-tier law enforcement and intelligence cooperation mechanism that has been operating since the 1990s, as follows:

- Annual Bhutan-India Meeting on Border Management and Security led by the Home Secretary on the Bhutanese side and the Border Management Secretary on the Indian side.
- Annual Border Districts Coordination Meeting with State Government of West Bengal and Assam.
- Quarterly District level Coordination Meeting between the districts authorities of Bhutan and India.

401. These mechanisms are formalized through a signed minutes of the meeting that Bhutan and India will ensure mutual security through cooperation and coordination on security and border management related issues. On the Bhutanese side, the BLO is the primary coordinating department for this mechanism.

402. In addition to the three-tier mechanism, Bhutan and India have an extensive range of other cooperation mechanisms that are actively used for operational purposes including; (i) reciprocal liaison officers in Delhi, India and Thimphu, Bhutan, (ii) local meetings between Bhutan and Indian border town administrative authorities, (iii) a hotline between Bhutan and India for real-time intelligence sharing.

403. Bhutan has legislation to provide a wide range of international cooperation at an agency-to-agency level. Regionally, Bhutan is a member of SARRC and BIMSTEC and has a bilateral law enforcement and intelligence cooperation mechanism with India. Globally, Bhutan participates in the Interpol network. However, evidence in support of rapid provision of the widest possible range of assistance was not provided to the assessment team.

404. *Criterion 40.2* – Whilst there appears to be no statutory restriction over international cooperation in relation to law enforcement agencies, such as the ACC and FIU, there are no clear documented mechanisms and processes as required by criterion 40.2 (c), (d) and (e). The RMAA provides a legal gateway for the RMA to exchange information, subject to an international agreement.

405. *Criterion 40.3* – Various agencies have entered into MOUs with other countries to facilitate sharing of information. For example, the FIU has signed MOUs with Bangladesh and Korean counterparts and the ACC has signed MOUs with Malaysia and Thailand counterparts. Also, as noted above, Bhutan is a member of BIMSTEC and SAARC. However, Bhutan provided no evidence that agreements are negotiated and signed in a timely way, and agreements do not seem to be with the widest range of foreign counterparts. For example, the FIU has not signed a MOU their Indian counterpart.

406. *Criterion 40.4* – Bhutan has not provided evidence that it has provided timely feedback or has procedures in place to provide timely feedback.

407. *Criterion 40.5* – Bhutan has not provided information to allow the assessment team to conclude that there are no unreasonable or unduly restrictive conditions on the provision of information exchange.

408. *Criteria 40.6-7* – The confidentiality provisions covered in earlier sections of the TC annex are also applicable to information gathered from foreign counterparts.

409. *Criterion 40.8* – Bhutan has not provided information to allow the assessment team to conclude that competent authorities are able to conduct inquiries on behalf of foreign counterparts and exchange with their foreign counterparts all information that would be obtainable by them if such inquiries were being carried out domestically.

Exchange of Information Between FIUs

410. *Criterion 40.9* – Under section 141 (d) of FSA the FIU can receive requests and provide information to assist a foreign FIU with its investigation. Under section 141(f) of the FSA, the FIU can request information from foreign FIU for analysis purposes.

411. Section 141 (f) of the FSA requires a MOU with foreign FIUs to exchange information and for general cooperation. This section does not clearly define whether the FIU is authorized to exchange information and provide general cooperation without a MOU. Bhutan FIU has signed MOUs with Bangladesh FIU and Korea FIU to exchange information.

412. *Criterion 40.10* – There is no specific requirement for providing feedback to foreign counterparts and Bhutan did not provide any examples of feedback.

413. *Criterion 40.11* – The FSA and AML/CFT Regulations do not appear to place any restrictions on the extent to which information can be shared with its foreign counterparts.

Exchange of Information Between Financial Supervisors

414. *Criterion 40.12* – The RMAA (section 9) provides for information exchange subject to the terms contained in any international agreement.

