



~~3rd~~4th¹ Follow-Up Report

Mutual Evaluation of Cambodia

July 2021

¹These editorial changes were made in March 2022.



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Cambodia: 3rd 4th ENHANCED FOLLOW-UP REPORT 2021

I. INTRODUCTION

1. The mutual evaluation report (MER) of Cambodia was adopted in July 2017. This FUR analyses Cambodia's progress in addressing the technical compliance (TC) deficiencies identified in its MER. Technical compliance re-ratings are given where sufficient progress has been demonstrated. This report also analyses progress made in implementing new requirements relating to FATF Recommendation 15 which has changed since the MER was adopted. This report does not analyse any progress Cambodia has made to improve its effectiveness.

2. The assessment of Cambodia's request for technical compliance re-ratings and the preparation of this report was undertaken by the following experts:

- *Ms. Patrícia Godinho Silva, Banco de Portugal*
- *Ms. Yi Zhang, AML Bureau of the People's Bank of China*
- *Ms. Nicole van Lent, APG Secretariat*

3. Section IV of this report summarises the progress made to improve technical compliance. Section V contains the conclusion and a table illustrating Cambodia's current technical compliance ratings.

II. FINDINGS OF THE MUTUAL EVALUATION REPORT & FOLLOW UP

4. Cambodia's MER ratings¹ and updated ratings based on earlier FUR are as follows:

R.	Rating	R.	Rating
1	PC (MER 2017)	21	LC (MER 2017)
2	PC (MER 2017) ↑ LC (FUR 2019)	22	PC (MER 2017)
3	LC (MER 2017)	23	LC (MER 2017)
4	LC (MER 2017)	24	PC (MER 2017)
5	LC (MER 2017)	25	PC (MER 2017)
6	LC (MER 2017)	26	PC (MER 2017)
7	NC (MER 2017)	27	LC (MER 2017)
8	PC (MER 2017)	28	PC (MER 2017)
9	C (MER 2017)	29	LC (MER 2017)
10	LC (MER 2017)	30	LC (MER 2017)
11	LC (MER 2017)	31	LC (MER 2017)
12	PC (MER 2017)	32	LC (MER 2017)

¹ There are four possible levels of technical compliance: compliant (C), largely compliant (LC), partially compliant (PC), and non-compliant (NC).

13	PC (MER 2017)	33	PC (MER 2017)
14	LC (MER 2017)	34	PC (MER 2017) ↑ LC (FUR 2018)
15	C (MER 2017)	35	PC (MER 2017)
16	PC (MER 2017)	36	LC (MER 2017)
17	LC (MER 2017)	37	PC (MER 2017)
18	PC (MER 2017)	38	PC (MER 2017)
19	PC (MER 2017) ↑ LC (FUR 2018)	39	LC (MER 2017)
20	LC (MER 2017)	40	PC (MER 2017)

5. Given these results and its effectiveness ratings, Cambodia was placed in enhanced follow-up².

III. OVERVIEW OF PROGRESS TO IMPROVE TECHNICAL COMPLIANCE

6. In keeping with the APG Mutual Evaluation Procedures, this FUR considers progress made up until 1 February 2021. This section summarises the progress made by Cambodia to improve its technical compliance by:

- a) addressing the technical compliance deficiencies identified in the MER, and
- b) implementing new requirements where the FATF Recommendations have changed since the MER was adopted.

3.1. Progress to address technical compliance deficiencies identified in the MER

7. Cambodia requested re-ratings of the following Recommendations: R. 1, 12, 33, 37, 38 and 40 (which were rated PC) and R.7 (which was rated NC).

8. The APG welcomes the steps that Cambodia has taken to improve its technical compliance with R. 1, 7, 12, 33, 37, 38 and 40. As a result of this progress, Cambodia has been re-rated on Recommendations: 1, 7, 12, 33, 37 and 38. However, insufficient progress has been made to justify a re-rating of 40.

Recommendation 1 (Originally rated PC)

9. Cambodia was rated PC for Recommendation 1 in its 2017 MER. The main deficiencies were that the outcomes of Cambodia's 2016 national risk assessment (NRA) had not been provided to reporting entities (REs); Cambodia had not yet applied a broad risk-based approach to the allocation of resources based on the results of the NRA; measures in relation to higher and lower risks were not fully reflective of the results of the NRA; and risk-based monitoring of AML/CFT compliance had not fully extended to all REs.

10. The 2019 FUR found that whilst Cambodia had made some progress with R.1, moderate deficiencies remained, including 1) no requirement for REs to take enhanced measures to manage risks; 2) simplified measures for REs were not risk-based; and 3) no evidence that supervisors other than the

² There are three categories of follow-up based on mutual evaluation reports: regular, enhanced and enhanced (expedited). For further information see the APG Mutual Evaluation Procedures.

Cambodia Financial Intelligence Unit (CAFIU) conducted activities to ensure REs were implementing AML/CFT obligations relating to risk assessment and mitigation.

11. Criterion 1.1 is *mostly met*. There is no change since the 2017 MER.

12. Criterion 1.2 is *met*. There is no change since the 2017 MER.

13. Criterion 1.3 is *mostly met*. There is no change since the 2017 MER. Cambodia indicated it has intent to update its NRA in 2021 (five years after its first NRA). This is in line with other major policy documents released by Cambodia. As found in the 2017 MER, it remains unclear whether Cambodia's indication it would update its ML/TF risk assessment every five years is sufficient in light of the weaknesses in Cambodia's first NRA, and its ML/TF risk landscape.

14. Criterion 1.4 is *met*. Since the 2017 MER, Cambodia has shared the NRA and its key findings with all REs. In addition, CAFIU has promoted the results of its risk assessment in workshops and AML/CFT training with relevant authorities, financial institutions (FIs) and other private sector entities.

15. Criterion 1.5 is *mostly met*. There is no change since the 2019 FUR. As noted in the 2019 FUR, CAFIU has increased its compliance staffing levels. CAFIU is now implementing a risk-based approach to AML/CFT supervision for the banking sector and CAFIU and the Ministry of Economy and Finance are working on risk-based off-site tools for the casino sector. However, no information has been provided in relation to resource allocation across other sectors' AML/CFT supervision, based on the ML/TF risks. There is no further information as to what types of implementing measures are being taken to prevent or mitigate those risks.

16. Since the 2017 MER, Cambodia has established an Anti-Money Laundering Board under ACU, and an Inter-Ministerial Working Group to progress their anti-money laundering obligations.

17. Criterion 1.6 is *not applicable*. There is no change since the 2017 MER.

18. Criterion 1.7 is *mostly met*. Since the 2017 MER, Cambodia has implemented an AML/CFT Law (2020) and a Directive on Customer Due Diligence (CDD) Measures (2021) to enhance its AML/CFT regime. The AML/CFT Law and Directive on CDD Measures require FIs and DNFBPs to conduct enhanced measures for all categories of higher risk customers, and where other risks, including geographic risks or risks associated with products, services delivery channels and/or technologies are high (Article 8, AML/CFT Law & Point 4.7, CDD Measures). There is no explicit requirement that these enhanced measures be consistent with the country's findings of risk. Cambodia has not required REs to incorporate higher risks identified by Cambodia into their own risk assessments.

19. Criterion 1.8 is *partly met*. The AML/CFT Law allows REs to apply simplified CDD measures in situations where the RE has identified the risk as low. REs are required to conduct their own risk assessments under Article 8 of the AML/CFT Law. REs are permitted to apply simplified CDD measures for any product, delivery channel, technologies or class of customers if they have undertaken a written risk assessment demonstrating a low ML/TF risk (4.6.1, Directive on CDD Measures). However, there is no requirement that the lower risk identified be consistent with Cambodia's assessment of its ML/TF risks.

20. Criterion 1.9 is *mostly met*. As noted in the FUR 2019, CAFIU has established a framework for, and commenced testing of, a risk-based approach for the AML/CFT supervision of the banking sector. CAFIU selects FIs for virtual targeted on-site supervision based on the result of risk assessments combined with essential criteria derived from follow-up outcomes. CAFIU also conducted offsite reviews of self-risk assessments by FIs.

21. Supervisory measures including off-site and on-site supervision have been undertaken for higher-risk institutions, casino and real estate sectors, and the Ministry of Economy and Finance has developed monitoring tools for off-site supervision. It is not clear whether the securities and insurance sectors, under the Securities Exchange Commission Cambodia (SECC), have been covered in the supervision schedule.

22. Criterion 1.10 is *mostly met*. Article 8 of the AML/CFT Law requires REs to understand their own ML/TF risks. Point 3.1 of the Directive on CDD Measures requires FIs and DNFBPs to identify, assess, manage and mitigate their risks. These obligations include (a) documenting their risk assessments (Point 3.2); (b) considering the relevant risk factors as set out in c.1.10 (Point 3.1) and (c) keeping risk assessments up to date (Point 3.2).

23. In relation to 1.10(d), there is no explicit requirement for FIs and DNFBPs to provide risk assessment information to competent authorities and self-regulatory bodies, however CAFIU has conducted offsite reviews of banks' risk assessments.

24. Criterion 1.11 is *met*. There is no change since the 2017 MER.

25. Criterion 1.12 is *partly met*. Article 8 of the AML/CFT Law and Point 4.6.1 of the Directive on CDD Measures allow FIs and DNFBPs to take simplified measures in the form of simplified CDD where the ML/TF risks are found to be low. Whilst there is a requirement for REs to undertake their own risk assessments, the lower risks identified by the REs for the purposes of simplified measures do not need to be consistent with Cambodia's assessment of its risks. Point 4.6.3 of the Directive provides that simplified measures shall not apply whenever there is a suspicion of ML/TF, or where 'specific higher-risk scenarios apply'. Higher risk scenarios identified in the directive would relate to politically exposed persons (PEPs), however it is unclear whether this would also consider higher risks identified in the NRA.

Weighting and conclusion

26. Cambodia has indicated that it will update its NRA in 2021. Cambodia has shared the 2016 NRA and its findings with REs and the private sector. Since the 2017 MER, Cambodia has implemented the AML/CFT Law and the Directive on CDD Measures, which require REs to identify, assess and understand their own ML/TF risk, and apply a risk based approach to implementing measures to mitigate and prevent those risks. Some minor deficiencies remain in the implementation of REs' risk assessment and obligations, and its consistency with the findings of the NRA. ***Recommendation 1 is re-rated Largely Compliant.***

Recommendation 7 (Originally rated NC)

27. Cambodia was rated NC for Recommendation 7 in its 2017 MER as there were no specific measures for implementing targeted financial sanctions (TFS) related to proliferation in order to comply with UNSCRs.

28. Criterion 7.1 is *mostly met*. The Law on Combating the Financing of Proliferation of Weapons of Mass Destruction of Cambodia (June 27, 2020) (the PF law) and its sub-decrees (159 and 161) provide a mechanism for the implementation of TFS relating to WMD proliferation and financing.

29. Article 3 of Sub-Decree 161 provides that upon receiving the UNSCR, the Ministry of Foreign Affairs and International Cooperation (MOFA) shall, without delay, forward the resolution to the Ministry of Justice (MOJ) which shall, without delay, make an ex-parte application to the court for a freezing order. On 2 November 2020, the Judge of the Phnom Penh Municipal Court of First Instance issued two separate rulings for asset freezing for the UNSCR related to on DPRK (No.11) and Iran (No. 12). These standing orders require the freezing of assets of persons or entities listed in the UNSCRs

1737 and 1718 and subsequent resolutions (the Standing Orders). These ensure that any updates to the UN designation lists take effect automatically and without delay, however the process is subject to delays as outlined below at c.7.2(d).

30. Cambodia has also included a mechanism for domestic designation of an individual or entity by a court, should the court find that the individual/entity meets the criteria for designation pursuant to UNSCR 2270. This designation will accompany a freezing order issued by the court (Article 5, PF law). This mechanism for domestic designation outlined in the PF law goes beyond what is required by the FATF standards.

31. Criterion 7.2(a) is *met*. All natural and legal persons are required to freeze, without delay and without prior notice, the funds or other assets of designated persons or entities, in accordance with the Freezing Order issued by the Court (Article 6, PF Law).