415. *Criteria 40.13-16* – While general provisions are available under the RMAA, there are no specific provisions covering the situations contained in c.40.13-16, and there has been no supervisory MOU signed to demonstrate the general provisions cover the circumstances envisaged. However, the FIU based in the RMA has signed MOUs (with foreign counterparts based in supervisory authorities) on financial intelligence information exchange founded on this enabling provision.

Exchange of Information Between Law Enforcement Authorities

416. *Criterion 40.17* – There appear to be no statutory restrictions over law enforcement, such as the police, customs and ACC and the FIU, to share information with their foreign counterparts. For example, Bhutan and India have a three tier law enforcement and intelligence cooperation mechanism that is actively used for terrorism and border related issues.

417. Bhutan is a member of SAARC. Members of SAARC are currently Afghanistan, Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka. There is an annual SAARC Conference on Cooperation in Police Matters. This provides a platform for important matters relating to networking arrangements among police authorities including prevention of organized crimes, combating corruption, drug abuse, drug trafficking and ML and training requirements of police officers and networking among police authorities.

418. Bhutan is currently a member of Bay of Bengal Initiative for Multi-Sectoral Technical and Economic Cooperation (BIMSTEC). BIMSTEC currently has seven members, Bangladesh, Bhutan, India, Myanmar, Nepal, Sri Lanka and Thailand and is a regional organisation that seeks to promote cooperation and intelligence sharing in areas including counter terrorism and transnational crime.

419. Both BIMSTEC and SAARC are only confined to their member states and BIMSTEC only relates to the sharing of intelligence, however, at the latest meeting relating to combating the financing of terrorism in Bhutan in May 2015 the meeting stressed the need to sign MOUs between member states.

420. Chapter 9 of the ACA allows the ACC to assist foreign states where they make a request in relation to an investigation of a corruption offence. This legal provision also provides the basis for information and intelligence sharing with foreign counterparts. The FIU can share information domestically and internationally under section 141(c), (d) and (e) of the FSA. Bhutan is a member of Interpol and has shared information. Customs is member of the World Customs Organization (WCO) and shares intelligence information with the Regional Intelligence & Liaison Office.

421. *Criterion 40.18* – Bhutan advised that no cases have been undertaken with foreign counterparts, and with the exception of the ACC, Bhutan does not have specific provisions in legislation to enable LEAs to use their powers on behalf of foreign counterparts.

422. *Criterion 40.19* – Section 157 of ACA allows the ACC to establish a joint investigative body in relation to investigations in one or more states pursuant to multilateral or bilateral arrangement, or where none exists, on a case by case basis.

423. Section 206 of the Police Act allows the police, subject to the production of a court order, to assist any other Government department in Bhutan in the execution of their duties.

424. Furthermore, BLO and BNCA act as a coordination agency for terrorism and drug related activity, respectively.

Exchange of Information Between Non-Counterparts

425. *Criterion 40.20* – Bhutan has not provided information to allow the assessment team to conclude that competent authorities are able to exchange information directly with non-counterparts.

Weighting and Conclusion

426. Bhutan's international cooperation is essentially with India given the risk and context of the country. The three tier cross border mechanism provides for a wide range of international cooperation with India. However, there is a lack of a more efficient framework between the FIUs of the two countries. **R. 40 is rated partially compliant.**