32. Criterion 7.2(b) is *met*. The freezing obligation at Article 4 of the PF law extends to the property required in criteria 7.2(b):

- (i) all funds or other assets that are owned or controlled by the designated person or entity, and not just those that can be tied to a particular act, plot or threat of proliferation;

- (ii) those funds or other assets that are wholly or jointly owned or controlled, directly or indirectly, by designated persons or entities; and

- (iii) the funds or other assets derived or generated from funds or other assets owned or controlled directly or indirectly by designated persons or entities, as well as

- (iv) funds or other assets of persons and entities acting on behalf of, or at the direction of designated persons or entities.

33. Criterion 7.2(c) is *met*. The PF law prohibits any individual or entity who is subject to the laws of Cambodia, from making property available to, or for the benefit of, designated persons or entities (Article 10). Article 9 of the PF law, and Articles 4 and 5 of Sub-Decree no. 159 on the Use and Management of Frozen Property allow any individual/entity to request permission from the court to use or manage the funds.

34. Criterion 7.2(d) is *not met*. There is no mechanism for communicating designations to REs (including FIs and DNFBPs). The Standing Orders are published on the MOJ website, however a link to the PF UN designations list is not available. Cambodia advised that supervisory authorities forwarded the Standing Orders to the REs, but there is no evidence that reporting entities are notified upon updates to designation lists.

35. Criterion 7.2(e) is *mostly met*. REs, including FIs and DNFBPs, are required to report on whether they have frozen property of designated persons/entities, and any attempted transactions on the frozen property (Article 12, PF Law). However, other actions taken in compliance with the prohibition requirements of the relevant UNSCRs, such as opening a bank account, are not included.

36. Criterion 7.2(f) is *not met*. There are no formal measures to protect the rights of *bona fide* third parties acting in good faith when implementing the freezing of funds.

37. Criterion 7.3 is *partly met*. The PF Law requires supervisory authorities to monitor REs, including FIs and DNFBPs, to ensure compliance with the PF Law (Article 16). Cambodia has conducted outreach to FIs on their PF obligations. However, it is unclear how the supervisory authority

monitors and ensures compliance by FIs and DNFBPs. Moreover, DNFBPs were not included in the outreach.

38. The PF Law provides administrative fines and criminal penalties for failures to comply with freezing obligations, making property available to designated persons/entities, and failure to report cases of freezing. Administrative fines for these offences range from \$100,000 to \$200 million Riels (approx. USD 24,600 to 49,200) and criminal penalties range from 1 month to 15 years imprisonment (PF Law Article 19-22). These sanctions appear to be proportionate and dissuasive.

39. In addition, the PF Law provides a range of administrative penalties for 'legal entities', ranging from \$30 million to \$400 million (approx. USD 7,380 to 98,400) and a range of administrative measures are provided for in the Penal Code. Legal entities may also be punished with criminal responsibility for failure to comply with the freezing obligations. However, it is unclear whether REs are included in 'legal entities' or 'anyone', as 'legal entities' are not clearly defined in the law, and 'entities' are defined as legal persons, unincorporated bodies, groups, associations, organisations, institutions and arrangements.

40. Criterion 7.4 is *partly met*.

41. Criterion 7.4(a) is *not met*. The PF Law provides that a designated person or entity may file an application for de-listing with the UNSC (Article 7), however there are no procedures on how this should occur, and there is no link to the focal point for de-listing on CAFIU's website.

42. Criterion 7.4(b) is *not met*. There is no publicly known procedure to unfreeze the assets of persons and entities with the same or similar name as the designated persons and entities upon adequate verification.

43. Criterion 7.4(c) is *met*. The PF Law authorises an individual or entity to use or dispose of the frozen property with the consent of sub-decree. The Sub-Decree No. 159 provides a basis to access funds for basic expenses and other expenses authorised and in compliance with the UNSCRs (Article 4). Individuals and entities holding frozen funds shall request use of the frozen property through the court.

44. Criterion 7.4(d) is *not met*. There is no mechanism for communicating de-listings to REs (including FIs and DNFBPs). Article 10 of the Sub-decree provides that MOFA and MOJ shall "make in public" the resolutions and the judicial decisions by the Courts of Cambodia regarding the designation and property freeze and also the delisting and the revocation of the property freeze. No evidence was provided to the review team of any communication to reporting entities in relation to de-listings and unfreezing, and in addition, the sanction lists are not available on CAFIU or MOJ websites. Moreover, no guidance is provided to FIs and DNFBPs for them to respect a delisting or unfreezing action. Cambodia did indicate that the National Bank of Cambodia (NBC) would facilitate in sending the court order to Banks and FIs if there is any request from the court, however the review team did not see any evidence to verify this.

45. Criterion 7.5 is *mostly met*.

46. Criterion 7.5(a) is *partly met*. The PF Law does not provide scope to permit the addition to accounts of interest or other earnings due on those accounts, or payments due to agreements, or obligations that arose prior to those accounts becoming subject to the freezing actions. The PF Law may permit FIs and DNFBPs to add payments and earnings acquired under a contractual obligation to a frozen account so long as those payments or earnings are also frozen (Article 10). This requirement does not cover other entities and individuals, which should also comply with the freezing obligations.

47. Criterion 7.5(b) is *met*. Article 3 and Article 4 of the Sub-Decree No. 159 allows for an individual or entity to use the frozen property to cover expenses for the performance of contract obligations. This refers to necessary expenses incurred from a contract made prior to the freezing actions, provided that such payment is not in violation of UNSCR. The individual or entity must apply to the court for authorisation to use the frozen funds.

Weighting and conclusion

48. Cambodia has implemented the PF Law and its sub-decrees, to create a mechanism for the implementation of TFS relating to WMD proliferation and financing. The standing orders issued by the court ensure that any updates to the UN designation lists take effect automatically and without delay. However, moderate deficiencies remain, such as lack of a mechanism to communicate to REs any updates to the UNSCR sanction lists, a lack of measures adopted by supervisory authorities for monitoring and ensuring compliance by FIs and DNFBPs, and a lack of mechanisms regarding delisting or unfreezing actions. There are no publicly known procedures to unfreeze property of persons or entities with the same or similar name as designated persons or entities, and lack of explicit provisions regarding agreements or obligations that arose prior to the date on which accounts became subject to TFS. There are no formal measures to protect the rights of *bona fide* third parties acting in good faith when implementing the freezing of funds. Whilst the PF law provides a range of administrative penalties for legal entities, ‘legal entities’ are not defined in the law, and it is unclear whether REs are included. Additionally, the PF Law does not provide scope to permit the addition of interest or other earnings on accounts, or for payments due to agreements or obligations that arose prior to those accounts being subject to freezing actions. **Recommendation 7 is re-rated to Partially Compliant.**

Recommendation 12 (Originally rated PC)

49. Cambodia was rated PC for Recommendation 12 in its 2017 MER. The report found that the definition of PEPs did not extend to domestic PEPs or to heads of international organisations, their family members and close associates. It was not explicit that REs should include PEPs in their risk management systems nor put in place ongoing customer monitoring of PEP’s accounts. In addition, there was no requirement to determine whether a beneficial owner is a PEP.

50. Criterion 12.1 is *mostly met*. Article 3(11) of the AML/CFT Law defines PEPs in three categories; foreign, domestic and international. Cambodia’s definition of these PEPs mirrors that of the FATF standards.

51. Cambodia’s definition of ‘beneficial owner’ is not consistent with the FATF standards (Article 3(10), AML/CFT Law). The definition does not cover trusts, or persons who exercise ultimate effective control over a legal person or arrangement. In addition, the term ‘legal entity’ is not clearly defined in Cambodian law.

52. In relation to foreign PEPs, in addition to performing CDD measures, REs are required to:

- a) have in place a risk management system to identify whether customer or beneficial owner is a foreign PEP (Paragraph 5(d), Article 8, AML/CFT Law);
- b) obtain senior management approval before establishing (or continuing, for existing customers) business relationships with PEPs (Paragraph 4.4.1(a), Directive of CDD);
- c) take reasonable measures to establish the source of funds and wealth of customers and beneficial owners identified as PEPs (Article 4.4.1, Directive on CDD); and
- d) conduct enhanced ongoing monitoring on business relationships with PEPs (Article 4.4.1(c), Directive on CDD).

53. Criterion 12.2 is *mostly met*. As noted above, Cambodia has extended the definition of PEPs to domestic PEPs and international PEPs (individuals with prominent functions in an international organisation). Appropriate measures are required by Directive on CDD Measures for FIs to determine whether a customer or beneficial owner is such a person (Article 4.4.2(a), Directive on CDD Measures), and to undertake enhanced due diligence (EDD) measures when there is higher risk business relationship (Articles 4.4.2(b) and 4.7, Directive on CDD Measures). However, the deficiency related to the definition of beneficial ownership remains.

54. REs are required to undertake all the measures in c.12.1(a) to (d), i.e. Article 4.3 of the CDD Directive, in addition to this enhanced and ongoing monitoring. This is in excess of what the FATF Standards require.

55. Criterion 12.3 is *mostly met*. The relevant requirements of criteria 12.1 to 12.2 are applied to family members or close associates of all types of PEP (Article 2(b) and (c), Directive on CDD Measures). However, the deficiency relating to the definition of beneficial ownership remains.

56. Criterion 12.4 is *partly met*. In relation to life insurance policies, there is no explicit requirement for FIs to take reasonable measures to determine whether the beneficiaries, or where required, the beneficial owner of the beneficiary, are PEPs. Moreover, no further enhanced measures are explicitly required when higher risks are identified. There is no requirement that senior management be informed when higher risks are identified, prior to the payout of the policy. Article 4.10.4 of the Directive of CDD requires enhanced measures to be taken when the identity of the beneficiary is a legal person or arrangement, but does not provide an explicit requirement to conduct enhanced measures when other higher risks are identified. In addition, the deficiency in relation to the beneficial ownership definition also remains.

Weighting and conclusion

57. Cambodia has extended the definition of PEPs to domestic PEPs and heads of international organisations, their family members and close associates. Appropriate measures have been required for REs to mitigate risks when PEPs are identified, such as putting in place ongoing customer monitoring of PEP's account. Cambodia is also required to determine whether a beneficial owner is a PEP. Deficiencies remain with the beneficial ownership definition, and the specific requirement to identify whether the beneficiaries or beneficial owner of the beneficiary of life insurance policies are PEPs, and measures where higher risks are identified, have to be addressed. ***Recommendation 12 is re-rated to Largely Compliant.***

Recommendation 33 (Originally rated PC)

58. Cambodia was rated PC for Recommendation 33 in its 2017 MER. The report found major shortcomings in the statistics provided by Cambodia, in particular relating to international cooperation and property frozen, seized and confiscated.

59. Criterion 33.1(a) is *met*. CAFIU maintains statistics on suspicious transaction reports (STRs), incoming and outgoing requests and spontaneous disseminations. Whilst statistics were only provided for 2020, the data indicates that the architecture for the compilation of such data has been established. Cambodia also maintains statistics on ML and predicate investigations that utilise financial intelligence for each law enforcement agency (LEA).

60. Criterion 33.1(b) is *mostly met*. Cambodia has provided statistics on ML investigations, prosecutions and convictions, with information on predicate offences, between 2017 and 2020 with data from GNCP, ACU, GDCE and GDT. There have been no prosecutions of TF since the 2017 MER. No information was provided on TF investigations.

61. Criterion 33.1(c) is *mostly met*. Cambodia maintains comprehensive statistics on property frozen and confiscated, compiled by the MOJ. These statistics include a breakdown of the property and other assets frozen (approximately USD13.8million as at November 2020) and confiscated (approximately USD9.3million as at November 2020). These statistics primarily relate to the predicate offences of fraud, drug trafficking and environmental crime. No statistics were provided on property seized.

62. Criterion 33.1(d) is *mostly met*. Cambodia has provided comprehensive statistics on mutual legal assistance (MLA) requests sent and received between 2018 and 2020, including extradition requests. Some information has been maintained relating to informal international cooperation between LEAs for 2019 and 2020 but comprehensive information on what this informal cooperation involved and the matters they related to have not been provided. Cambodia has also provided statistics on incoming and outgoing requests with foreign FIU counterparts for 2020. Cambodia has not provided data on informal cooperation between regulators.