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	NC	- Bhutan has not completed its NRA to identify and assess all of its ML/TF risks. - Mechanism to coordinate risk assessment does not include all DNFBP stakeholders. - Limited implementation of risk based approach. - Exempted measures not based on proven low risk but lack of regulatory coverage. - Reporting entities not required to address NRA identified higher risks as NRA has not been completed. - Supervisors are not ensuring that reporting entities are implementing their obligations under R.1. - Simplified measures do not apply as c.1.9-1.11 are not fully met.
2. National cooperation and coordination	PC	- Bhutan does not have a comprehensive national AML/CFT policy informed by risk. - Lack of domestic cooperation and coordination between FIU and LEAs and supervisor on both AML/CFT operational and police issues. - Bhutan does not have a coordination mechanism to combat the financing of proliferation of WMD.
3. Money laundering offence	PC	- Penal Code ML offence does not meet all elements of Conventions. - Four of the 21 offences are not predicate offences for ML. - Unclear whether a conviction of predicate crime is necessary before proving the proceeds of crime. - Penal Code offence does not extend to foreign proceeds.
4. Confiscation and provisional measures	PC	- Scope deficiencies in predicate offences. - Absence of provisions for TF, property of equivalent value. - Deficiencies in provisions to freeze and seize for property subject to confiscation. - No provision to protect rights of bona fide third parties. - Limited mechanisms for managing property seized.
5. Terrorist financing offence	NC	- Terrorist financing under Section 329 of the Penal Code is not in accord with the TF Convention. - The law does not cover the financing or support for a terrorist organization or individual terrorist. - Indirect support to terrorists is not covered. - Direct or indirect financing or support for a terrorist group or individual terrorist is not covered. - There is no definition for the term “funds” within the meaning of the TF Convention. - Organizing and directing others to commit TF offense or contributing to the commission of one or more TF offenses is not covered. - The TF offense is not a predicate offense to ML. - Extra-territorial application of the law is limited to Bhutanese citizens.
6. Targeted financial sanctions related to terrorism & TF	NC	- Bhutan has neither mechanisms nor procedures for designation pursuant to UNSCR 1267/1989; 1988. - There is no competent authority responsible for designation as required under UNSCR 1373.

Compliance with FATF Recommendations

Recommendation	Rating	Factor(s) underlying the rating
		- Bhutan lacks a framework to implement UNSCR 1373. - Bhutan has no regulations in place that would govern information gathering to meet the criteria for designation and operate ex parte against such target. - Scope of freezing mechanism for UNSCR 1267 is limited and does not include all persons within the country. - The freezing mechanism for reporting entities does not cover UNSCR 1373. - It is unclear whether the freeze covers all types of funds or assets. - There are no rules that would govern the protection of the rights of bona fide third parties. - Bhutan has no procedures covering de-listing, unfreezing and access to frozen funds or assets. - Bhutan has no legal basis covering access to frozen funds intended for basic and extraordinary expenses.
7. Targeted financial sanctions related to proliferation	NC	- The freezing mechanism is limited to UNSCR 1737, does not include all funds and do not cover all persons within the country. - There are no rules that would govern the protection of the rights of bona fide third parties. - Bhutan has no publicly known procedures for submitting de-listing requests to the Security Council. - Bhutan has no laws, rules or regulations in place governing contracts, agreements or obligations that arose prior to the date the accounts became subject to targeted financial sanctions.
8. Non-profit organisations	PC	- Bhutan is yet to conduct a review of its NPO sector including its vulnerability to abuse for financing of terrorism. - Bhutan has not conducted outreach to the NPO sector concerning TF issues. - Absence of targeted monitoring of NPOs. - Limited application and enforcement of the CSOA and CSO Regulations. - No points of contact and procedures for responding to international information request regarding NPOs.
9. Financial institution secrecy laws	LC	Lack of clarity concerning the ability of sharing information between competent authorities internationally.
10. Customer due diligence	C	
11. Record keeping	C	
12. Politically exposed persons	C	
13. Correspondent banking	C	
14. Money or value transfer services	PC	- Authorities are not identifying illegal MVTS providers. - Authorities are not monitoring MVTS providers for AML/CFT compliance. - There is an absence of specific requirements in relation to agents of MVTS providers.
15. New technologies	C	