Weighting and conclusion

63. Cambodia maintains statistics, on STR/CTRs, ML investigations and prosecutions, as well as frozen and confiscation actions and MLA requests. However, there are minor shortcomings in relation to maintaining statistics for seizures, informal cooperation and TF investigations. These minor deficiencies have been weighted, taking into account Cambodia's risk and context. **Recommendation 33 is re-rated to Largely Compliant.**

Recommendation 37 (Originally rated PC)

64. Cambodia was rated PC for Recommendation 37 in its 2017 MER as there were no domestic legal instruments that dealt with MLA outside the ASEAN MLA framework other than in relation to drug, corruption and terrorism related offences. Cambodia required dual criminality regardless of whether the request required coercive measures, which is contrary to the requirements of R. 37. There was also no requirement of expedient conduct or prioritisation of MLA requests and no case management system to monitor requests.

65. Criterion 37.1 is rated *mostly met*. The law on Mutual Legal Assistance in Criminal Matters adopted by the legislature and promulgated on the 27th November 2020 (the MLA Law) regulates international judicial cooperation in criminal matters, including ML and its predicate offences (including TF) for jurisdictions not party to a bilateral treaty or multilateral convention ratified by Cambodia.

66. The internal procedure for executing the requests for mutual assistance as stipulated under the MLA Law (Article 2) shall cover all cases of MLA in criminal matters including MLA in criminal matters implemented in accordance with a bilateral or multilateral treaty or a convention which has been ratified by Cambodia. However, in the case of other provisions specified under any treaty or convention or any other laws of Cambodia that provide specific or more detail in executing the request, that internal procedure in that specific treaty, convention or law shall be applied.

67. This legislation enables Cambodia to provide broad cooperation concerning criminal matters and related procedures outside the ASEAN and on the basis of reciprocity. In particular, legal assistance includes provisions for taking statements and evidence, and for searches and seizures. Furthermore, assistance related to identifying the location of a person or property, to freezing, seizures and confiscation of property and the transit of people and extradition requests are also covered. However there is no legal basis to ascertain whether this legislation enables Cambodia to rapidly provide broad cooperation concerning investigations in criminal proceedings and related procedures, including in urgent matters, e.g. freezing or seizures of property.

68. Cambodia can also rely on ratified international treaties and conventions to provide MLA, as international law is a source of Cambodian law. As a party to the ASEAN MLA in Criminal Matters Treaty, Cambodia is able to make or receive requests for assistance from parties under this treaty. Article 7 of the ASEAN MLA Treaty requires parties to carry out requests ‘promptly’ and respond to inquiries concerning the execution of the request ‘as soon as possible.’ However, outside of the ASEAN MLA Treaty, there is no legal basis that MLA be provided ‘rapidly’.

69. Criterion 37.2 is rated *mostly met*. The central authority for the purpose of MLA in criminal matters is the MOJ (art. 5 of MLA Law). The requirements for the transmission and execution of requests are clearly defined (art. 7 - 16 of MLA Law), but no reference is made to the timely prioritisation of requests, including in urgent cases. The Central Authority uses a case management system to monitor progress on requests.

70. The MOJ has developed a guideline for prioritising incoming MLA requests to the Ministry, where officers in charge must consider four main criteria to decide on case priority. These guidelines help the MOJ to improve effectiveness of executing MLA requests. However, no information is included in relation to the timeliness of requests.

71. Criterion 37.3 is rated *met*. Cambodia does not impose unreasonable or unduly restrictive conditions on MLA. In specific instances, requests for cooperation may be refused: art. 10 of MLA Law. Some restrictions may also be provided for in treaties and conventions art. 2 of MLA Law.

72. Criterion 37.4 is rated *met*. Fiscal matters are not an obstacle to provide assistance in response to a request for MLA (art. 10, paragraph 3 (2) of MLA Law); and Cambodia does not refuse requests for MLA on the grounds of secrecy or confidentiality requirements of FIs or DNFBPs (art. 10, paragraph 3 (1) of MLA Law and art. 6 of AML/CTF Law).

73. Criterion 37.5 is rated *met*. The ASEAN MLA Treaty (Article 9) requires that Requested Parties take all appropriate measures to maintain confidentiality of MLA requests and the information contained therein, subject to the Requested Party’s domestic laws. The MLA law requires the Central Authority to take measures to maintain the confidentiality of requests for cooperation and the information contained therein (Article 16). The Law on the Common Statute of Civil Servants prohibits civil servants from publishing, without the prior authority of the Minister under whom they are employed, or making public, facts related to their position (Article 35). A person who violates this prohibition is liable to disciplinary sanctions, ranging from reprimand to dismissal (Article 40) without prejudice to possible criminal proceedings. Article 314 of the Criminal Code sets out penalties for civil servants who breach confidentiality.

74. Criterion 37.6 is rated *partly met*. The MLA Law foresees that dual criminality is not a mandatory but voluntary ground for refusal (Article 10 Paragraph 2). Dual criminality does not require the offense to be the same type, having the same name, or sharing the same element of offense, as long as the facts presented are considered an offense under the MLA. This law is not applicable where MLA is carried out in accordance with a treaty or convention.

75. However, when Cambodia executes specific requests for MLA that involve drug control (art. 114 of the Law on Drug Control), counter terrorism (art. 103 of Law on Counter Terrorism) and corruption, the relevant domestic laws require dual criminality in order to render MLA regardless of whether coercive actions are required. There is no legal provision in the MLA Law that expressly repeals them. Cambodia explained that if there is a specific article to execute MLA requests for offenses relating to drug control, corruption or counter terrorism where there is no dual criminality, authorities would use the MLA Law.

76. The ASEAN MLA Treaty (Article 3 (1e)) lists non-fulfilment of the dual criminality condition as a mandatory ground for refusal unless the Requested Party is permitted by its domestic laws to provide assistance in the absence of dual criminality. The UN convention against transnational organised crime provides a voluntary ground for refusal in the absence of dual criminality but that the state party may provide assistance when it deems appropriate (Article 18(9)).

77. Criterion 37.7 is rated *met*. The MLA Law provides that it is sufficient for both countries (Cambodia/Requesting State) to criminalise the underlying illicit conduct as an offence, regardless of whether both countries place the offence within the same category, or denominate the offence by the same terminology, definitions or characteristics according to (Article 10 Paragraph 2). This law is not applicable where MLA is carried out in accordance with a treaty or convention (art. 2 of MLA Law).

78. The Law on Counter Terrorism specifically provides that an offence under the law of a foreign State will be deemed to correspond to an offence under that Law regardless of whether the categories of offence or legal terminology used are the same in both countries, provided that having regard to the totality of the acts or omissions, an offence under that Law would have been committed.

79. There are no provisions in the ASEAN MLA Treaty, UN convention, the Law on Anti-Corruption or the Law on Drug Control that specifically relate to the conduct, rather than the categorization or denomination of an offence, being critical for the purposes of establishing dual criminality.

80. Criterion 37.8(a) is rated *mostly met*. According to Articles 6, 17, 18, 19, 20 of the MLA Law, powers required under R.31 or otherwise available to domestic competent authorities, are available for use in response to requests for MLA when related to the search and seizure of information, evidence, documents (including financial records) from financial institutions, or other natural or legal persons, and the taking of witness statements.

81. Cambodia is able to provide MLA on the basis of ratified treaties such as the ASEAN MLA Treaty that have relevant provisions subject to domestic laws.

82. Criterion 37.8(b) is rated *partly met*. Article 6 of the MLA Law extends the use of all powers and legal remedies available under Cambodian Law, including under the Code of Criminal Procedure (CCP), to the President of the court of first instance and to the Prosecutor attached to the municipal/provincial court of first instance to implement the MLA request.

83. But, as noted in the MER, investigative powers required by criterion 31.2 are not broadly granted to judicial police officers. They are specifically set out with respect to corruption, drug and terrorism related cases. Powers and investigative techniques provided for by the Law on Drug Control and the Law on Counter Terrorism could be used in response to a MLA request. The Law on Anti-Corruption allows the ACU to use a limited range of investigative techniques including assessing computer or electronic systems. Article 105 of the CCP prohibits any type of interception of communications by judicial police without an order from an investigative judge.

Weighting and conclusion

84. Cambodia has taken important measures to address most of the deficiencies related to R.37. The MLA Law has greatly improved the legal framework of Cambodia to handle MLA related matters in the absence of a treaty or convention. It sets out the authority in charge and has provided a proper and clear communication channel and a broader scope along with frameworks for the execution of a request or formulating a request. The Central Authority has also implemented a case management system to monitor progress on MLA requests and enhance cooperation, although it is not completely clear how Cambodia ensures the timely and rapid prioritisation of MLA requests. To execute requests for MLA that involve drug control, counter terrorism and corruption offences, Cambodia's relevant

domestic laws require dual criminality in order to render MLA. Drug and corruption offences are significant threats in Cambodia, and Cambodia has advised that where these offences do not involve dual criminality, authorities can use the new MLA law. A range of powers and investigative techniques are available for drug control and counter-terrorism offences in response to MLA requests, with a limited range of investigative techniques also available for corruption offences. However investigative techniques are not available to execute MLA for other types of offences. ***Recommendation 37 is re-rated Largely Compliant.***

Recommendation 38 (Originally rated PC)

85. Cambodia was rated PC with Recommendation 38 in its 2017 MER. The report found moderate shortcomings in the provision of a legal basis for Cambodia to freeze and confiscate assets under MLA requests. There was no legislative provision to freeze and confiscate assets under an MLA request in circumstances where a country is not party to the ASEAN MLA Treaty, or the matter is not related to drugs, corruption or TF. Further, the report found no evidence to suggest that there were arrangements for co-ordinating seizure and confiscation actions with other countries, mechanisms for managing or disposing of frozen, seized or confiscated property, or arrangements for sharing property with countries outside ASEAN.

86. Criterion 38.1 is *mostly met*. The ASEAN MLA Treaty provides a comprehensive regime to identify, freeze, seize and confiscate all the required types of property, or property of corresponding value. The ASEAN MLA Treaty also requires that requests for assistance be carried out promptly. However, this treaty only applies to MLA provided among the parties to the treaty.

87. The MLA Law regulates international judicial cooperation in criminal matters for jurisdictions not party to a bilateral treaty or multilateral convention ratified by Cambodia (see c. 37.1). This legal assistance comprises acts necessary for the freezing, seizure or confiscation of property, instrumentalities, objects or proceeds of a crime or property with a corresponding value (art. 3, 30 to 34 MLA Law). However, there is no specific process guaranteeing expeditious action for MLA requests for freezing and confiscation for jurisdictions not party to the ASEAN MLA Treaty.

88. Criterion 38.2 is *met*. Cambodia has the authority to provide assistance to requests for co-operation made on the basis of non-conviction based confiscation proceedings (Article 30, MLA Law). Cambodia shall also decide to freeze, seize, or confiscate the property even if the offender or the accused died, or has not been identified, or has escaped when the court of the Requesting State has issued a judgment stating that the property was the proceeds of a crime, or instruments of an offense, which shall be confiscated (Article 32, MLA Law).

89. The ASEAN MLA Treaty and the UN Convention against Transnational Organised Crime also provide broad powers to engage in MLA and do not prohibit the extension of MLA in non-conviction based matters.

90. Criterion 38.3 is *partly met*. In the absence of a bilateral or multilateral agreement, the MLA law, in conjunction with the rule of reciprocity, allows authorities sufficient room for coordinating seizure and confiscation actions with other countries, according to Article 9 and 33 of the MLA Law. Article 34 of the MLA Law sets out the authority in charge of the management, handling and the allocation of the confiscated property (the Central Authority) but it does not clearly provide the procedures and description of the mechanisms involved.

91. Article 178 of the Criminal Code, Article 51 of the Law on Anti-Corruption and Article 87 of the Law on Counter Terrorism set out a basic mechanism for asset management, which include provisions for authorities to sell or destroy confiscated objects. No information has been provided on mechanisms for managing or disposing of, frozen or seized property.

92. Criterion 38.4 is *met*. The ASEAN MLA Treaty and the UN Convention against Transnational Organised Crime provide Cambodia with the ability to share confiscated property with other Parties. For jurisdictions not party to a treaty or convention, Cambodia is able to share confiscated property upon a signed agreement between the Central Authority and requesting state (Article 33 and 34 of the MLA Law).