Compliance with FATF Recommendations		
Recommendation	Rating	Factor(s) underlying the rating
16. Wire transfers	LC	Gaps on R.6 cascade onto TFS requirements.
17. Reliance on third parties	LC	Absence of group level supervision from R.18.
18. Internal controls and foreign branches and subsidiaries	LC	Financial groups are not required to have group-wide programmes and measures against AML/CFT.
19. Higher-risk countries	LC	No measures put in place across financial sector to proactively identify countries having weaknesses in the AML/CFT systems and advise FIs of such concerns.
20. Reporting of suspicious transaction	PC	There are cascade deficiencies from R.3 and R.5.
21. Tipping-off and confidentiality	NC	- Lack of protection for RE's directors and employee. - Provisions in the FSA requiring REs to report all evidence of serious criminal or terrorism activity to the RMA and not the FIU.
22. DNFBPs: Customer due diligence	C	
23. DNFBPs: Other measures	PC	The deficiencies identified in R.18 - 21 apply equally to DNFBPs.
24. Transparency and beneficial ownership of legal persons	PC	- Partnerships and sole proprietorship are not covered. - Details of shareholders not fully captured. - Lack of mechanisms to identify beneficial owners in a timely manner. - No explicit mechanisms against nominee directors. - Lack of proportionate and dissuasive sanctions.
25. Transparency and beneficial ownership of legal arrangements	LC	- Some deficiencies with law enforcement access to timely information. - Cascade gaps from R.37.
26. Regulation and supervision of financial institutions	PC	- A minor scope limitation on AML/CFT supervisors, i.e. credit cooperative/CSO savings funds and national pension fund. - Insufficient market entry requirements for money changers and non-bank MVTs providers. - No provisions relating to adherence to the Core Principles and on the application of consolidated group supervision.
27. Powers of supervisors	C	
28. Regulation and supervision of DNFBPs	NC	- The absence of a designated competent authority for supervision. - Lack of effective systems for monitoring and ensuring compliance with AML/CFT requirements for all categories of DNFBP. - No AML/CFT compliance monitoring or supervision of DNFBPs has been carried out to date. - The monetary sanctions are not dissuasive.
29. Financial intelligence units	NC	- The FIU has conducted very limited operational analysis and no strategic analysis. - There are no SOP for STR receipt and analysis. - There is a lack of confidentiality requirements. - Operational independence and autonomy of the FIU is not fully ensured.

Compliance with FATF Recommendations		
Recommendation	Rating	Factor(s) underlying the rating
30. Responsibilities of law enforcement and investigative authorities	PC	- Only the ACC is designated to conduct ML. - No designated agency for TF. - The role of the police to identify and trace property subject to confiscation is not clearly defined.
31. Powers of law enforcement and investigative authorities	PC	- Undercover and controlled delivery can only be conducted by BNCA but the latter does not conduct investigations. - No basis for LEAs to request information from FIU except for MOU between FIU and ACC.
32. Cash couriers	PC	- No system whereby FIU is notified of suspicious cross border incidents. - No MoU between the FIU and Customs, or other LEAs relating to cross border issues. - Currently unable to detain currency where suspicion of ML and TF. - No regulation or provision for declaration information to be retained.
33. Statistics	PC	Statistics on confiscations and international cooperation are not sufficiently detailed and comprehensive.
34. Guidance and feedback	PC	Lack of feedback to reporting entities from the FIU.
35. Sanctions	PC	Monetary fines are relatively small to be sufficiently dissuasive.
36. International instruments	PC	- Bhutan has yet to ratify and implement the Palermo and Corruption Conventions. - Bhutan has yet to fully implement the Conventions.
37. Mutual legal assistance	NC	- Lack of a legal framework to rapidly provide the widest range of MLA. - No designated central authority. - Lack of confidentiality requirements. - Lack of clarity on dual criminality. - Not clear law enforcement powers can be used.
38. Mutual legal assistance: freezing and confiscation	NC	No provision for freezing and confiscation.
39. Extradition	LC	- Bhutan has no extradition case management system. - There are no simplified extradition arrangements.
40. Other forms of international cooperation	PC	- Evidence that Bhutan can provide rapid and a wide range of international cooperation (except India) was not provided to the assessment team. - There are no clear documented mechanisms and processes as required by 40.2(c), (d) and (e). - No evidence was provided in support of timely negotiation of agreements, and Bhutan has not signed agreements with the widest range of foreign counterparts. - No evidence (except India) was provided to show the provision of feedback. - No evidence (except India) was provided in support of the absence of unreasonable or unduly restrictive conditions on the provision of information exchange. - General confidentiality provisions are also applicable to information

Compliance with FATF Recommendations		
Recommendation	Rating	Factor(s) underlying the rating
		from foreign counterparts. • No evidence (except India) was provided in support of authorities' ability to conduct inquiries of behalf of foreign counterparts. • It is unclear if the FIU can exchange information without a MOU. • There is no specific requirement for providing feedback. • There are no specific legal provisions to allow supervisors to perform measures as detailed under c.40.13-15. • Besides the ACC, LEAs do not have specific provisions to enable them to use their powers of behalf of foreign counterparts. • There are limited provisions for the ACC and Police to conduct joint investigations, and the BLO and BNA act as coordination agencies for terrorism and drug related activities. • No evidence was provided in support of information exchange with non-counterparts.