Weighting and conclusion

93. Cambodia has the authority to take action in response to requests by foreign countries to identify, freeze, seize, or confiscate property, instrumentalities, objects or proceeds of a crime or property with a corresponding value, including on the basis of non-conviction based confiscation proceedings. Moreover, the MLA Law sets out the authority in charge of the management, handling and the allocation of the confiscated property (the Central Authority) but it does not clearly provide the procedures and description of the mechanisms involved and there is no specific process guaranteeing expeditious action for MLA requests. ***Recommendation 38 is re-rated to Largely Compliant.***

Recommendation 40 (Originally rated PC)

94. Cambodia was rated PC in its 2017 MER for R.40. Cambodia's mechanisms by which they can cooperate with foreign counterparts do not provide a basis for cooperation in some circumstances. The kind of information that can be shared is not broad enough to meet the requirements of R.40, and there is no provision to support joint investigations across borders or information exchange with non-counterparts. Cambodia does not have a system for prioritisation of requests or safeguarding of the information involved. Further, it is not clear that competent authorities can conduct inquiries on behalf of foreign counterparts and exchange all information available to them domestically.

95. Criterion 40.1 is *mostly met*. The MLA law applies only to MLA in criminal matters with respect to proceedings related to criminal offenses, as well as freezing, seizure and confiscation (Article 1 & 2, MLA Law). As such, there has been no change since the MER to the legal framework for exchange of information and the analysis in the MER and available material supports the criterion rating.

96. Criterion 40.2(a) is *met*. There is no change since the 2017 MER.

97. Criterion 40.2(b) is *mostly met*. There is no change since the 2017 MER.

98. Criterion 40.2(c) is *met*. There is no change since the 2017 MER.

99. Criterion 40.2(d) is *partly met*. CAFIU has a clear and documented process, in its 'Workflow of Response to Requests', for handling and responding to requests for assistance in a timely manner. This process however does not address prioritisation of requests. The SOP for the ACU outlines procedures for managing complaints received, however it does not contain clear processes for the prioritisation and timely execution of requests.

100. The MLA law and flowchart for processing MLA requests only apply to legal assistance in criminal proceedings. Beyond the CAFIU, it is not demonstrated how other Cambodian competent authorities prioritise and handle requests for assistance in a timely manner.

101. Criterion 40.2(e) is *partly met*. CAFIU, the ACU and the NBC have legislative obligations to maintain the confidentiality of information obtained (Article 24, AML/CFT Law, Articles 13 and 39 Law on Anti-Corruption and Article 5, Prakas on Home-Host Relations Related to Information Sharing, respectively). Likewise, Cambodia's MOUs impose confidentiality obligations on the parties.

102. The Internal Rules and Regulations for Official of the ACU provide for some direction on maintaining confidentiality (point 3, article 3) and securing documents at the close of business (point 9, article 3). These rules and regulations do not sufficiently provide clear processes and mechanisms for ensuring confidentiality and safeguarding information.

103. The information provided and referenced relates to the ACU only – no information was provided in relation to protocols and procedures for safeguarding information by other competent authorities such as the CAFIU and NBC.

104. The deficiencies outlined in the MER have not been addressed, as Cambodia has not provided any evidence of clear processes for safeguarding the information received.

56. Criterion 40.3 is *mostly met*. There is no change since the 2017 MER.

105. Criterion 40.4 is *partly met*. CAFIU, as an Egmont member, uses standard Egmont protocols in relation to feedback. CAFIU provides a feedback form to LEAs seeking feedback on the quality, timeliness and the use and usefulness of its information. Other than basic statistics of feedback sent and received (see c.40.10), Cambodia has provided limited information in response to this criterion. There is no clear policy or guidelines in place for feedback.

106. Criterion 40.5 to 40.7 are *mostly met*. There is no change since the 2017 MER.

107. Criterion 40.8 is *partly met*. There is no change since the 2017 MER.

108. Criterion 40.9 is *met*. There is no change since the 2017 MER.

109. Criterion 40.10 is *mostly met*. Cambodia has provided feedback to foreign counterparts on 22 occasions on 2018-2021. It is not clear if this included feedback on the use of the information and the outcomes of any analysis conducted on the basis of the provided information.

110. No SOPs/guidelines were provided in relation to providing feedback to foreign counterparts. However, as a member of Egmont, the FIU is required to provide feedback in compliance with the Egmont Principles for Information Exchange between FIUs, including the use of information provided and outcome of the analysis conducted.

111. Criterion 40.11 and 40.12 are *mostly met*. There is no change since the 2017 MER.

112. Criterion 40.13 is *met*. There is no change since the 2017 MER.

113. Criterion 40.14 is *not met*. There is no change since the 2017 MER.

114. Criterion 40.15 is *partly met*. There is no change since the 2017 MER.

115. Criterion 40.16 is *met*. There is no change since the 2017 MER.

116. Criterion 40.17 to 40.20 are *partly met*. There is no change since the 2017 MER.

Weighting and Conclusion

117. Insufficient progress has been made to justify a re-rating for R.40. Whilst Cambodia has made some progress in relation to providing and receiving feedback, the moderate deficiencies outlined in the MER still remain. Cambodia's mechanisms do not provide a basis for cooperation in some circumstances. In particular, there is patchy coverage relating to neighbouring jurisdictions and other jurisdictions that may expose Cambodia to ML/TF risk. The kind of information that can be shared is

also not broad enough to meet the requirements of R.40. There is no provision to support joint investigations across borders or information exchange with non-counterparts. Cambodia does not have a system for prioritisation of requests or safeguarding of the information involved. Further, it is not clear that competent authorities can conduct inquiries on behalf of foreign counterparts and exchange all information available to them domestically. **Recommendation 40 remains Partially Compliant.**

3.2. Progress on Recommendations which have changed since adoption of the MER

118. Since the adoption of Cambodia's MER, Recommendation 15 has been amended. This section considers Cambodia's compliance with the new requirements.

Recommendation 15 (Originally rated C)

119. In its 2017 MER, Cambodia was rated compliant with Recommendation 15. This recommendation has since been amended to include requirements relating to virtual assets (VA) and virtual asset service providers (VASPs).

120. Criterion 15.1 is *met*. No deficiency was identified in the 2017 MER. Cambodia reported that since the MER, it has undertaken joint activities via a working group (composed of NBC, SECC, and the General-Commissariat of National Police) to conduct on-site inspections on four separate occasions.

121. Criterion 15.2(a) and (b) are *met*. There is no change since the 2017 MER.

122. Criterion 15.3(a) is *partly met*. Since the MER, Cambodia has issued a 2014 press release and 2018 inter-ministerial statement (see analysis below on c.15.3(b)) cautioning the public to be wary in relation to 'crypto currencies' on the basis of market volatility, IT vulnerabilities, and lack of consumer protections. The statement identifies the potential ML/TF risks arising from the lack of transparency.