GLOSSARY

ACC	Anti-corruption Commission of Bhutan
ACCA	Anti-Corruption Act 2011
AGA	Attorney General Act of Bhutan 2006
AML/CFT	Anti-money Laundering and Combating the Financing of Terrorism
AML/CFT Regulations	Anti-money Laundering and Combating the Financing of Terrorism Regulations 2015
AML/CFT Regulations 2012	Anti-money Laundering and Combating the Financing of Terrorism Regulations 2012
BCCI	Bhutan Chamber of Commerce and Industry
BIMSTEC	Bay of Bengal Initiative for Multi-Sectoral Technical and Economic Cooperation
BLO	Bureau of Law and Order
BNCA	Bhutan Narcotic Control Authority
BNI	Bearer Negotiable Instruments
CCPC	Civil and Criminal Procedures Code 2001
Companies Act	The Companies Act of the Kingdom of Bhutan 2000
CSO Authority	Civil Society Organisation Authority
CSOA	Civil Society Organisation Act 2007
Customs	Department of Revenue & Custom
DAM	Department of Agriculture and Marketing
DNFBP	Designated Non-financial Businesses and Professions
DoFPS	Department of Forest and Park Services
DPRK	Democratic People's Republic of Korea
FDI	Foreign Direct Investment Policy 2010
FED	Foreign Exchange and Reserve Management Department
FEX Regulations	Foreign Exchange Regulations
FI	Financial Institutions
FIAB	Financial Institutions Association of Bhutan
FIU	Financial Intelligence Unit
FRSD	Financial Regulation and Supervision Department
FSA	Financial Services Act 2011
IED	Improvised Explosive Device
IIG	Indian Insurgent Group
IR	India Rupee
LEA	Law enforcement authorities
MBO	Mutual Benefit Organisations
ME	Mutual Evaluation
MFA	Ministry of Foreign Affairs
ML	Money laundering
MOEA	Ministry of Economic Affairs
MoFA	Ministry of Agriculture and Forests
MOU	Memorandum of Understanding
NBFI	Non-bank Financial Institutions
NCC	National Coordination Committee
NDPSSAA	Narcotic Drugs Psychotropic Substance and Substance Abuse Act 2015
NIACS	National Integrity and Anti-Corruption Strategy 2014-2018
NPO	Non-profit Organisation

NRA	National Risk Assessment
NRAWG	National Risk Assessment Working Group
Nu.	Bhutanese Ngultrum
OAG	Office of the Attorney General
PBO	Public Benefit Organisations
Penal Code	Penal Code 2004 (amended in 2011)
PF	Proliferation Financing
Police	Royal Bhutan Police
Police Act	Royal Bhutan Police Act 2009
RE	Reporting Entity
RG	Radical Group
RMA	Royal Monetary Authority of Bhutan
RMAA	Royal Monetary Authority Act of Bhutan 2010
RO	Religious Organisations
ROA	Religious Organisations Act 2007
SAARC	South Asian Association for Regional Cooperation
SRB	Self-regulatory Bodies
STCEA	Sales Tax Customs and Excise Act
TF	Terrorism financing
TFS	Targeted Financial Sanctions
TOR	Terms of Reference
UN	United Nations
UNSC	United Nations Security Council
UNSCR	United Nations Security Council Resolutions
WCO	World Customs Organization
WMD	Weapons of Mass Destruction



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Anti-money laundering and counter-terrorist financing measures – Bhutan

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 Bhutan as at November 2015. The report analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of Bhutan's AML/CFT system, and provides recommendations on how the system could be strengthened.