123. Cambodia did not provide further information as to whether it has conducted any work to identify and assess ML/TF risks emerging from VA activities or VASP activities/operations, or detailed information on how VA/VASPs are defined and whether these definitions are in line with the FATF standards.

124. According to the authorities, an assessment of ML/TF risks posed by VA/VASP will be conducted as part of its National Risk Assessment update. This work is scheduled to commence later in 2021.

125. Criterion 15.3(b) is *not met*. The review team commends Cambodia's efforts to provide some guidance to the market on the risks of novel currencies and assets. An inter-ministerial statement was issued by Cambodian authorities on 11 May 2018. This followed a 2014 press release issued by the National Bank of Cambodia informing the public that NBC does not recognise cryptocurrencies. Both statements do not prohibit the propagation, circulation, buying, selling, trading, and settlement of virtual assets. They caution against the participation in this range of 'crypto currency' activities.

126. The 2018 statement declares that "any person or legal entity that propagates to mobilise funds, buys, sells, trades, or settles Crypto Currencies without obtaining license from competent authorities shall be penalised in accordance with applicable laws". The review team cannot consider the joint statement and the press release as a prohibition in line with Footnote 44 of the FATF standards, as it does not constitute enforceable means in line with the FATF Methodology. As required by c.15.3(a), it does not appear to have been prepared on a ML/TF risk-sensitive basis.

127. The review team notes the Inter-Ministerial Technical/Operational Working Group appears to have a mandate to identify, monitor, and coordinate action against actors who do not have a license

from the NBC. However, it is unclear whether there is a legal basis for Cambodian authorities to enforce a prohibition against VA/VASPs. Firstly, VA/VASPs do not appear to be adequately defined in enforceable means. Secondly, it is unclear whether there are sanctions in place to enforce prohibition.

128. More broadly, c.15.3(b) tests whether this is a risk-based approach to prevent/mitigate identified ML/TF risks. It is unclear how a lack of recognition extended by the NBC represents part of a risk-based approach against ML/TF risks linked to VAs or VASPs; and what enforceable means prevent/mitigate ML/TF risks).

129. Criterion 15.4 is *not applicable*. Cambodia indicated its decision to prohibit VA/VASPs as per Footnote 44 of the Methodology, and this criterion was not analysed.

130. Criterion 15.5 is *not met*. Cambodia did not provide any information as to whether it is taking action to identify natural/legal persons that carry out unlicensed VASP activities, and apply appropriate sanctions to them.

131. Criterion 15.6 to 15.10 are *not applicable*. Cambodia indicated its decision to prohibit VA/VASPs as per Footnote 44 of the methodology, and these criteria was not analysed. Cambodia did not provide any information in response to these criteria.

132. Criterion 15.11 is *not met*. Deficiencies in R.37 to 40 apply to Cambodia's ability to rapidly provide international cooperation on ML/TF and predicate offences. Cambodia did not provide any evidence in relation to its ability to cooperate with partners on VA. There are no VASP supervisors, and they do not have a legal basis for exchanging information with foreign counterparts.

Weighting and Conclusion

133. Cambodia has maintained legacy criteria requirements to identify and address ML/TF risks, and require ML/TF risk assessments arising from new products, services, and technologies in general. However there are major gaps with respect to Cambodia's AML/CFT regime for VAs and VASPs. Some initial steps have been taken towards prohibition of VA but there was no evidence that ML/TF risks have been identified and assessed. Therefore it was unclear to the review team whether prohibition was based on an understanding of risks and whether responses are risk-based. No evidence was provided of any action taken to identify and sanction unlicensed entities dealing in VA/VASPs. ***Recommendation 15 is re-rated to Non-Compliant.***

IV. CONCLUSION

134. Overall, Cambodia has made good progress in addressing the technical compliance deficiencies identified in its MER and has been re-rated on Recommendations 1, 7, 12, 33, 37 and 38. Insufficient progress has been made on Recommendation 40 to justify a re-rating at this time.

135. Cambodia has made insufficient progress on R.15, which was amended after the adoption of its MER in 2017. As a result, Cambodia has been re-rated to non-compliant for Recommendation 15.

136. In light of the progress made by Cambodia since its MER was adopted, its technical compliance with the FATF Recommendations is as follows as of the reporting date 1 February 2021:

R.	Rating	R.	Rating
1	PC (MER 2017) ↑ LC (FUR 2021)	21	LC (MER 2017)
2	PC (MER 2017) ↑ LC (FUR 2019)	22	PC (MER 2017)
3	LC (MER 2017)	23	LC (MER 2017)
4	LC (MER 2017)	24	PC (MER 2017)
5	LC (MER 2017)	25	PC (MER 2017)
6	LC (MER 2017)	26	PC (MER 2017)
7	NC (MER 2017) ↑ PC (FUR 2021)	27	LC (MER 2017)
8	PC (MER 2017)	28	PC (MER 2017)
9	C (MER 2017)	29	LC (MER 2017)
10	LC (MER 2017)	30	LC (MER 2017)
11	LC (MER 2017)	31	LC (MER 2017)
12	PC (MER 2017) ↑ LC (FUR 2021)	32	LC (MER 2017)
13	PC (MER 2017)	33	PC (MER 2017) ↑ LC (FUR 2021)
14	LC (MER 2017)	34	PC (MER 2017) ↑ LC (FUR 2018)
15	C (MER 2017) ↓ NC (FUR 2021)	35	PC (MER 2017)
16	PC (MER 2017)	36	LC (MER 2017)
17	LC (MER 2017)	37	PC (MER 2017) ↑ LC (FUR 2021)
18	PC (MER 2017)	38	PC (MER 2017) ↑ LC (FUR 2021)
19	PC (MER 2017) ↑ LC (FUR 2018)	39	LC (MER 2017)
20	LC (MER 2017)	40	PC (MER 2017)

137. Cambodia has 27 Recommendations rated C/LC. Cambodia will remain in enhanced follow-up, and will continue to report back to the APG on progress to strengthen its implementation of AML/CFT measures. Cambodia's ~~fourth~~^{fifth} progress report is due 1 February 2022.